REVISIONS:
ITEM XII-17, PULLED PER PARK DEPT.
ADDTION OF ITEMS X-1 & 2

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:30 a.m. September 23, 2008

First Floor Board Room
455 North Main

OPENING OF REGULAR MEETING

-- Call to Order

-- Approve the minutes of the regular meeting on September 16, 2008

AWARDS AND PROCLAMATIONS

-- Proclamation:

Irma Wassall Day

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

V. CONSENT PLANNING AGENDA

1. *ZON2008-00041 – Zone change from GO General Office ("GO") to LC Limited Commercial ("LC") subject to Protective Overlay #218; generally located on the east side of Maize Road, north of U.S. Highway 54 (Kellogg). (District V)

   RECOMMENDED ACTION: Adopt the findings of the MAPC, approve the zone change subject to the provisions of Protective Overlay #218 and publish the zone change ordinance in the official City newspaper after adoption; or Return the application to the MAPC for reconsideration; OR Deny the application.

2. *SUB 2007-115-Plat of Via Christi-West Campus Addition located on the east side of 151st Street West and on the north side of 21st Street North. (County)

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

3. *SUB 2008-28-Plat of Johnson's Nursery Addition, located north of 21st Street north and on the east side of Hoover. (District V)

   RECOMMENDED ACTION: Approve the document and plat, authorize the necessary signatures, adopt the Resolution, and approve first reading of the Ordinance.

4. *SUB 2008-52-Plat of The Village at Greenwich Addition located on the northeast corner of Greenwich Road and 21st Street North. (District II)

   RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures, adopt the Resolutions, and approve first reading of the Ordinance.

HOUSING AGENDA

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

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

VII. CONSENT HOUSING AGENDA

1. *Section 8 Administrative Plan Addendum.

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

AIRPORT AGENDA

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

IX. CONSENT AIRPORT AGENDA

1. *Wichita Mid-Continent Airport, Renovations to Hangar 16 (1700 Airport Road).

   RECOMMENDED ACTION: Approve the project budget and authorize the necessary signatures.

2. *Agreement for the Operation and Management of the Bulk Aviation Fuel Storage and Distribution Facility at Mid-Continent Airport.

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

3. *Agreement - U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services.

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

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

1. Approval of Travel Expenditures for Sister Cities Official Visit to China, October 14 through 21, 2008, for Mayor Brewer, Vice-Mayor Schlapp, Virdena Gilkey, Senator Carolyn McGinn, Jacqueline Lane, WASC Representatives, Captain Darrell Haynes, International Security, Karyn Page, Kansas World Trade Center, and Jim Mock.

   RECOMMENDED ACTION: Approve the expenditures.

2. Travel Expenditures to attend the Kansas Arts Council Advocacy meeting in Topeka on Thursday, October 2, 2008 for Council Members Fearey and Williams.

   RECOMMENDED ACTION: Approve the travel expenditures.

XI. COUNCIL MEMBER APPOINTMENTS

1.

   RECOMMENDED ACTION: Approve the Appointments

XII. CONSENT AGENDA

1. Report of Board of Bids and Contracts dated September 22, 2008.

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

2. Applications for Licenses:

   None

3. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2008	(Consumption on Premises)
Armondo De Santiago	El Perron Enterprises, LLC*	3824 East Harry
New	2008	(Consumption off Premises)
Mark Branham	QuikTrip #316	14411 East Kellogg Drive

*General/Restaurant - 50% or more of gross receipts derived from sale of food.

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

4. Preliminary Estimates:
   a. Preliminary Estimates. (See attached)

RECOMMENDED ACTION: Receive and file.

5. Petitions for Public Improvements:

None

6. Deeds and Easements:

None

7. Statement of Costs:

None

8. Consideration of Street Closures/Uses.

   a. Wichita River Jump 2008 October 4, 2008 12:00 pm – 11:00 pm (Districts I and VI)
   McLean Blvd, Douglas to 1st Street
   Douglas Avenue, Waco to McLean Blvd.

   Wichita River Jump 2008 October 4, 2008 6:00 pm – 8:00 pm (Districts I and VI)
   1st Street, Waco to McLean Blvd.
   Waco Street, Douglas to 1st Street.

   b. Newman University 75th Anniversary Celebration October 11, 2008 8:45 pm – 9:30 pm (District IV)
   McCormick Avenue, All Hallows to K-42/Edwards

   c. 13th Street North from Lewellen to Bitting. (District VI)

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

9. Agreements/Contracts:
   a. Staking in The Woods Addition, east of 151st Street West, north of Maple. (District V)-Supplemental
   b. Staking in Turkey Creek Third Addition, north of Pawnee, east of 135th Street West. (District IV)
   c. Agreement to Respread Assessments: Tyler's Landing fourth Addition, east of Tyler Road, south of 37th Street North. (District V)

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

10. Design Services Agreement:
    a. Traffic Signalization at Three Locations. (Districts II, III, and VI)
    b. 13th Street Bridge at the Little Arkansas River. (District IV)-Supplemental
    c. Crystal Gardens Addition, north 13th, east of 135th Street West. (District V)

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

11. Change Orders:

    None

12. Property Acquisition:

    None

13. Minutes of Advisory Boards/Commissions

    Deferred Compensation Board of Trustees, May 9, 2008
    Deferred Compensation Board of Trustees, May 15, 2008
    Arts Council, August 14, 2008
    District II Advisory Board, August 4, 2008
    Wichita Historic Preservation Board, August 11, 2008

    RECOMMENDED ACTION: Receive and file.

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

Property Address:	Council District:
a. 1226 North Lorraine	I

    RECOMMENDED ACTION: Adopt the resolutions to schedule a public hearing before the City Council on November 4, 2008 at 9:30 a.m. or as soon as possible thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

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

    RECOMMENDED ACTION: Approve the recommended funding from the HDLP, and authorize the necessary signatures.

16. Notice of Intent to Use Debt Financing, renovations to 1700 Airport Road (Customs).

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

17. Park Facilities Renovation. **(PULLED PER PARK DEPARTMENT)**

18. Increased Budget-Equipment and Facilities Project

    RECOMMENDED ACTION: Approve the amended bonding resolution for the Equipment and Facilities Improvement Project.

19. Transportation Services Agreement with Sedgwick County.

    RECOMMENDED ACTION: Approve the contract, authorize the necessary signatures, and authorize any necessary budget adjustments.

20. Correcting Resolution: Drainage Project in Cedar View Village Addition, east of Greenwich, south of Kellogg. (District II)

    RECOMMENDED ACTION: Adopt the Resolution.

21. Sale of Remnant at the Southwest Corner of Yellowstone and Pawnee. (District IV)

    RECOMMENDED ACTION: Approve the Real Estate Purchase Contracts and authorize all necessary signatures.

22. Office of Central Inspection Penalty Fee Collections Agreement – Addendum to Municipal Court fine collection contract.

    RECOMMENDED ACTION: Approve the addendum to the contract with Gila Corporation, d/b/a Municipal Services Bureau and authorize the necessary signatures.

23. Blind and Physically Handicapped (Talking Books) Contract.

    RECOMMENDED ACTION: Approve the 2008-2009 Talking Books Service contract and authorize the necessary signatures.

24. Bentley Reserve Wellfield Improvements - Design/Build.

    RECOMMENDED ACTION: Approve the Contract for Design/Build with the team of Burns & McDonnell/Utility Inc. and authorize the necessary signatures.

25. Second Reading Ordinances: (First Read September 16, 2008)

    a. Second Reading Ordinances. (See attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Workshop to follow

Agenda Report No. V-1.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council

SUBJECT: ZON2008-00041 – Zone change from GO General Office ("GO") to LC Limited Commercial ("LC") subject to Protective Overlay #218; generally located on the east side of Maize Road, north of U.S. Highway 54 (Kellogg). (District V)

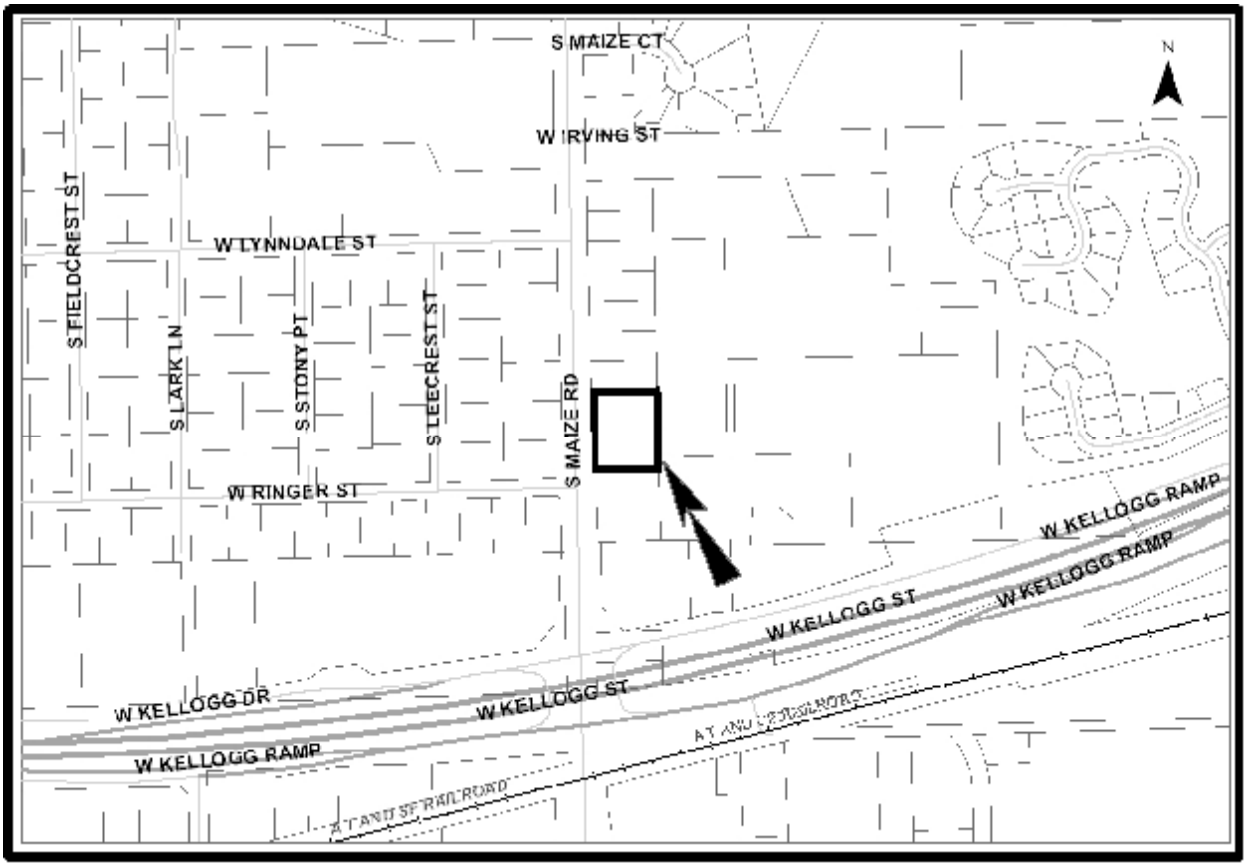
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

DAB V Recommendation: To be heard on September 8, 2008.

MAPC Recommendation: Approve, LC Limited Commercial ("LC") with a Protective Overlay, (13-0)

MAPD Staff Recommendation: Approve, LC Limited Commercial ("LC") with a Protective Overlay



Background: The applicant requests a zone change from GO General Office ("GO") to LC Limited Commercial ("LC") for a bank or financial institution on 1.3 acres. The site is located east of Maize Road and north of Kellogg. The platted site was originally developed with two single-family residential units. Currently the site is developed with a financial institution. The applicant has also proposed a Protective Overlay that states: "The subject property shall be limited to the following uses: Banks and Financial Institution, as permitted by the LC Limited Commercial ("LC") District, and all uses permitted by right in the GO General Office ("GO") District." The only significant difference between what is there now and what this case is proposing will be the increased signage that LC zoning allows in respect to signage allowed in the GO zone.

The site has SF-5 Single-family Residential ("SF-5") zoned single-family residences to the north and west across Maize. East of the site is vacant SF-5 zoned property containing the Cowskin Creek Floodway. South of the site is vacant LC zoned property. Further south, at the Maize/Kellogg intersection, is an LC zoned convenience store and car wash.

Analysis: This case will be heard at the District V Advisory Board meeting on September 8, 2008. At the MAPC meeting held August 21, 2008, the MAPC voted (13-0) to approve LC zoning with a Protective Overlay. There was discussion about a provision requiring signage not to face towards the residential property to the west, across Maize Road. MAPC decided to add a provision to the Protective Overlay to prohibit a proposed monument sign from facing the west towards residential property. After the discussion, the MAPC recommended approval of the LC request with a Protective Overlay with the following provisions:

1. The subject property shall be limited to the following uses: Banks and Financial Institution, as permitted by the LC Limited Commercial ("LC") District, and all uses permitted by right in the GO General Office ("GO") District;

2. Proposed monument signage shall not face property zoned or used for residential purposes on the west side of Maize Road.

There were no citizens that spoke in favor of the application and there was no opposition.

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 the provisions of Protective Overlay #218 and publish the zone change ordinance in the official City newspaper after adoption; or
2. Return the application to the MAPC for reconsideration; or
3. Deny the application.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

ORDINANCE NO. 47-991

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. ZON2008-00041

Zone change from GO General Office ("GO") to LC Limited Commercial ("LC") subject to Protective Overlay #218 on property described as:

Lot 1, Block A, Kansas State Bank Addition, Wichita, Sedgwick County, Kansas; generally located on the east side of Maize Road, north of U.S. Highway 54 (Kellogg).

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #218:

1. The subject property shall be limited to the following uses: Banks and Financial Institution, as permitted by the LC Limited Commercial ("LC") District, and all uses permitted by right in the GO General Office ("GO") District;

2. Proposed monument signage shall not face property zoned or used for residential purposes on the west side of Maize Road.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED AT WICHITA, KANSAS, _____

_____
Carl Brewer - Mayor

EXTRACT OF THE AUGUST 21, 2008 MAPC HEARING

Case No.: ZON2008-41 – Key South LLC, Attn: Jim Ashcraft (owner/applicant); Baughman Company, P.A., Attn: Phil Meyer (Agent) Request Zone change from GO General Office to LC Limited Commercial with a Protective Overlay on property described as;

Lot 1, Block A, Kansas State Bank Addition, Sedgwick County, Kansas. Generally located on the east side of Maize Road, north of Kellogg/US 54.

BACKGROUND: The applicant requests a zone change from GO General Office ("GO") to LC Limited Commercial ("LC") for a bank or financial institution on 1.3 acres. The site is located east of Maize Road and north of Kellogg. The platted site was originally developed with two single-family residential units. Currently the site is developed with a financial institution. The applicant has also proposed a Protective Overlay that states: "The subject property shall be limited to the following uses: Banks and Financial Institution, as permitted by the LC Limited Commercial ("LC") District, and all uses permitted by right in the GO General Office ("GO") District." The only significant difference between what is there now and what this case is proposing will be the increased signage that LC zoning allows in respect to signage allowed in the GO zone.

The site has SF-5 Single-family Residential ("SF-5") zoned single-family residences to the north and west across Maize. East of the site is vacant SF-5 zoned property containing the Cowskin Creek Floodway. South of the site is vacant LC zoned property. Further south, at the Maize/Kellogg intersection, is an LC zoned convenience store and car wash.

CASE HISTORY: The subject property was originally platted as Lots 9, 10, and the north 60 feet of lot 11 of the Vera Vista Addition in 1955. The property was then replatted as Lot 1, Block A of the Kansas State Bank Addition in 2007. The site was rezoned in 2007 from SF-5 to GO (ZON2007-00007) with a Conditional Use for a bank and financial institution (CON2007-00009).

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family Residence
SOUTH:	LC	Vacant Commercial Land
EAST:	SF-5	Agricultural Land
WEST: SF-5	Single-family Residence	

PUBLIC SERVICES: The site has frontage along Maize Road. Maple is a principal arterial, improved with four lanes, at this location. Current average daily trips (ADT) on Maize Road at the intersection with Maple, to the north of the subject site, are 30,441 ADT. The current ADT for US highway 54 (Kellogg), just south of the subject site is 74,700 ADT. Water and sewer are available.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for "Urban Residential" use. It is located immediately north of an area designated for "Regional Commercial" use. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be located adjacent to arterial streets. The guidelines also indicate that low-density offices can serve as a transitional land use between residential uses and higher intensity uses. The Commercial Locational Guidelines of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design

features, which limit noise, lighting, signage and other activity from adversely impacting surrounding residential areas.

The Unified Zoning Code (UZC) would require screening between single-family residential development and proposed development on this site, and would require setbacks from all property lines. The Landscape Ordinance would require a landscape plan for the proposed development.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to a Protective Overlay that states:

"The subject property shall be limited to the following uses: Banks and Financial Institution, as permitted by the LC Limited Commercial ("LC") District, and all uses permitted by right in the GO General Office ("GO") District"

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by commercial zoning and uses south of the site, near the Maize/Kellogg intersection, and residential zoning and uses north and west of the site. Property east of the site is zoned SF-5, and is currently undeveloped floodplain.

2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned GO and could continue to be used for office and residential type uses. The site may not be desirable for residences due to arterial street frontage near an expressway.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed Protective Overlay permitting bank and financial institutions will be the same as what is currently on the site. The standards of the Unified Zoning Code and the Landscape Ordinance should limit noise, lighting, and other activity from adversely impacting the nearby single-family residential areas. If the site is developed in conformance with current drainage and traffic access policies, the proposed development should have little to no affect on nearby property. However, with the zoning proposed to be increased to LC zoning, the greatest impact for this particular case will be the additional signage that is allowed under the LC zoning.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request will allow bank and financial institutions by right and all uses allowed in the GO zone district. Denial of the request would have little impact on the applicant since they are allowed by right what is currently on the site. The approval of LC zoning with the proposed Protective Overlay will impact the nearby residential properties due to the increased signage that is allowed in the LC zone district.

5. Conformance of the requested change to adopted or recognized Plans/Policies: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for "Urban Residential" use, immediately north of an area designated for "Regional Commercial" use. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be located adjacent to arterial streets. The guidelines also indicate that low-density offices can serve as a transitional land use between residential uses and higher intensity uses. The Commercial Locational Guidelines of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zoning Code (UZC) would require screening between single-family residential development and proposed

development on this site, and would require setbacks from all property lines. The Landscape Ordinance would require a landscape plan for the proposed development.

6. Impact of the proposed development on community facilities: Provided that drainage and traffic access policies are met, community facilities should not be impacted by the proposed development.

FOSTER commented that since there was residential zoning west of the site would it be appropriate to add a provision that the signage not face residential zoning.

SLOCUM stated that was addressed in the Protective Overlay.

PHIL MEYER, BAUGHMAN CO., AGENT FOR THE APPLICANT said the sign was along Maize Road and would read to traffic traveling north and south.

MITCHELL asked if they were agreeable to adding the provision to the PO?

MEYER responded yes.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation and the addition of a provision to the Protective Overlay to include that signage not face to the west toward residential zoning.

MCKAY moved, **HILLMAN** seconded the motion, and it carried (13-0).

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: SUB 2007-115 -- Plat of Via Christi-West Campus Addition located on the east side of 151st Street West and on the north side of 21st Street North.

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)

Background: This site, consisting of two lots on 113.79 acres, is located in the County within three miles of Wichita's city limits. A County zone change (PUD 2007-04) from SF-20 Single-Family Residential to PUD Planned Unit Development has been approved. A Notice of Planned Unit Development has been submitted.

Analysis: County Petitions, 100 percent, and a Certificate of Petitions have been submitted to the County for paving, drainage and bridge improvements. City Petitions, 100 percent, and a Certificate of Petitions have been submitted to the City for sewer and water improvements. An Application for Water Service Outside the City has been submitted. A Restrictive Covenant has been submitted to provide for the ownership and maintenance of the proposed reserves being platted for drainage purposes**.** In accordance with the PUD approval, a Declaration of Cross-lot Access and Easement has been submitted to assure internal vehicular movement between the lots.

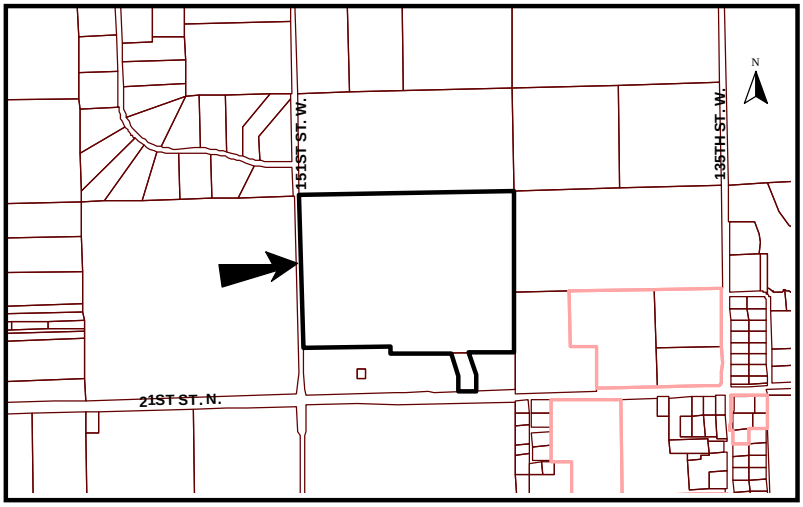
This plat has been reviewed and approved by the Metropolitan Area Planning Commission, subject to conditions.

Financial Consideration: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Notice of Planned Unit Development, Certificate of Petitions, Application for Water Service Outside the City, Restrictive Covenant and of Cross-lot Access and Easement will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and adopt the Resolutions.


21ST ST. N.
151ST ST. W.
135TH ST. W.
N

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-460

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90402 (EAST OF 151ST ST. WEST, NORTH OF 21ST) 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 448-90402 (EAST OF 151ST ST. WEST, NORTH OF 21ST) 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 448-90402 (east of 151st St. West, north of 21st).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Eight Hundred Thirty-Nine Thousand Dollars ($839,000) exclusive of the cost of interest on borrowed money, with 52.21 percent of the total cost payable by the improvement district and 47.79 percent of the total cost payable by the City of Wichita from Water Department Water Utility Improvement Funds. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after September 1, 2008, 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:

VIA CHRISTI-WEST CAMPUS ADDITION
Lot 1, Block A
Lot 1, Block B

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

> The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block A, VIA CHRISTI-WEST CAMPUS ADDITION shall pay 843/1,000 of the total cost of the improvements, and Lot 1, Block B, VIA CHRISTI-WEST CAMPUS ADDITION shall pay 157/1,000 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot 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.

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 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-461

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90403 (EAST OF 151ST ST. WEST, NORTH OF 21ST) 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 448-90403 (EAST OF 151ST ST. WEST, NORTH OF 21ST) 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 448-90403 (east of 151st St. West, north of 21st).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Sixty-Four Thousand Dollars ($164,000) exclusive of the cost of interest on borrowed money, with 57.32 percent of the total cost payable by the improvement district and 42.68 percent of the total cost payable by the City of Wichita from Water Department Water Utility Improvement Funds. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after September 1, 2008, 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:

VIA CHRISTI-WEST CAMPUS ADDITION
Lot 1, Block A
Lot 1, Block B

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block A, VIA CHRISTI-WEST CAMPUS ADDITION shall pay 843/1,000 of the total cost of the improvements, and Lot 1, Block B, VIA CHRISTI-WEST CAMPUS ADDITION shall pay 157/1,000 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot 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.

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 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-462

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90404 (EAST OF 151ST ST. WEST, NORTH OF 21ST) 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 448-90404 (EAST OF 151ST ST. WEST, NORTH OF 21ST) 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 448-90404 (east of 151st St. West, north of 21st).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Two Hundred Ninety-One Thousand Dollars ($291,000) exclusive of the cost of interest on borrowed money, with 100 percent of the total cost 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 September 1, 2008, 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:

VIA CHRISTI-WEST CAMPUS ADDITION
Lot 1, Block A
Lot 1, Block B

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

> The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block A, VIA CHRISTI-WEST CAMPUS ADDITION shall pay 843/1,000 of the total cost of the improvements, and Lot 1, Block B, VIA CHRISTI-WEST CAMPUS ADDITION shall pay 157/1,000 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot 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.

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 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

132019

First Published in the Wichita Eagle on September 23, 2008

RESOLUTION NO. 08-463

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF MAIN 11, NORTHWEST INTERCEPTOR SEWER, (EAST OF 151ST ST. WEST, NORTH OF 21ST) 468-84543 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 MAIN 11, NORTHWEST INTERCEPTOR SEWER, (EAST OF 151ST ST. WEST, NORTH OF 21ST) 468-84543 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Main 11, Northwest Interceptor Sewer, (east of 151st St. West, north of 21st) 468-84543.

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 Million Three Hundred Dollars ($2,300,000) exclusive of the cost of interest on borrowed money. The Benefit District shall be responsible for paying Two Hundred Forty Thousand One Hundred Seventy-Six Dollars ($240,176) of the total cost of the foregoing improvements, such amount representing a $0.05 per square foot sanitary sewer main benefit fee assessment. The remaining cost of the improvements shall be payable from other available funds to the City, including available and unencumbered funds of the Water and Sewer Utility and proceeds of Water and Sewer Utility Revenue Bonds. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after September 1, 2008 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:

VIA CHRISTI-WEST CAMPUS ADDITION
Lot 1, Block A
Lot 1, Block B

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, Block A VIA CHRISTI-WEST CAMPUS ADDITION shall pay 843/1,000 of Two Hundred Forty Thousand One Hundred Seventy-Six Dollars ($240,176.00) of the total cost of the improvements; and Lot 1, Block B VIA CHRISTI-WEST CAMPUS ADDITION shall pay 157/1,000 of Two Hundred Forty Thousand One Hundred Seventy-Six Dollars ($240,176.00) of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or

parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

NOTICE OF PLANNED UNIT DEVELOPMENT

THIS NOTICE made this 27th day of August, 2008, by Via Christi Regional Medical Center, Inc., a Kansas Corporation, hereinafter called Declarant,

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

VIA CHRISTI – WEST CAMPUS ADDITION

Lot 1, Block A
Lot 1, Block B

and

WHEREAS, Declarant is desirous to file notice that a planned unit development plan approved by the Sedgwick County Commission is on file with the Metropolitan Area Planning Department, known as Via Christi-West Campus Planned Unit Development (PUD-27).

NOW, THEREFORE, the Declarant wants to make notice that the approved community unit plan has placed restrictions on the use and requirements on the development of the above described real property.

The Metropolitan Area Planning Department is located on the 10th Floor, City Hall, Wichita, Kansas, (316) 268-4421.

The planned unit development shall be binding on the owners, their heirs, or successors or assigns and is a document running with the land and is binding on all successors in title to Lot 1, Block A, and Lot 1, Block B, Via Christi – West Campus Addition, Sedgwick County, Kansas.

EXECUTED the day and year first written above.

Via Christi Regional Medical Center, Inc.

By: R. Allan Allford
R. Allan Allford, Senior Vice President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came R. Allan Allford as Senior Vice President of Via Christi Regional Medical Center, Inc., a Kansas Corporation, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Janis Marean
Notary Public

(My Appointment Expires: 11-28-10)

NOTARY PUBLIC OFFICIAL SEAL STATE OF KANSAS
JANIS MAREAN
MY COMMISSION EXPIRES
November 28, 2010

BCC Certificate of Petition. Here is a Copy for your Files.

JA
8/28/08

CERTIFICAT

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

We, Via Christi Regional Medical Center, Inc., a Kansas Corporation, owners of VIA CHRISTI – WEST CAMPUS ADDITION, Sedgwick County, Kansas, do hereby certify that petition(s) for the following improvements have been submitted to the Board of County Commissioners, Sedgwick County, Kansas:

1. Pavement Improvements
2. Drainage Improvements
3. Bridge Improvements

As a result of the above-mentioned petition(s) for improvements, all lots, or portions thereof within the Via Christi – West Campus Addition may be subject to special assessments assessed thereto for the cost of constructing the above-described improvements.

Signed this 27th day of August, 2008.

Via Christi Regional Medical Center, Inc.

By: R. Allan Allford
R. Allan Allford, Senior Vice President

COPY

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came R. Allan Allford as Senior Vice President of Via Christi Regional Medical Center, Inc., a Kansas Corporation, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Janis Marean
Notary Public

(My Appointment Expires: 11-28-10)

NOTARY PUBLIC OFFICIAL SEAL STATE OF KANSAS
JANIS MAREAN
MY COMMISSION EXPIRES
November 28, 2010

CERTIFICATE OF PETITION

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

We, Via Christi Regional Medical Center, Inc., a Kansas Corporation, owners of VIA CHRISTI - WEST CAMPUS, Sedgwick County, Kansas, do hereby certify that petition(s) for the following improvements have been submitted to the City Council of the City of Wichita, Kansas:

1. Sanitary Sewer Improvements
2. Water Improvements

As a result of the above-mentioned petition(s) for improvements, all lots or portions thereof within VIA CHRISTI - WEST CAMPUS ADDITION, may be subject to special assessments assessed thereto for the cost of constructing the above-described improvements.

Signed this 27TH day of AUGUST, 2008.

Via Christi Regional Medical Center, Inc.

By: R. Allan Allford

R. Allan Allford, Senior Vice President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came R. Allan Allford as Senior Vice President of Via Christi Regional Medical Center, Inc., a Kansas Corporation, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Janis Marean
Notary Public

(My Appointment Expires: 11-28-10)

NOTARY PUBLIC OFFICIAL SEAL STATE OF KANSAS
JANIS MAREAN
MY COMMISSION EXPIRES
November 28, 2010

RESTRICTIVE COVENANT

THIS DECLARATION made this 27th day of August, 2008, by Via Christi Regional Medical Center, Inc., a Kansas Corporation, owner of Via Christi – West Campus Addition, Sedgwick County, Kansas, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

VIA CHRISTI – WEST CAMPUS ADDITION
Lot 1, Block A
Lot 1, Block B

WHEREAS, the Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserves "A", "B", "C", and "D", VIA CHRISTI-WEST CAMPUS ADDITION, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is hereby reserved for bridges, entry features, entry monuments, signage, landscaping, sidewalks, drainage purposes, floodway and utilities as confined to easement.

Reserve "B" is hereby reserved for bridges, entry features, entry monuments, signage, landscaping, sidewalks, drainage purposes, and floodway.

Reserves "C", and "D" are hereby reserved for open space, landscaping, drainage purposes, utilities, and streets. The public shall not bear the cost of any repair or replacement of improvements within said Reserves "C" and "D" adversely affected by street construction, repair, or maintenance.

Reserves "A" and "B" shall be owned and maintained by the owner of Lot 1, Block A, until such time as the appropriate governing body elects to assume the responsibility for maintenance and improvements to the drainage.

Reserves "C" and "D" shall be owned and maintained by the owner of Lot 1, Block A.

2. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserves, as defined, for the purposes of maintaining such Reserves. This easement is conditioned upon the following event or events happening:

A. That the Declarant has failed to maintain the reserve in a reasonable and prudent manner,

and,

B. That the appropriate governing body has given written notice to the Declarant and neither entity has responded in initiating corrective action within thirty (30) days of such notice. If the governing body has taken action to maintain the reserves under this covenant, the Declarant shall pay promptly the costs expended. If the costs are not paid within thirty (30) days of the rendering of an account, the costs shall be considered an assessment against Lot 1, Block A, and Lot 1, Block B, Via Christi – West Campus Addition, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in all portions of Lot 1, Block A, and Lot 1, Block B, Via Christi – West Campus Addition, Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita AND County of Sedgwick. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first written.

Via Christi Regional Medical Center, Inc.

By: R. Allan Allford

R. Allan Allford, Senior Vice President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came R. Allan Allford as Senior Vice President of Via Christi Regional Medical Center, Inc., a Kansas Corporation, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Janis Marean
Notary Public

(My Appointment Expires: 11-28-10)

NOTARY PUBLIC OFFICIAL SEAL STATE OF KANSAS
JANIS MAREAN
MY COMMISSION EXPIRES
November 28, 2010

DECLARATION OF CROSS LOT ACCESS AND EASEMENT

This Declaration is made as of this 27th day of August, 2008, by the undersigned.

A. The undersigned are the owners of Lot 1, Block A, and Lot 1, Block B, Via Christi – West Campus Addition, Sedgwick County, Kansas.

B. The undersigned desires to provide for cross lot access and easements for pedestrian and vehicular traffic over and across all Lots in said Via Christi-West Campus Addition.

NOW, THEREFORE, the undersigned hereby declares, establishes and grants to and for the benefit of each of their respective lots, for the convenience of the owners and employees, customers, and invitees of the owners thereof, mutual non-exclusive easements and rights-of-way for the purpose of ingress and egress of vehicular and pedestrian traffic along and across those portions of the respective parcels on said Lot to be established as driveways and sidewalks from time to time.

Said easements are for the purpose of providing ingress and egress between and for the benefit of each of the parcels on said lot, the owners thereof, their employees, customers and invitees. There shall be erected no continual fence or other barrier which would prevent or obstruct the passage of such vehicular and pedestrian traffic between said parcels; provided, however, that this Declaration shall not be construed to create any rights in the general public nor as a dedication to public use of any portion of said parcels on said Lot.

The easements herein granted are superior and paramount to the rights of the owner of the servient estates so created and shall be deemed covenants that run with the land and shall inure to the benefit of and be binding upon the owners of said Lots, their successors and assigns.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

Via Christi Regional Medical Center, Inc.

By: R. Allan Allford
R. Allan Allford, Senior Vice President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came R. Allan Allford as Senior Vice President of Via Christi Regional Medical Center, Inc., a Kansas Corporation, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Janis Marean
Notary Public

(My Appointment Expires: 11-28-10)

NOTARY PUBLIC OFFICIAL SEAL STATE OF KANSAS
JANIS MAREAN
MY COMMISSION EXPIRES
November 28, 2010

APPLICATION FOR WATER SERVICE
OUTSIDE THE CORPORATE LIMITS OF
THE CITY OF WICHITA
AND RELATED PETITION AND CONSENT TO ANNEXATION,
AGREEMENTS AND COVENANTS

The Governing Body of the City of Wichita, Kansas, this _____ day of _____, 2008, approves and files the application of Via Christi Regional Medical Center, Inc., a Kansas Corporation, for water service to the following property: Lot 1, Block A, and Lot 1, Block B, Via Christi – West Campus Addition, Sedgwick County, Kansas.

The applicant agrees to abide by the established rules and regulations of the Wichita Water Department now in force, or which may hereafter be enacted or adopted by said Department of the City of Wichita, Kansas, and to pay for service at the established rate, all in accordance with Section 17 of Code of the City of Wichita, or as amended. The applicant further agrees to acquire a plumbing permit from the City of Wichita; to have the service line installed by a plumber licensed by the City using City approved materials and installation methods.

The owners of land covered hereunder do hereby consent to, petition and request the annexation of such lands by the City of Wichita at such time as it determines appropriate (as contemplated in K.S.A. 12-519 et. seq.). Until such time as the annexation occurs, the owners covenant and agree they will not seek incorporation as a separate city nor annexation to any other city of the land, or any part thereof. The foregoing consent to annexation and covenants are hereby made binding on all heirs, successors and assigns and are made a covenant to run with the land and shall not be withdrawn without the consent of the City of Wichita; and in the event such consent is given, said services above may be terminated at the option of the City of Wichita.

The undersigned agrees not to transfer title to the above premises or any portion thereof without notifying the purchaser of the existence of this application, but failures of purchasers of above property or any portion thereof to have actual notice of this application shall in no way diminish or enlarge the rights or obligations imposed hereunder.

The undersigned agrees that upon failure to comply with the terms of this agreement and permit, the covered service may be denied to the property above described and said service may be terminated without notice, all in accordance with the ordinance and regulations of the City. This remedy is in addition to all other legal remedies available to the City to assure full compliance with this agreement and permit.

Applicant:
Via Christi Regional Medical Center, Inc.

By: R. Allan Allford
R. Allan Allford, Senior Vice President

APPLICATION FOR WATER SERVICE OUTSIDE THE CORPORATE LIMITS OF THE CITY OF WICHITA

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this 27th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came R. Allan Allford as Senior Vice President of Via Christi Regional Medical Center, Inc., a Kansas Corporation, personally known to me to be the same persons whom executed the within instrument of writing and such persons duly acknowledged the execution of the same, for and on behalf and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Janis Marean
Notary Public

(My appointment expires: 11-28-10)

NOTARY PUBLIC OFFICIAL SEAL STATE OF KANSAS
JANIS MAREAN
MY COMMISSION EXPIRES
November 28, 2010

APPLICATION FOR WATER SERVICE OUTSIDE THE CORPORATE LIMITS OF THE CITY OF WICHITA

APPROVED BY:

Director of Water ~~and Water Pollution Control~~ UTILITIES DAVID R. Warren

APPROVED AS TO FORM:

Director of Law Gary Rebenstorf

APPROVED BY:

Director of Planning, John. S. Schlegel

AUTHORIZED BY:

Mayor CARL Brewer

APPROVED BY:

Engineering Department James ARMOUR City Engineer

ATTEST:

City Clerk Karen Sublett

Agenda Report No. V-3.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: SUB 2008-28 -- Plat of Johnson's Nursery Addition, located north of 21st Street North and on the east side of Hoover. (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 one lot on 13.16 acres, is located within Wichita's city limits. The site was approved for a zone change (ZON 2007-69) from SF-5 Single-family Residential to LC Limited Commercial. A Conditional Use (CON 2008-03) was also approved for a nursery on this site.

Analysis: Water will be available to serve this site. The site was approved by Environmental Services for the use of on-site sewerage facilities. Petitions, 100%, and a Certificate of Petitions were submitted for future sewer improvements.

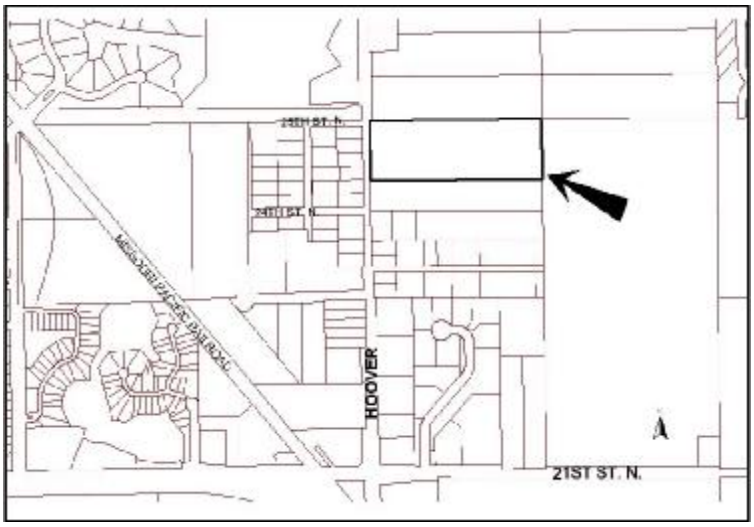
The plat has been approved by the Metropolitan Area Planning Commission. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Certificate of Petition will be recorded with the Register of Deeds.

Recommendations/Actions: Approve the document and plat, authorize the necessary signatures, adopt the Resolution and approve first reading of the Ordinance.


MISSOURI PACIFIC RAILROAD
24TH ST. N.
24TH ST. N.
HOOVER
21ST ST. N.

OCA150006 BID 37529-009 CID#76383)

Published in The Wichita Eagle on _____

ORDINANCE 47-999

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. ZON 2007-69

Zone change request from SF-5, Single-Family Residential to LC, Limited Commercial, for property described as:

Lot 1, Block 1, Johnson's Nursery Addition, Wichita, Sedgwick County, Kansas.

Generally located north of 21st Street North and on the east side of Hoover Road.

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 7th day of October, 2008.

ATTEST:

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-459

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 529, SOUTHWEST INTERCEPTOR SEWER (EAST OF HOOVER, NORTH OF 21ST) 468-84541 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 529, SOUTHWEST INTERCEPTOR SEWER (EAST OF HOOVER, NORTH OF 21ST) 468-84541 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 529, Southwest Interceptor Sewer (east of Hoover, north of 21st) 468-84541.

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 Twenty-Seven Thousand Dollars ($27,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after January 1, 2008 exclusive of the costs of temporary financing.

That, in accordance with the provisions K.S.A 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing sanitary sewer main, such benefit to be in the amount of Twenty-Seven Thousand Nine Hundred Ninety Seven Dollars and ten cents ($27, 997.10).

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:

JOHNSON'S NURSERY ADDITION
Lot 1, 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 lateral sanitary sewer for which the improvement district is liable, plus the benefit fee, shall be on a fractional basis: Lot 1, Block 1 JOHNSON'S NURSERY ADDITION shall pay 100% of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be

divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

CERTIFICATE

Sedgwick County) SS
State of Kansas)

We, Jeremy E. Johnson and Kassy A. Johnson, owners and plattors of Johnson's Nursery Addition, do hereby certify that petitions for the following improvements have been submitted to the City Council of Wichita, Sedgwick County, Kansas;

1. Sanitary Sewer Lateral Petition (1)

As a result of the above mentioned petitions for improvements, lots within Johnson's Nursery Addition may be subject to special assessments assessed thereto for the cost of constructing the above described improvements.

Signed this 18th day of August, 20__.

JEREMY E. JOHNSON

KASSY A. JOHNSON

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 18th day of August, 2008, before me a Notary Public in and for said State and County, came Jeremy E. Johnson and Kassy A. Johnson, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009
(SEAL)

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2009

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: SUB 2008-52 -- Plat of The Village at Greenwich Addition located on the northeast corner of Greenwich Road and 21st Street North. (District II)

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 15 lots on 20.66 acres, is located within Wichita's city limits. The site was approved for a zone change (ZON 2007-17) from SF-5 Single-family Residential to LC Limited Commercial.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for water, sewer, sidewalk and drainage improvements. The applicant has platted a 35-foot building setback which represents an adjustment of the setbacks imposed by the Development Agreement for this property. A Notice of Developer's Agreement has been submitted. A Restrictive Covenant has been submitted to provide for the ownership and maintenance of the proposed reserves being platted for drainage purposes. Since this site is located within the noise impact area of Jabara Airport, a Restrictive Covenant and Avigational Easement have been submitted.

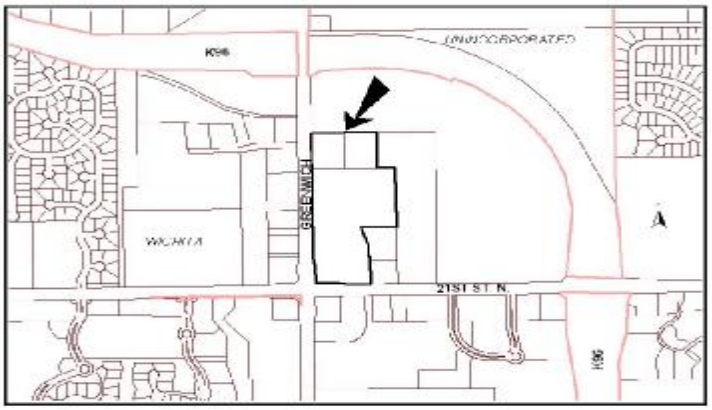
The plat has been approved by the Metropolitan Area Planning Commission. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Certificate of Petitions, Notice of Developer's Agreement, Restrictive Covenants and Avigational Easement will be recorded with the Register of Deeds by the applicant.

Recommendations/Actions: Approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and approve first reading of the Ordinance.


K96
WICHITA
GREENWICH
21ST ST. N.
UNINCORPORATED
K96

OCA150006 BID 37529-009 CID#76383)

Published in The Wichita Eagle on _____

48-000

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. ZON 2007-17

Request for Zone change from SF-5, Single-Family Residential to LC, Limited Commercial District, for property described as:

Lots 9-12, Block 1, The Village at Greenwich Addition, Wichita, Sedgwick County, Kansas.

Generally located on the northeast corner of Greenwich and 21st Street North.

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 7th day of October, 2008.

ATTEST:

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-464

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90405 (NORTH OF 21ST, EAST OF GREENWICH) 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 448-90405 (NORTH OF 21ST, EAST OF GREENWICH) 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 448-90405 (north of 21st, east of Greenwich).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Twenty-Five Thousand Dollars ($25,000) exclusive of the cost of interest on borrowed money, with 100 percent of the total cost 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 September 1, 2008, 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:

VILLAGE AT GREENWICH ADDITION
Lots 9 through 12, 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 square foot basis.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot 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.

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 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-465

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 167, WAR INDUSTRIES SEWER (NORTH OF 21ST, EAST OF GREENWICH) 468-84545 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 167, WAR INDUSTRIES SEWER (NORTH OF 21ST, EAST OF GREENWICH) 468-84545 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 167, War Industries Sewer (north of 21st St. North, east of Greenwich) 468-84545.

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 Seventy Thousand Dollars ($70,000) 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 September 1, 2008, 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:

VILLAGE AT GREENWICH ADDITION

Lots 9 through 14, 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 square foot basis.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said

improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-466

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER SEWER NO. 646 (NORTH OF 21ST, EAST OF GREENWICH) 468-84546 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER SEWER NO. 646 (NORTH OF 21ST, EAST OF GREENWICH) 468-84546 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Storm Water Sewer No. 646 (north of 21st, east of Greenwich) 468-84546.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Thirty-Three Thousand Dollars ($33,000) 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 September 1, 2008, 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:

VILLAGE AT GREENWICH ADDITION
Lots 9 and 10, 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 square foot basis:

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Be it further resolved that the above-described improvement is hereby

authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on September 23, 2008

RESOLUTION NO. 08-467

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER SEWER NO. 647 (NORTH OF 21ST, EAST OF GREENWICH) 468-84547 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER SEWER NO. 647 (NORTH OF 21ST, EAST OF GREENWICH) 468-84547 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Storm Water Sewer No. 647 (north of 21st, east of Greenwich) 468-84547.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Eighty Thousand Dollars ($80,000) 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 September 1, 2008, 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:

<u>VILLAGE AT GREENWICH ADDITION</u>
Lots 1 though 7, 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 square foot basis:

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Be it further resolved that the above-described improvement is hereby

authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-468

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER SEWER NO. 648 (NORTH OF 21ST, EAST OF GREENWICH) 468-84548 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER SEWER NO. 648 (NORTH OF 21ST, EAST OF GREENWICH) 468-84548 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Storm Water Sewer No. 648 (north of 21st, east of Greenwich) 468-84548.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Nineteen Thousand Dollars ($119,000) 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 September 1, 2008, 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:

VILLAGE AT GREENWICH ADDITION
Lots 11 though 15, 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 square foot basis:

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-469

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING A SIDEWALK FROM THE EAST LINE OF GREENWICH ROAD THROUGH RESERVE A TO A POINT APPROXIMATELY 320 FEET EAST. SIDEWALK TO CONTINUE SOUTH THROUGH RESERVE A AND EAST OF ESTIMATING POND TERMINATING AT THE NORTH LINE OF 21ST STREET (NORTH OF 21ST, EAST OF GREENWICH) 472-84757 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING A SIDEWALK FROM THE EAST LINE OF GREENWICH ROAD THROUGH RESERVE A TO A POINT APPROXIMATELY 320 FEET EAST. SIDEWALK TO CONTINUE SOUTH THROUGH RESERVE A AND EAST OF ESTIMATING POND TERMINATING AT THE NORTH LINE OF 21ST STREET (NORTH OF 21ST, EAST OF GREENWICH) 472-84757 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 a sidewalk from the east line of Greenwich Road through Reserve A to a point approximately 320 feet east. Sidewalk to continue south through Reserve A and east of estimating pond terminating at the north line of 21st Street (north of 21st, east of Greenwich) 472-84757.

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 Thirty-Four Thousand Dollars ($34,000) 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 September 1, 2008 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:

VILLAGE AT GREENWICH ADDITION
Lots 1 through 8; and 13 through 15, Bock 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 square foot basis.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot 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 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

CERTIFICATE

Sedgwick County) SS
State of Kansas)

I, Steven R. Wheeler, President, Kansas Investment Properties, Inc., A Kansas Corporation, Manager, Greenwich Investment Group, LLC, a Kansas Limited Liability Company; and Manager, North Greenwich Properties, LLC, a Kansas Limited Liability Company, owner and plattor of The Village at Greenwich Addition, do hereby certify that petitions for the following improvements have been submitted to the City Council of Wichita, Sedgwick County, Kansas;

1. Water Distribution System Petition (1)
2. Sanitary Sewer Lateral Petition (1)
3. Sidewalk Petition (1)
4. Storm Water Sewer Petitions (3)

As a result of the above mentioned petitions for improvements, lots within Village at Greenwich Addition may be subject to special assessments assessed thereto for the cost of constructing the above described improvements.

Signed this 8th day of September, 2008.

GREENWICH INVESTMENT GROUP, LLC
A Kansas Limited Liability Company

By: KANSAS INVESTMENT PROPERTIES, INC.
A Kansas Corporation, Manager

By: _____
Steven R. Wheeler, President

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 8th day of September, 2008, before me a Notary Public in and for said State and County, came Steven R. Wheeler, President, Kansas Investment Properties, Inc., A Kansas Corporation, Manager, Greenwich Investment Group, LLC, a Kansas Limited Liability Company to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

(SEAL) CYNTHIA A. WOMACK Notary Public - State of Kansas My Appt. Expires 2/7/2009

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2009

NORTH GREENWICH PROPERTIES, LLC,
a Kansas Limited Liability Company

Steven R. Wheeler, Manager

Be it remembered that on this 8th day of September, 2008, before me a Notary Public in and for said State and County, came Steven R. Wheeler, Manager, North Greenwich, LLC, a Kansas limited liability company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2009

RESTRICTIVE COVENANT

This covenant, executed this 28 day of August, 2008.

W I T N E S S E T H: That,

WHEREAS, the undersigned is in the process of platting that certain real property to be known as The Village at Greenwich Addition, an addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, as a part of the platting process certain requirements have been made by The City of Wichita regarding maintenance of reserves, the establishment of an owners association, and providing for the maintenance of drainage reserves being platted.

NOW, THEREFORE, the undersigned does hereby subject Village at Greenwich Addition, an addition to Wichita, Sedgwick County, Kansas, to have the following covenants and restrictions.

1. At such time as the 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, and the common areas.
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 covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.
5. In the event that the Undersigned or the association, its' successors or assigns, shall fail at any time to maintain the Reserves dedicated for Drainage or fail in any manner to fulfill their obligation relating to the Reserves dedicated for Drainage, 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 obligation. 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 dedicated for Drainage from becoming a nuisance, may enter upon said Reserves dedicated for Drainage 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 or the Association 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, it 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.

This covenant runs with the land and is binding on future owners and assigns.

IN WITNESS WHEREOF THIS covenant has been executed by the undersigned as its act and deed upon this 29 day of August, 2008.

GREENWICH INVESTMENT GROUP, LLC
A Kansas Limited Liability Company

BY: KANSAS INVESTMENT PROPERTIES, INC.
A Kansas Corporation, Manager

BY: _____
Steven R. Wheeler, President

STATE OF KANSAS) ss
SEDGWICK COUNTY)

Be it remembered that on this 29 day of August, 2008, before me a Notary Public in and for said State and County, came Steven R. Wheeler, President, Kansas Investment Properties, Inc., A Kansas Corporation, Manager, Greenwich Investment Group, LLC, a Kansas Limited Liability Company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009
(SEAL)

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2009

AVIGATIONAL EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That for a good and valuable consideration, the receipt of which is hereby acknowledged, that Greenwich Investment Group, LLC, a Kansas Limited Liability Company, by Kansas Investment Properties, Inc., A Kansas Corporation, Manager; and Manager, North Greenwich Properties, LLC, a Kansas Limited Liability Company, does hereby grant a permanent Avigational Easement to the public authority authorized by law to own and operate public-owned airports in Sedgwick County, Kansas, for the use of "navigable Airspace" as defined by the Federal Aviation Act of 1958, over all of the following described real estate, to wit:

> All property platted as the Village at Greenwich Addition, an addition to Wichita, Sedgwick County, Kansas.

By virtue of this easement, the grantors, for and on behalf of themselves and all successors in interest to any and all of the real property above described, waives as to the public authority only any and all claims for damage of any kind whatsoever incurred as a result of aircraft using the "Navigable Airspace" granted herein. This easement does not grant or convey any surface use rights, nor is it to be construed to grant any right to private persons or corporations.

"Navigable Airspace" means air space above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section 101 (24) 49 U.S. Code 1301, and shall include air space needed to insure safety in take-off and landing of aircraft.

To have and to hold said easement forever.

IN WITNESS WHEREOF:

The Grantor has signed these presents this 8th, day of September, 2008.

GREENWICH INVESTMENT GROUP, LLC
A Kansas Limited Liability Company

By: KANSAS INVESTMENT PROPERTIES, INC.
A Kansas Corporation, Manager

By: _____
Steven R. Wheeler, President

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 8th day of September, 2008, before me a Notary Public in and for said State and County, came Steven R. Wheeler, President, Kansas Investment Properties, Inc., A Kansas Corporation, Manager, Greenwich Investment Group, LLC, a Kansas Limited Liability Company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

(SEAL)

CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2009

NORTH GREENWICH PROPERTIES, LLC,
a Kansas Limited Liability Company

Steven R. Wheeler, Manager

Be it remembered that on this 8th day of September, 2008, before me a Notary Public in and for said State and County, came Steven R. Wheeler, Manager, North Greenwich, LLC, a Kansas limited liability company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2009

RESTRICTIVE COVENANT

RESTRICTIVE COVENANT AFFECTING: Lots 1 through 15, Block 1, the Village at Greenwich Addition.

THIS DECLARATION made this 8 day of September, 2008, Greenwich Investment Group, LLC, A Kansas Limited Liability Company, by Kansas Investment Properties, Inc., A Kansas Corporation, Manager, and Manager, North Greenwich, LLC, a Kansas limited liability company, hereinafter called the Grantors.

WITNESSETH:

WHEREAS, Grantors are owners of the Village at Greenwich Addition, an addition to Wichita, Sedgwick County, Kansas, which property is located near Colonel James Jabara Airport and is accordingly subject to considerable noise from the operation of aircraft, and is exposed at times to aircraft noise which may infringe upon the owners enjoyment of property and may, depending upon the degree of acoustical treatment of the structure, affect his/her health and/or well being, and

WHEREAS, the City of Wichita in connection with approval of the plat of said addition considers it to be in the public interest to require any building constructed in said addition to be designed and constructed giving proper consideration to noise pollution in the area.

NOW THEREFORE, Grantors, hereby declare that the Village at Greenwich Addition, shall be and the same is subjected to the following restrictive covenant, to wit:

> Any building constructed on the premises shall be so designed and constructed as to minimize noise pollution in any such structure, giving due consideration to the use for which such structure is designed and built. This covenant is for the benefit of said property and shall run with the land and shall inure to the benefit of and pass with said property and shall apply to and bind the successors in interest and any owner thereof.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first above written.

GREENWICH INVESTMENT GROUP, LLC,
a Kansas limited liability company

By: Kansas Investment Properties, Inc.
a Kansas Corporation, Manager

Steven R. Wheeler, President

STATE OF KANSAS) ss
SEDGWICK COUNTY)

Be it remembered that on this 8th day of September, 2008, before me a Notary Public in and for said State and County, came Steven R. Wheeler, President, Kansas Investment Properties, Inc., A Kansas Corporation, Manager, Greenwich Investment Group, LLC, a Kansas limited liability company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2009

NORTH GREENWICH PROPERTIES, LLC,
a Kansas Limited Liability Company

Steven R. Wheeler, Manager

Be it remembered that on this 8th day of September, 2008, before me a Notary Public in and for said State and County, came Steven R. Wheeler, Manager, North Greenwich, LLC, a Kansas limited liability company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2009

DECLARATION OF CROSS LOT CIRCULATION AND ACCESS EASEMENT

THIS DECLARATION OF CROSS LOT CIRCULATION AND ACCESS EASEMENT is made this 8th day of September, 2008, by Greenwich Investment Group, L.L.C., a Kansas limited liability company ("GIG"), as the owner of "Tract A" (hereafter defined) and by North Greenwich Properties, LLC, a Kansas limited liability company ("NGP"), as the owner of "Tract B" (hereafter defined).

WHEREAS, GIG is the owner of certain real property located in the City of Wichita, Sedgwick County, Kansas generally referred to herein as "Tract A" and more fully described as follows:

Tract A: Lots 1, 2, 3, 4, 5, 6, 7, 8, 13, 14 and 15 and Reserve "A" of Village At Greenwich Addition, an Addition to Wichita, Sedgwick County, Kansas.

WHEREAS, NGP is the owner of certain real property located in the City of Wichita, Sedgwick County, Kansas generally referred to herein as "Tract B" and more fully described as follows:

Tract B: Lots 9, 10, 11 and 12 of Village At Greenwich Addition, an Addition to Wichita, Sedgwick County, Kansas.

WHEREAS, GIG and NGP wish to establish a cross-lot circulation and access easement for the benefit of Tract A and Tract B. Tract A and Tract B are collectively referred to herein as the "Tracts".

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, GIG and NGP do hereby state and declare as follows:

1. GIG grants to Tract A and all future owners of Tract A (including any part thereof) and to Tract B, NGP and all future owners of Tract B (including any part thereof), and their respective agents, assigns, lessees, customers, invitees, licensees, tenants and employees a nonexclusive cross-lot access easement over and across, through and around the roads, entry ways, parking lots, common areas, driveways, walkways and alleys now or in the future located on Tract A, for the purpose of reciprocal ingress and egress of pedestrians and vehicles, and the loading and unloading of commercial and other vehicles but not for parking. All entrances, exits, roads and common driveways shall be unobstructed so that

vehicular and pedestrian traffic may easily move to and from adjoining Tracts to the adjoining arterial streets (21st Street North and Greenwich Road).

2. NGP grants to Tract A, GIG and all future owners of Tract A (including any part thereof) and to Tract B and all future owners of Tract B (including any part thereof), and their respective agents, assigns, lessees, customers, invitees, licensees, tenants and employees a nonexclusive cross-lot access easement over and across, through and around the roads, entry ways, parking lots, common areas, driveways, walkways and alleys now or in the future located on Tract B, for the purpose of reciprocal ingress and egress of pedestrians and vehicles, and the loading and unloading of commercial and other vehicles but not for parking. All entrances, exits, roads and common driveways shall be unobstructed so that vehicular and pedestrian traffic may easily move to and from adjoining Tracts to the adjoining arterial streets (21st Street North and Greenwich Road).

3. The curbs between Lots 11, 12 and 13 and their respective adjoining Lots may be cut to facilitate said ingress and egress at such locations as may be mutually agreeable to the then current owners of the applicable adjoining Lots. Plans pertaining to the placement and or re-alignment of entry ways and or driveways between such applicable adjoining Lots shall be provided to the owners of the applicable adjoining Lots within a reasonable period prior to making the necessary curb cut(s). Matters of reduced parking due to curb cuts shall be negotiated among the owners of the applicable adjoining Lots as needed. No party shall unreasonably burden any property with the location of curb cuts between the applicable adjoining Lots.

4. The owners of Tract A and Tract B, and their respective successors and assigns, at their own expense, shall perform necessary maintenance to the roads, driveways and entry ways located upon their respective Tract, including but not limited to: cleaning, snow and ice removal, repairs and replacements to the roads, entryways and driveways facilitating the ingress and egress of pedestrians and vehicles between the Tracts.

5. The declarations, covenants, and such undertakings made herein shall be deemed to be a covenant running with the land and shall be binding upon the grantors, successors and assigns, their grantees, their heirs, assigns, licensees, successors, and assignees in interest.

6. This agreement shall not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the written consent of the owners at the time of rescission or modification.

[Signature page follows.]

IN WITNESS WHEREOF: The owners have signed these presents the day and year first above written.

GREENWICH INVESTMENT GROUP, L.L.C., a Kansas limited liability company

By: Kansas Investment Properties, Inc., a Kansas corporation, Manager

By: _____,
Steven R. Wheeler, President

STATE OF KANSAS)

COUNTY of SEDGWICK)

BE IT REMEMBERED, That on this 8th day of September, 2008, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Steven R. Wheeler in his capacity as President of Kansas Investment Properties, Inc, a Kansas corporation, in its capacity as Manager of Greenwich Investment Group, LLC, a Kansas limited liability company, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same for and on behalf, and as the act and deed of said Greenwich Investment Group, L.L.C.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

(Seal) CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009

Cynthia A. Womack
Notary Public

My Appointment Expires: February 7, 2009

NORTH GREENWICH PROPERTIES, LLC, a Kansas limited liability company

By: _____,
Steven R. Wheeler, Manager

STATE OF KANSAS)

COUNTY of SEDGWICK)

BE IT REMEMBERED, That on this 8th day of September, 2008, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Steven R. Wheeler in his capacity as Manager of North Greenwich Properties, LLC, a Kansas limited liability company, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same for and on behalf, and as the act and deed of said North Greenwich Properties, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

(Seal) CYNTHIA A. WOMACK Notary Public - State of Kansas My Appt. Expires 2/7/2009

_____
Notary Public

My Appointment Expires: February 7, 2009

NOTICE OF DEVELOPERS AGREEMENT

Village at Greenwich Addition

THIS NOTICE made this 8th day of September, 2008,by Greenwich Investment Group, LLC, A Kansas Limited Liability Company, by Kansas Investment Properties, Inc., A Kansas Corporation, Manager, hereinafter called "Declarant".
WITNESSETH

WHEREAS, declarant is the owner of all or a portion of the following described property;

Village at Greenwich Addition, an addition to Wichita, Sedgwick County, Kansas.

WHEREAS, declarant is desirous to file notice that a protective overlay approved by the Wichita City Council is on file with Metropolitan Area Planning Department, located on the 10th Floor, City Hall, Wichita, Kansas, (316)268-4421.

NOW, THEREFORE, the declarant wants to make notice that the approved Developers Agreement by ZON2008-43, has placed restrictions on the use and requirements on the development of the above described real property. The protective overlay shall be binding on the Owners, the heirs, successors, or assigns, and is a document running with the land and is binding on successors in title to Lots 1 through 8 and 13 through 15, Block 1, the Village at Greenwich Addition, an addition to Wichita, Sedgwick County, Kansas.

EXECUTED the day and year first written above.

GREENWICH INVESTMENT GROUP, LLC
A Kansas Limited Liability Company

By: KANSAS INVESTMENT PROPERTIES, INC.
A Kansas Corporation, Manager

By: _____
Steven R. Wheeler, President

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 8th day of September, 2008, before me, a notary public in and for said County and State, came Steven R. Wheeler, President, Kansas Investment Properties, Inc., a Kansas Corporation, Manager, Greenwich Investment Group, LLC, A Kansas Limited Liability Company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledge the execution of same.

(SEAL) CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2009

_____
Notary Public

My Appointment Expires: February 7, 2009

City of Wichita
City Council Meeting
September 23, 2008

TO: Wichita Housing Authority Board Members

SUBJECT: Section 8 Administrative Plan Addendum

INITIATED BY: Housing and Community Services Department

AGENDA: Housing Authority (Consent)

Recommendation: Review and approve the Section 8 Administrative Plan revisions for the Section 8 Housing Choice Voucher Program.

Background: The Governing Board of the Housing Authority must approve revisions or amendments to the Section 8 Administrative Plan before changes can be implemented. The revision requested in this action, will provide an amendment to the existing plan to include the provision for granting an exception to the minimum rent policy of the Section 8 Housing Choice Voucher Program.

Analysis: The proposed revision to the Section 8 Administrative Plan provides an amendment with information regarding the minimum rent exception for persons experiencing a financial hardship. The addendum explains the circumstances under which such requests will be considered for either a temporary or long-term exemption from the mandatory $50 minimum rent. This exemption has been available to Housing Choice Voucher participants since the mandatory minimum rent was established in 2006, however the exemption hardship request language was inadvertently omitted from the Administrative Plan at that time. Revising the Administrative Plan to include the exception hardship confirms that the procedure exists for families receiving rental assistance through the Section 8 Housing Choice Voucher program.

Financial Considerations: None.

Legal Considerations: Amendments are required or permitted in accordance with Rules and Regulations for administration of the Section 8 Housing Choice Voucher Program.

Recommendations/Actions: It is recommended that the Wichita Housing Authority Board review and approve the amendment to the Section 8 Administrative Plan for the Section 8 Housing Choice Voucher Program.

Attachment: Minimum rent exception amendment to the Section 8 Administrative Plan.

11.5 ASSISTANCE AND RENT FORMULAS

A. Total Tenant Payment

The total tenant payment is equal to the highest of:

1. 10% of the family's monthly income

2. 30% of the family's adjusted monthly income

3. The minimum rent is $50.00

4. If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this provision is the amount resulting from one application of the percentage.

Plus any rent above the payment standard.

B. Minimum Rent.

The Wichita Housing Authority has set the minimum rent at $50.00. However, if the family requests a hardship exemption, the Wichita Housing Authority will suspend the minimum rent for the family beginning the month following the family's hardship request. The suspension will continue until the Housing Authority can determine whether hardship exists and whether the hardship is of a temporary or long-term nature. During suspension, the family will not be required to pay a minimum rent and the Housing Assistance Payment will be increased accordingly.

1. A hardship exists in the following circumstances:

   a. When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State or local assistance program including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996;

   b. When the family would be evicted because it is unable to pay the minimum rent;

c. When the income of the family has decreased because of changed circumstances, including loss of employment; and

d. When a death has occurred in the family.

2. No hardship. If the Housing Authority determines there is no qualifying hardship, the minimum rent will be reinstated, including requiring back payment of minimum rent to the Housing Authority for the time of suspension.

3. Temporary hardship. If the Housing Authority determines that there is a qualifying hardship but that it is of a temporary nature, the minimum rent will not be imposed for a period of 90 days from the month following the date of the family's request. At the end of the 90-day period, the minimum rent will be imposed retroactively to the time of suspension. The Housing Authority will offer a reasonable repayment agreement for any minimum rent back payment paid by the Housing Authority on the family's behalf during the period of suspension.

4. Long-term hardship. If the Housing Authority determines there is a long-term hardship, the family will be exempt from the minimum rent requirement until the hardship no longer exists.

5. Appeals. The family may use the informal hearing procedure to appeal the Housing Authority's determination regarding the hardship. No escrow deposit will be required in order to access the informal hearing procedures.

City of Wichita
City Council Meeting
September 23, 2008

TO: Wichita Airport Authority

SUBJECT: Wichita Mid-Continent Airport
Renovations to Hangar 16 (1700 Airport Road)

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Initiate the project; approve the budget and the design supplemental agreement.

Background: The approved Capital Improvement Program (CIP) includes this project. HNTB was selected to provide consulting services for the Terminal Area Redevelopment Program.

Analysis: This project renovates a portion of Hangar 16 to be the interim facilities for the U. S. Customs and Border Protection Federal Inspection Services Facility as a result of its relocation due to the cargo building demolition and new federal standards for facility design in order to accommodate larger numbers of inbound international passengers on General Aviation and charter airline flights. Additionally a portion of the space will be remodeled for tenant use.

Financial Considerations: The professional services contract with HNTB for design and bid phase services is for $53,137. The total project budget to remodel these facilities is $690,000 and will be funded with General Obligation Bonds funded entirely with Airport Revenue.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through improvements to allow uninterrupted airport services to be provided to the aviation community.

Legal Considerations: The Law Department has approved the design supplemental agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the project budget and authorize the necessary signatures.

Attachments: Five original copies and 12 distribution copies of the supplemental agreement.

SUPPLEMENTAL AGREEMENT NO. 3

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE WICHITA AIRPORT AUTHORITY, "OWNER",

AND

HNTB ARCHITECTURE, INC., "CONSULTANT",

WITNESSETH:

WHEREAS, there now exists a Contract, dated July 18, 2006, between the two parties covering professional services to be provided by the CONSULTANT in conjunction with the construction of improvements to Wichita Mid-Continent Airport.

WHEREAS, ARTICLE IV, B. of the 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 CONSULTANT provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. SCOPE OF SERVICES

The description of the improvements that the OWNER intends to construct and thereafter called the "PROJECT" as stated within ARTICLE I of the referenced Contract is hereby amended to include the following:

Architectural and engineering design services for a U.S. Customs and Border Protection (CPB) facility at 1600 Airport Road.

Remodel the existing 5,000 s. f. office midsection of the existing Hangar 16 to house an interim facility for U.S. Customs and Border Protection (CBP) in approximately 3,200 s. f. and to provide office space for an existing tenant of approximately 1,800 s. f. Refer to Exhibit B. Major services to provide include:

- Feasibility study for relocation of CBP
- Coordinate with the various agencies
- Prepare construction plans and technical specifications following CBP guidelines and criteria by completion of architectural, structural and MEP design efforts.
- Submit plans to the review agencies and incorporate comments into the design package.
- Prepare cost estimates
- Bid Phase services

The following services are not included:

- Construction phase services
- Record drawings
- Fire protection systems (discussions with OCI and CBP have indicated that sprinklers will not be required)

Refer to Exhibit C for the anticipated schedule for completion of design and construction documents.

B. PAYMENT PROVISIONS

The fee in ARTICLE IV, A3, shall be amended to include the following:

Payment to the CONSULTANT for the performance of the professional services as outlined in this Supplemental Agreement shall be made on the basis of a lump sum for the amount of $53,137.00 (Exhibit SA3-A).

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 OWNER and the CONSULTANT executes this Supplemental Agreement as of this _____ day of _____, 2008.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President
"OWNER"

By: _____
Victor White, Director of Airports

ATTEST:

HNTB ARCHITECTURE, INC.
715 KIRK DRIVE
KANSAS CITY, MO 64105

By: Phil Hannon

Title: Principal Architect

By: Becky Cotton

Title: BECKY COTTON
SENIOR VICE PRESIDENT

APPROVED AS TO FORM: _____ Date: _____
Director of Law

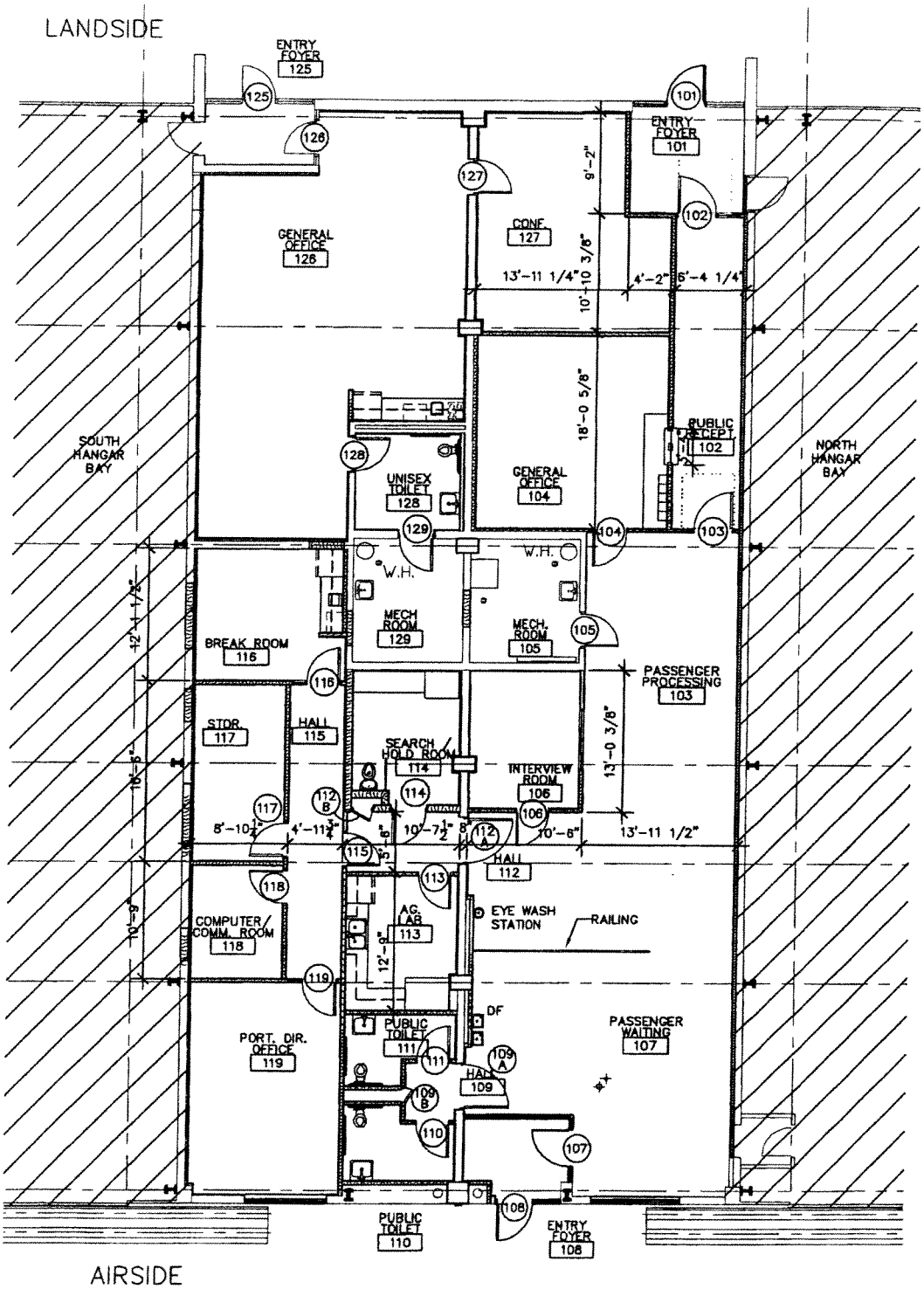
ATTACHMENTS: EXHIBIT SA3-A –FEE SCHEDULE
EXHIBIT B – SITE PLAN
EXHIBIT C- SCHEDULE

Wichita Mid-Continent Airport - Terminal Area Redevelopment Project
Estimated Cost of Consultant's Services
HNTB Architecture, Inc. 04/18/08

Additional Services Proposal No. 11d

Design Services for Customs Facility

		Hours	Avg Rate	Cost
1.	**Direct Salary Costs**			
	HNTB Project Manager	32	57.59	$1,843
	HNTB Clerical	20	21.13	$423
	Total Direct Salary Costs			$2,265
2.	**Labor and General & Administrative Overhead**			
	Percentage of Direct Salary Costs	177.43%		$4,020
3.	**Total Labor Cost - Subtotal of Items 1 and 2**			$6,285
4.	**Fixed Fee**	15.00%		$943
5.	**Subtotal of Items 3 and 4**			$7,228
6.	**Direct Non-Salary Expenses** (HNTB)			
	Transportation & Subsistence		500	
	Printing and Deliveries		300	
	Total Direct Non-salary Expenses			$800
7.	**Subtotal of Items 5 and 6**			$8,028
8.	**Subcontractor Costs**			
	Gossen Livingston Associates		23,000	
	Professional Engineering Consultants (MEP)		18,700	
	Faithful & Gould		3,409	
	Total Subcontractor Costs			$45,109
	Total Proposed Maximum Cost			$53,137



HANGAR 16 FLOOR PLAN

A

0' 4' 8' 12'
1/8"=1'-0"

N
PLAN NORTH
TRUE NORTH

EXHIBIT C

SCHEDULE

Feasibility studies	completed
Design development documents	four weeks
Owner review	two weeks
Construction documents	four weeks
Owner review	two weeks
Final bid documents	two weeks

City of Wichita
City Council Meeting
September 23, 2008

TO: Wichita Airport Authority

SUBJECT: Agreement for the Operation and Management of the Bulk Aviation Fuel Storage and Distribution Facility at Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Agreement.

Background: The Wichita Airport Authority (WAA) owns and operates a 200,000 gallon capacity bulk aviation fuel storage and distribution facility on Mid-Continent Airport. The current agreement with Hawker Beechcraft Services is expired, and is currently operating on a month-to-month basis.

On April 11, 2008 airport staff issued a request for proposals (RFP) for the operation and management of this facility at Mid-Continent Airport. In response to the RFP, three (3) proposals were received from interested and qualified parties. Proposals were received from Signature Flight Support, Yingling Aircraft Company, and Allied Aviation. On May 22, 2008, a screening selection committee, consisting of representatives from Purchasing, Finance, City Manager, Law, and Airport Departments convened to interview all three proposers.

Based upon qualifications, experience, and management fee proposal, Signature Flight Support was unanimously selected by the screening selection committee as the top-ranked proposer. Immediately thereafter, airport staff, in consultation with the Law Department, began final contract language negotiations. On August 4, 2008, the Wichita Airport Advisory Board recommended approval of the Agreement.

Analysis: Airport staff is comfortable with the competitive selection of Signature Flight Support to perform contract operation and management services of the bulk aviation fuel storage facility at Mid-Continent Airport, and feel that the Agreement as presented to the Board is mutually beneficial to both parties.

Financial Impact: The Agreement term is for a period of three years, with two, one-year options as mutually agreed to by both parties. Agreement management fee is:

- First Year $36,000
- Second Year $37,260
- Third Year $38,580

Funds are included in the Airport Operating Budget.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through maintaining sufficient and economical airport services to serve the community.

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

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement; and authorize the necessary signatures.

Attachments: Two original signature copies and 12 distribution copies of the Agreement.

AGREEMENT

By and Between

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

And

Signature Flight Support Corporation

for

Operation and Management of the Bulk Aviation Fuel Storage Plant
Wichita Mid-Continent Airport
Wichita, Kansas

This AGREEMENT, dated September 23, 2008, by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas, hereinafter referred to as the AUTHORITY; and Signature Flight Support Corporation, hereinafter referred to as the CONTRACTOR.

WITNESSETH:

WHEREAS, the Authority is desirous of providing bulk aviation and auto fuel storage and related services on Mid-Continent (ICT) Airport, hereinafter referred to as Airport, to certain qualifying aeronautical tenants, operators and permittees; and

WHEREAS, the Contractor is authorized to do business at Airport, and willing to provide operation, maintenance, inspection, administration, storage, bulk issue, bulk receipt, quality control, inventory management, accounting, record keeping and environmental compliance functions associated with receiving, storing and dispensing of aviation and auto fuels at Airport on an independent contractor basis;

WHEREAS, the Authority desires to engage the Contractor to provide operation, maintenance, inspection, administration, storage, bulk issue, bulk receipt, quality control, inventory management, accounting, record keeping and environmental compliance functions associated with receiving, storing and dispensing of aviation and auto fuels at Airport under the terms of this Agreement.

NOW THEREFORE, for and in consideration as hereinafter set out, it is agreed by both parties as follows:

SECTION 1. INDEPENDENT CONTRACTOR

The relationship of the parties hereunder is that of purchaser and provider of services. The Contractor is intended to be an independent contractor and nothing herein is intended or is to be construed as establishing any agency, partnership, or joint venture relationship between the Contractor and the Authority.

SECTION 2. CONTRACTOR'S RESPONSIBILITIES AND SERVICES

2.1 The Contractor is hereby designated as the manager of the Bulk Fuel Plant, hereafter referred to as BFP or Premises, and agrees to provide the Authority the following services in a professional manner consistent with industry standards, and federal, state and local laws and codes:

a. maintain, repair, replace, calibrate, and inspect the BFP, including all future improvements and additions thereto, and all vehicles and equipment used by the Contractor, in order to keep the BFP system: (i) in good, safe, and efficient operating condition and repair; (ii) in sanitary and sightly condition; (iii) in compliance with obligations of the Authority; (iv) in compliance with all applicable government laws, rules, and regulations; and (v) in compliance with all directives and applicable rules reasonably established by the Authority;

b. on a scheduled basis, inspect or cause to be inspected the equipment in accordance with operating procedures established herein;

c. research, compile, analyze, and present, when requested by the Authority, special reports on operations and financial matters for the BFP;

d. take such measures as are reasonably required in order to secure the BFP, and to prevent tampering with the storage and distribution facilities, buildings, and equipment, however, the Contractor shall not be required to provide guards in the normal course of business;

e. prepare and obtain approval from the Authority for an Operating Procedures Manual, which shall include operations, safety, security, training, inspection, quality control standards, maintenance, and preventive maintenance programs utilizing the ATA 103 Specification as the basis for standards; this Operating Procedures Manual shall become the property of the Authority upon completion and approval by the Authority;

f. perform such other functions relating to operation and maintenance of the BFP as the Authority may reasonably authorize or request;

g. provide management and technical personnel to attend meetings required for the orderly and efficient operation of the BFP, including, but not limited to, meetings with the Authority, airlines, fixed-base operators, suppliers, architects, engineers, contractors, government regulatory agencies, and others;

h. be responsible for compliance with applicable environmental laws, rules, regulations, and ordinances, and for the securing and filing of all necessary permits, licenses, documents, etc.;

i. assure all aeronautical operators authorized to draw fuel from the BFP are properly trained in using the BFP, and that established procedures are met and followed;

j. provide for deliveries, storage and withdrawals of fuels in or at the BFP in accordance with the terms and provisions of this Agreement;

k. dispense or make available for dispensing on a twenty-four (24) hour per day, seven (7) day per week basis all fuels placed or stored in the BFP to certain aeronautical operators designated by the Authority; and

l. provide properly trained, professional and qualified personnel on-site to supervise and manage the operation, maintenance, inspection, storage, receipt, issue, quality control, environmental compliance, fire code compliance, inventory management, accounting and record keeping functions associated with receiving, storing and dispensing of aviation and auto fuels from BFP.

2.2 Contractor, at its own expense, shall develop an Operating Procedures Manual reflecting the operation of the Premises as proposed by the Contractor. A draft of these Operating Procedures shall be submitted to the Authority for review within sixty (60) days of commencement of this Agreement. Within fifteen (15) days the Authority shall submit comments and/or required changes to the Operating Procedures, and Contractor shall incorporate such changes. This Manual shall include, at a minimum, the following:

a. BFP INSPECTION: Daily, monthly, quarterly and annual inspection and record keeping procedures compliant with ATA103 *Fuel Facility Checks*;

b. PREVENTATIVE MAINTENANCE: Those daily, monthly, quarterly and annual preventative measures required to insure proper operation of the BFP;

c. QUALITY ASSURANCE /QUALITY CONTROL: Establish fuel QA/QC procedures for the receipt and storage of Aviation Gas (100LL) and Jet-A. Procedures for Jet-A must be in compliance with ATA 103 Appearance Test, Membrane Color Filtration Test, Free Water Test, API Gravity Test, White Bucket Test, Filter Vessel Differential Pressure (Filter/Separators & Monitors), Bonding Cable Continuity Check, Fuel Storage Tank Inspection and Cleaning, Water Defense System, Filter Change Procedures, Fuel Odor, Water Separation Test, Visual Detection of Microorganisms, Filter Element Replacement Criteria and Time Extension and Flushing Standards and Specifications; Procedures for Aviation Gas (avgas) shall conform to ASTM D 910 latest revision with the following purity and specification parameter: API Gravity and Appearance;

d. PIPELINE DELIVERY: Confirm that Jet Fuel meets or exceeds *Jet Fuel Specification & Purity Standards* (ASTM D1655) as required by ATA103. Fuel ordering and receipt procedures applicable to current system and in compliance with ATA 103 pipeline deliveries, and into tank procedures;

e. TRANSPORT TRUCK DELIVERY: Confirm that Jet Fuel meets or exceeds *Jet Fuel Specification & Purity Standards* (ASTM D1655) as required by ATA103. Based upon the current BFP transport unloading equipment, provide procedures for transport truck deliveries. Procedures must be in compliance with ATA 103 for Jet-A receipt;

f. LOADING RACK OPERATIONS: Utilizing current loading rack equipment, establish procedures for bottom loading refuelers. Procedures must be in compliance with ATA 103 *Refueler Loading Procedures* for Jet-A;

g. RECORD KEEPING: Provide procedures and forms compliant with ATA 103, Environmental Protection Agency and or Kansas Department of Health and Environment requirements including storage and timeline procedures;

h. ENVIRONMENTAL COMPLIANCE: Procedures required to be in compliance with local, state and federal regulations for underground storage tanks, including but not limited to inspections, data collection, record keeping, monitoring, testing, training and/or equipment maintenance;

i. SPILL RESPONSE: Procedures required for spill response in the event of a chemical or fuel release. Procedures will need to be in addition to and in compliance of WAA Standard Operating Procedure #11;

j. GASBOY SYSTEM: Operational procedures for the current Gasboy card reading and ticketing system;

k. OIL/WATER SEPARATOR SYSTEM: Operational and daily, monthly and annual inspection and maintenance procedures of the BFP, including disposal of collected oil;

l. INDUCED CATHODIC PROTECTION SYSTEM: Operational daily, monthly and annual inspection and maintenance of the BFP induced cathodic protection system;

m. TRAINING: Description of training protocol for BFP staff, and BFP authorized users.

2.3 For the purpose of this Agreement, it is understood that the term "operation and management" or "operate and manage" shall refer to all tasks and responsibilities associated with the administration, operation, maintenance, inspection, storage, receipt, issue, quality control, permitting, licensing, environmental compliance, fire code compliance, inventory management, accounting, record keeping, and reporting associated with receiving, storing and dispensing of aviation and auto fuels from the Authority owned BFP on ICT in a highly professional manner consistent with federal, state and local laws, and accepted industry practices.

SECTION 3. FUELING REPRESENTATIVE

3.1 The Authority hereby appoints the Contractor as its representative for the specific purpose to order and to accept delivery of fuels into the BFP on behalf of authorized aeronautical tenants or operators. The Contractor's authority and responsibility in such respect shall be for the purpose of:

a. Protecting the fuels after acceptance of delivery from the introduction of any substance, which may change the specification of the fuel after delivery thereof to the BFP, and take all other reasonable steps to preserve the quality of the fuel in its possession in the BFP;

b. storing fuels so delivered into the BFP; and

c. checking each delivery of such fuels for quality.

3.2 The Authority shall accept the Contractor's determination of the quality of any delivery, except in the case of error, fraud, negligence or willful misconduct by the Contractor, its agents, officers, employees or subcontractors.

SECTION 4. ACCEPTANCE PROCEDURES AND ACCEPTANCE/REJECTION CRITERIA

4.1 The acceptance of fuels by the Contractor on behalf of authorized aeronautical tenants and operators shall be made in accordance with the following:

a. at the time of, or prior to, each delivery, each aeronautical tenant or its supplier shall deliver to the Contractor at the Airport its delivery ticket or loading certificate (or similar document) which shall specify (i) the grade of such fuel, (ii) the quantity thereof contained in the shipment being delivered to the Contractor, and (iii) that the fuel has been tested and is certified to meet the specifications determined in with ASTM (latest revision) or such other mutually agreed upon standard; and

b. promptly after each delivery of fuel, the Contractor shall complete or cause to be completed a receipt showing the date and time of such delivery, the quantity of such delivery, and the grade and source of the fuel delivered.

4.2 The Contractor shall be responsible for carrying out the procedures established in the Operating Procedures Manual, and such other procedures as may be agreed upon by the Authority for verifying the quality of fuels delivered into the BFP.

4.3 At the time of each delivery of fuel, the Contractor shall perform and make a record of tests to ascertain the correct grades of fuels delivered regardless of any delivery ticket or loading certificate or similar document, including the bright and clear test, color test, the specific gravity test, and such other tests as may be required pursuant to the Operating Procedures Manual. The Contractor shall reject or segregate any truck delivered fuel that fails to meet such test, and upon analysis does not meet the required specifications before fuel is taken into storage. The Contractor shall make all reasonable efforts to reject or segregate any pipeline delivered fuel that fails to meet such tests, and upon analysis does not meet the required specifications before fuel is taken into storage, or as promptly thereafter as

discovered. The Authority shall indemnify the Contractor and hold it harmless from and against any and all claims, liabilities, damages, losses, and judgments, including costs and expenses incidental thereto, which may be suffered by, accrued against, be charged to, or recoverable from it, by reason of the Contractor's rejection of any fuels delivered by or on behalf of an aeronautical tenant or operator, provided that in so rejecting such fuels the Contractor shall have acted with reasonable care and in accordance with its obligations hereunder and in accordance with the Operating Procedures Manual or under current industry practice in the United States. The Contractor shall promptly notify the fuel owner, the intended fuel customer and the Authority of any rejection by it of fuels hereunder.

4.4 If any of the fuels delivered to and stored by the Contractor is contaminated or otherwise is unfit for use (hereinafter referred to as "Condemned Fuel") the Contractor shall cause the same to be segregated and isolated to the extent permitted by the capabilities of the BFP to prevent any further contamination of other useable fuel inventories. If the Condemned Fuel becomes such, other than due to material error, fraud, negligence or willful misconduct of the Contractor, its agents, officers, employees and or subcontractors, Contractor shall cause the same, and any other fuels which by being commingled with the Condemned Fuel has become Condemned Fuel to be isolated from non-Condemned Fuel and shall notify the applicable aeronautical tenant or operator, which shall at its expense immediately remove or cause its supplier to remove the Condemned Fuel from the BFP and replace the Condemned Fuel with fuel acceptable for use. If Condemned Fuel becomes such, due to the Contractor's material error, fraud, negligence or willful misconduct, the Contractor's liability for fuels lost, contaminated or otherwise damaged or destroyed while in the Contractor's custody or control shall include, but not be limited to, the replacement value of such fuels, the cost of removing and replacing such fuels, any costs of environmental remediation and fines or charges, and all costs associated with tank cleaning and filter replacement required due to the contaminated fuel. When and/or if any Condemned Fuel has been made usable, the Contractor shall furnish quality and testing documentation conforming to industry standard to the aeronautical tenant or operator.

4.5 The Contractor shall retain records relating to the tests referred to in Section 2. for at least six (6) months after the performance of such tests. Samples of fuels shall be kept for at least thirty (30) days.

4.6 The Contractor shall maintain such accounting records and such properly calibrated measuring and metering devices and procedures as will accurately show to the reasonable satisfaction of the Authority all of the Contractor's fuel services transactions involving the BFP at the Airport. The Contractor shall maintain records for three years. The Contractor shall cooperate with the Authority and authorized aeronautical tenants and operators in the taking of physical measurements of the fuel inventories at such times as the Authority, within reason, may deem necessary and shall make its records readily available to the Authority or their designated representative during such audits for ready determinations of all transactions. With reasonable notice, aeronautical tenants and operators, under supervision and escort of the Contractor, shall have the right to gauge and take samples from the BFP or from any equipment used in conjunction therewith.

4.7 The fuel shall at all times be and remain the property of either the supplier, or the aeronautical tenant or operator for whose account such fuel is taken into the BFP, and shall not be titled to or become the property of the Contractor or Authority except on the express written agreement of the Contractor or Authority in specific instances. The Contractor shall not be responsible in any way or incur any liability to an aeronautical tenant or operator for any payments for or charges relating to fuels.

4.8 The Contractor shall monthly reconcile the physical inventory to the calculated inventory and present such reconciliation to the Authority. Such reconciliation shall explain to the Authority's reasonable satisfaction the receipt and distribution of all fuels, including all operating gains and/or losses of inventory.

4.9 The Contractor shall be responsible for all losses of fuels that result from the Contractor's error, fraud, negligence or willful misconduct. The Contractor shall also be responsible for all losses or disappearances of Jet A fuel from inventory in excess of 0.25 percent of yearly dispensed volumes from the BFP, and all losses or disappearance of Avgas and gasoline in excess of 0.50 percent of yearly dispensed volumes from the BFP that cannot be reconciled, or adequately explained as a normal operating loss reasonably beyond the Contractor's control. Within thirty (30) days following each yearly anniversary of the effective date of this Agreement, the Contractor shall replace all such losses or disappearances of Jet A fuel in excess of 0.25 percent of yearly dispensed volumes from the BFP, all losses or disappearances of Avgas and gasoline in excess of 0.50 percent of yearly dispensed volumes over the course of the previous year not reconciled or adequately explained as provided for above, such replacements to be allocated to all aeronautical tenants and operators of the BFP during such previous year based upon the respective dispensed volumes of all users that owned fuels in the BFP during the period or as otherwise directed by the Authority. All gains and losses for which the Contractor is not responsible shall be determined monthly and shared proportionately by the users of the BFP based upon total monthly volumes withdrawn from the BFP for the months in question.

4.10 The Contractor shall promptly report with an explanation, and shall be required to account to the Authority for all actual losses of fuels which arise out of or are in any way connected with the furnishing of any of the services herein provided for by the Contractor under this Agreement and caused by the negligence of the Contractor, its agents, officers, employees, and/or subcontractors.

SECTION 5. PREMISES

5.1 This Agreement shall include only the operation and management of the BFP, and shall not include or imply any rights to engage in fueling, fuel retailing, fuel dispensing, up-lift, into-plane, or in any way operate mobile fuelers on the Airport.

5.2 Neither the Contractor, nor its employees, will conduct, transact or otherwise carry on any business or services on the Premises that are not specifically authorized in accordance with this Agreement.

5.3 Contractor shall obtain express prior written approval from the Authority to start up or otherwise provide any services on the Airport that are not approved in advance by the Authority, and that do not conflict with the responsibilities under this Agreement which are not specifically included and authorized under this Agreement.

5.4 Should a conflict arise between the Contractor and other service operators or tenants at the Airport regarding the scope-of-service privileges, the Authority shall resolve the conflict in the best interest of the public and the Authority, and shall do so making every effort to protect and preserve the legitimate and legal business interests of all parties concerned. Contractor agrees to abide by the Authority's decision.

5.5 The Premises to be managed and operated by the Contractor pursuant to this Agreement is outlined on **Attachment A.1., and A.2.**, attached hereto and referred to herein as the Bulk Fuel Plant (BFP), or Premises.

5.6 The Authority may at its option add additional Premises to this Agreement by Amendment, and as may be mutually agreed to by both parties. Such additional Premises shall be subject to the same terms and conditions set forth in this Agreement, and future Amendment(s). Notwithstanding the foregoing, in the event the Authority adds to or relocates the Premises and such addition or relocation materially increases Contractor's performance obligations under this Agreement, then the Contractor and Authority shall negotiate an increase in the Management Fee that is commensurate with Contractor's increased performance obligations.

5.7 Contractor has the nonexclusive right of reasonable ingress and egress from the Premises over and across the Airport roadways, including common-use roadways, subject to any rules or security regulations which may have been established or shall be established in the future by the Authority, the federal government, and/or the State of Kansas. Such right of reasonable ingress and egress shall apply to the Contractor, its employees, and sublessees, guests, patrons, invitees, suppliers or other authorized individuals. The right of ingress and egress likewise applies to the transportation of equipment, material, machinery and other property related to Contractor's authorized business under this Agreement.

5.8 Contractor shall not locate any buildings, structures, improvements, machinery or equipment on the Premises except those necessary to operate, and maintain the Premises.

5.9 All equipment to be used in the operation of Contractor's business at the Airport will at all times be properly maintained in safe running condition, and kept in a neat and clean manner at all times. All equipment will be operated by Contractor and its employees in a safe and orderly manner at all times. Upon written notice from the Authority to the Contractor concerning the operation of such equipment or the unsafe an unclean condition of equipment, Contractor will promptly take corrective action.

5.10 Contractor shall operate the Premises in accordance with industry standards and performance measures generally accepted for aircraft fueling facilities.

SECTION 6. PAYMENT AND REPORTING

6.1 As compensation for the operation and management of the BFP, Authority agrees to pay to Contractor, and Contractor agrees to accept from Authority in full and complete payment for successful performance of Contractor under the terms and conditions of this Agreement, the following annual Management Fee, computed and payable on a monthly basis, as set forth below:

Agreement Period	Annual Management Fee
October 1, 2008 – September 30, 2009	$36,000
October 1, 2009 – September 30, 2010	$37,260
October 1, 2010 – September 30, 2011	$38,580

6.2 A cost is a "Reimbursable Operating Expense" under this Agreement if it is:

a. actually incurred by the Contractor;

b. necessary for the performance of the Contractor's duties under this Agreement;

c. reasonable under the circumstances;

d. not expressly excluded from reimbursement under this Agreement; and

e. no greater than the amounts stated for the applicable category of costs in the approved Annual Operating Budget, or if in excess of that amount, approved in writing by the Authority before the cost is incurred.

6.3 Annual Budget and Reimbursable Operating Expenses: At least forty-five (45) days prior to the commencement of each Agreement Period as defined above, Contractor shall prepare and submit to the Authority for approval an Annual Operating Budget by month, which conforms to the standards required under this Agreement. Said Budget may be reviewed and/or revised by Authority prior to approval, and shall be subject to further review by the parties from time to time at the request of either Contractor or Authority. All approvals or revisions of said Budget by Authority shall be set forth in writing to and shall thereafter be binding upon Contractor. The Annual Operating Budget shall include all "Reimbursable Operating Expenses" to be paid by Contractor in the operation and management of Premises, in such detail as Authority may direct, including, but not necessarily limited to, the following:

a. direct wages, salaries, benefits and training of the on-site manager, supervisor(s), technicians and operators (including employee over-time pay, screening, social security, unemployment insurance, workers' compensation insurance, and the employer's share of employee life, dental, and health insurance and retirement);

b. fees paid by Contractor for repair, replacement and upgrading of equipment, fixtures and hardware;

c. the cost of acquiring, leasing, maintaining, operating and fueling the motor vehicles used by Contractor in direct performance of its duties hereunder;

d. rental costs of Contractor-owned equipment used solely in connection with the Premises;

e. the cost of acquiring, repairing, maintaining, operating and upgrading all equipment, fixtures and hardware required in the operation of the Premises;

f. cost of outside services such as uniforms and laundry, overnight mail, special fabrication work and repairs performed at a supplier's shop related to services provided by Contractor operating the Premises;

g. all materials and supplies required for such operation, including, but not limited to, the inspection, testing, and analysis of fuels, cost of paper and office supply, maintenance and cleaning items used directly in the operation of the Premises;

h. costs or expenses associated with computer programming, software, hardware, personal computer equipment and systems used exclusively for performance under this Agreement;

i. telephone service specifically related to the operation of the Premises and initiated from the Authority's system shall be a reimbursable expense; Contractor shall be required to use the Authority's Shared Tenant Telephone System; Contractor may be required to maintain a long-distance phone call log in a format approved by the Authority;

j. cost of utilities, electricity, and water charges for the Premises;

k. charges for the routine removal of trash, hazardous waste (except contaminated fuel as defined and set forth under Section 4.4), and other related waste products from the Premises;

l. cost of internal and external audits;

m. cost of Airport Security Identification media as provided for under Section 23.;

n. cost associated with environmental, spill prevention monitoring and alarm, fire alarm and protection, spill mitigation supplied, and occupational safety compliance, and other regulatory costs;

o. cost of permitting and licensing fees associated with the Premises;

p. snow removal and related expenses;

q. federal, state and local taxes and fees attributable to the performance of services hereunder, but excluding the Contractor's corporate license fees, franchise taxes, and taxes based on the Contractor's net income;

r. premiums for insurance to be maintained pursuant to Section 15. hereunder, and payment of any deductibles in connection therewith on account of losses incurred by the Authority;

s. outside consultant fees approved by the Authority;

t. reasonable costs of travel, lodging and meals for the Contractor's local staff as directed or approved by the Authority to attend fueling system meetings, conferences or training outside the Wichita area;

u. costs for preparation of monthly statements and invoices in connection with this Agreement; and

v. other charges, expenses and costs approved by the Authority.

6.4 All BFP credits shall be allocated by the Contractor to the Authority in the month the credits are accrued.

6.5 Non-Reimbursable Operating Expenses: The Annual Operating Budget shall specifically not include the following Non-Reimbursable Operating Expenses; all of which shall be paid for by the Contractor:

a. except as provided herein, overhead costs for the Contractor's corporate office or non-Wichita offices, examples of which are compensation of personnel based outside of the Wichita area, travel expenses outside the Wichita area, and the costs of those services which the Contractor contemplates performing at its corporate offices; the Contractor's corporate office will provide the usual and customary corporate oversight, management, supervisory, and administrative functions;

b. the cost or expense of legal representation;

c. the cost of purchasing and maintaining Letter of Credit (if required);

d. penalties and fines paid or owed by the Contractor or the Contractor's employees, agents, contractors or invitees;

e. repair or damage to Authority or other property caused by the Contractor's employees, agents, or invitees, or for which the Contractor is responsible under this Agreement and pursuant to Section 14.1;

f. liabilities, losses, suits, claims, litigation costs, judgments, fines or demands that Contractor is responsible for which arise out of the activities of the Contractor under this Agreement and pursuant to Section 14.1;

g. bonuses;

h. relocation costs;

i. employee social functions and entertainment;

j. losses which may be uninsured due to Contractor's negligence;

k. Ineligible cost of Airport Security Identification Media as provided for under Section 23;

l. costs and expenses incurred by the Contractor in connection with providing services which are outside the scope of this Agreement, including overhead, wages, and payroll costs attributable to such services and all other costs incurred by the Contractor in providing such services; and

m. charges incurred by the Contractor by reason of the Contractor's failure to obtain any available early payment or pre-payment discounts and/or any late payment charges incurred by the Contractor, unless and to the extent that such failure or late payment is specifically authorized by the terms of this Agreement or is specifically directed, or the result of action or lack of action by the Authority or due to another cause beyond the reasonable control of the Contractor.

6.6 The approved Annual Operating Budget may be revised by the Director of Airports from time-to-time to permit the inclusion of unforeseen expenses or expenses required by law, as approved reimbursable expenses, but only if and to the extent the Director, at his sole and reasonable discretion, deems such revisions necessary and appropriate.

6.7 Contractor shall pay all expenses connected with operation and management hereunder when due and shall submit to Authority, on or before the tenth (10th) day of each month, an itemized statement of all approved expenses paid during the previous calendar month, including the monthly Management Fee billing. Each such statement shall be accompanied by such proof of disbursements. Statements or invoices submitted for reimbursement should be dated no more than ninety (90) days before the submittal date, unless adequate explanation for delayed invoice is provided and accepted. Reimbursement shall be made by Authority within thirty (30) days of its receipt from Contractor of each such itemized statement provided all appropriate supporting documents requested by the Authority are attached, unless within said thirty (30) day period the Authority notifies Contractor in writing of its objection to any item or items of expenses. Any such notice shall set forth the nature of objection, and the Authority shall timely pay all undisputed sums. Disputed charges and/or sums shall then be promptly resolved and settled by mutual resolution of the parties. Contractor shall also submit to Authority such additional periodic reports at such times and in such form as may be required at the reasonable discretion of the Authority. Any expenses paid by the Contractor that are not included in the approved Annual Operating Budget shall not be reimbursed unless previously approved in writing by the Authority.

6.8 Contractor shall, at all times during the term hereof, maintain complete and accurate books and records of its operations in a form consistent with good accounting practices. Contractor's books and records shall contain a reasonably detailed accounting of all expenses paid in performing its obligations, and in a manner that conforms to generally accepted accounting practices and procedures. All such books and records shall be kept available for inspection by the Authority, at any time during

reasonable business hours for a period of no less than three (3) years after the twelve-month period to which books, records and equipment pertain. Contractor shall perform at least once each year internal on-site audits of its operations, including a review of the records, internal controls, accounting records, quality control and compliance.

6.9 The Contractor shall maintain on a current basis complete and accurate books and records and make reports to the Authority in such form and detail as may be specified by the Authority, of deliveries, storage, withdrawals, gains, losses and expenses of the BFP. The Contractor shall be responsible for determining that the actual amount of any delivery into the BFP shall be correct and accurately reflected by its records.

6.10 Contractor shall submit monthly fuel flowage activity reports in a format acceptable to the Authority, including but not limited to, the following:

a. entity performing the up-lift, along with the end user of the fuel in categories as determined by the Authority;

b. type of fuel up-lifted; and

c. number of gallons by up-lift date and time.

SECTION 7. STANDARDS OF OPERATIONS

7.1 The Contractor shall furnish services impartially to each Authority approved aeronautical tenant or operator, and shall not favor any approved tenant or operator over any other.

7.2 Contractor shall furnish services on a fair, reasonable and nondiscriminatory basis.

7.3 The Contractor shall, in and about the Premises and elsewhere upon the Airport, exercise reasonable control over the conduct, demeanor and appearance of its employees, invitees, agents, representatives, contractors and suppliers in an orderly and proper manner so as not to annoy, disturb or be offensive to others. All employees of the Contractor must conduct themselves at all times in a courteous manner toward the public, and at all times act in accordance with the applicable Airport Rules and Regulations, policies, and standard operating procedures. Upon receipt of written notice from the Authority to Contractor concerning the conduct, demeanor or appearance of such persons, Contractor will, within a reasonable time, remedy the cause of notice, provided that such notice is based on non-discriminatory and legal premises.

7.4 The Contractor shall operate the Premises in a safe, efficient, prudent, and economical manner, and shall in good faith act to keep the BFP costs to a minimum consistent with best operating practices and with the level and type of services desired by the Authority. When possible, and to the greatest extent practical, Contractor shall solicit three (3) competitive bids/quotes for all parts, materials, equipment, and services in excess of one thousand five hundred dollars ($1,500.00).

7.5 The Contractor shall comply with all directions, rules, and procedures prescribed by the Authority, and all applicable governmental laws, rules, regulations and standard operating procedures.

7.6 The Contractor represents and warrants that the employees used in the performance of the services provided hereunder will have the qualifications, training, skills and experience necessary to perform said services.

7.7 The Contractor shall not sell, dispose of or trade-in any Authority owned BFP asset without the prior written approval of the Authority. If or when such Authority owned BFP asset may be approved for sale, disposal or trade-in by the Authority, any amount received by the Contractor upon the sale or trade-in shall be credited to the Authority.

SECTION 8. SIGNS

Contractor shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon the Premises or elsewhere upon the Airport Property, any signs or other similar devices for its own business. Any identifying signs erected, installed, operated or attached to the Premises will require the prior written approval of the Authority. Such approval, if any, may consider and provide conditions concerning factors including, but not limited to, size, type, content, and method of installation.

SECTION 9. TERM

9.1 This Agreement shall become effective on October 1, 2008. The term of this Agreement shall be for a period of three (3) consecutive twelve (12) month periods commencing the 1st day of October, 2008, unless sooner terminated as provided herein, and terminating on the 30th day of September, 2011.

9.2 Authority reserves the right at its sole discretion to renew this Agreement under the same terms and conditions, or as otherwise mutually agreed upon by the Authority and Contractor, for two (2), twelve (12) month periods. If Authority chooses not to exercise its right to renew this Agreement, Contractor shall be notified in writing sixty (60) days prior to the expiration date of the then-current period. Nothing in this paragraph shall be construed as to require the Authority to exercise such options.

9.3 No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Upon the expiration or earlier termination of this Agreement, or upon the substitution of areas as provided elsewhere in this Agreement, Contractor shall promptly vacate Premises and leave the same in the condition existing as of the commencement of this Agreement, normal wear and tear excepted. Authority shall have the right to take possession of Premises at that time with or without due process of law.

SECTION 10. HOLD OVER

In the event the Contractor holds over the operation and management of the Premises and rights granted herein after expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated at any time by the Authority.

SECTION 11. SUPERSEDES PREVIOUS AGREEMENTS

This Agreement supersedes all previous agreements for the Premises between the Authority and any other party, and all amendments or renewals thereto.

SECTION 12. PERSONNEL

12.1 Contractor shall furnish sufficiently trained personnel, including qualified, competent and experienced supervisory personnel necessary to operate and manage Premises.

12.2 It is the intent of the parties that the Key Personnel identified by the Contractor upon entering this Agreement are to be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of services performed hereunder. The list of key management and supervisory personnel ("Key Personnel"), essential to the successful operation of the BFP are contained in **Attachment B**. This list may be amended during the term of this Agreement by replacement of the Attachment and without formal amendment to the Agreement, only under the following procedures: if the Contractor is required to replace any of the "Key Personnel", it shall notify the Authority in writing of the desired change and recommend one or more qualified replacement candidates for each position for the Authority's approval. If the recommended "Key Personnel" meet the qualification expected and required as a basis for entering this Agreement, the Authority's approval shall not be unreasonably withheld or delayed.

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

12.4 Contractor shall immediately remove any employee or other representative of Contractor from Premises who participates in improper or illegal acts on Airport, who violates Airport Rules and Regulations, Standard Operating Procedures, or any provision of this Agreement, or whose continued presence on Airport is, in the opinion of Contractor, deemed not to be in the best interest of the Authority.

12.5 Contractor shall be required to train all employees before the employees will be allowed to perform services under this Agreement. Contractor shall submit an Employee Training Program within sixty (60) days of commencement of this Agreement to the Authority for review, and shall maintain a training record detailing training received, and time and date training was received by each employee.

12.6 Employees of Contractor providing services on Premises must pass an employment and security background check, to the extent permitted by law, performed by a certified agency. Personnel shall also be subject to a drug screening, to the extent permitted by law, by an authorized lab selected by the Contractor. All such personnel shall be required by Contractor to consent to such investigations prior to employment.

12.7 Modifications requested by the Authority shall be promptly prepared. Contractor is responsible for the maintenance and currency of the Operating Procedures Manual at all times.

12.8 The BFP Manager shall be in complete charge of Contractor's operation and management of the Premises. He/she shall ordinarily be available during regular business hours; and at all time during his/her absence, a designated representative supervisor shall be in charge and available on Premises. At least one (1) manager, supervisor, or knowledgeable and experienced authorized representative of the Contractor shall be available via phone, cell phone, or pager 24-hours per day, seven days per week, and within thirty (30) minutes response time to the Premises.

SECTION 13. ASSIGNMENT

Contractor shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement without the prior written consent of Authority, which consent may be withheld for any reason. Any assignment or delegation so permitted and so made shall be subject to all the terms, conditions and other provisions of this Agreement. Further, notwithstanding any assignment or delegation, Contractor shall remain obligated and liable to Authority for the performance of all terms, conditions and other provisions of this Agreement to the same extent that it would be obligated and liable if no assignment, delegation or sublease had been made. Any attempted assignment or delegation in violation of this provision shall be void and of no force or effect whatsoever.

SECTION 14. INDEMNITY

14.1 Contractor shall protect, defend and hold Authority and the City of Wichita and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the fault or negligence of Contractor's officers, agents, employees, contractors, subcontractors, or licensees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of the Authority. The Authority shall give to Contractor reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or early termination of this Agreement.

14.2 Authority shall protect, defend and hold Contractor and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising out of Authority's operation of the Airport or the fault or negligence of Authority's officers, agents, employees, contractors, subcontractors, or licensees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of the Contractor. The Contractor shall give to Authority reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or early termination of this Agreement.

14.3 Except to the limit and extent that the applicable insurance in Section 15 applies to a total loss of use of the Facility caused by the negligence or willful misconduct of the Contractor, NO PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY TO THIS AGREEMENT FOR LOSS OF USE, DIMINUTION OF VALUE, CONSEQUENTIAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS ARISING OUT OF THE SERVICES PERFORMED HEREIN.

SECTION 15. INSURANCE

15.1 The BFP shall be insured by Contractor at all times during the term of this Agreement against loss or damage caused by perils ordinarily covered under fire and extended coverage policies in an amount equal to one hundred percent (100%) of the replacement value thereof, and under Difference In Conditions coverage, including flood and earthquake and such other perils to the extent included in the Contractor's Difference In Conditions coverage and subject to reasonable deductibles. All such insurance shall be issued by insurers of recognized financial responsibility acceptable to the Authority and shall name Contractor, Authority, the City of Wichita and other such persons and entities as the Authority may designate as loss payees to the extent of their interest thereunder. In addition, Contractor shall obtain and maintain insurance of the following types and amounts issued by insurers of recognized financial responsibility acceptable to the Authority. Except for Workers' Compensation, with respect to Contractor's obligations under this Agreement, such insurance shall name as additional insureds, the Authority, and such other persons the Authority may designate in writing in advance of the purchase of such insurance, covering the operations, activities and services of Contractor under this Agreement. Contractor shall cause certificate(s) of insurance to be furnished to the Authority certifying that all the insurance coverage required pursuant to this Section is in effect and providing that it shall not be cancelable or materially reduced except upon thirty (30) days' written notice to the Authority, and to such other persons and entities as the Authority may designate of such proposed cancellation or reduction. The certificate, with respect to the Contractor's General Liability Coverage shall state that, with respect to Contractor's obligations under this Agreement, such coverage is primary insurance, over and above any other valid and collectible insurance issued to any of the additional insureds thereunder, is without right of contribution from any insurance carried by the Authority or any other additional insured, insurers shall agree to waive any rights of subrogation they may or could have against any of the additional insureds and that the liability assumed by Contractor under this Agreement (including, without limitation, the Indemnity obligations under Section 14.) has been specifically insured under the liability policy, but such insurance in no way limits Contractor's liability hereunder. The required insurance and minimum limits are as follows:

	Description	Limits of Liability
A.	Comprehensive General Liability Coverage	
	1. On-Airport Operations (including automobile, contractual, completed operations, independent contractor and products hazards).	
	- Bodily injury and property damage	$10 million per occurrence combined single limit, subject to $5 million annual policy aggregate for product hazards and completed operations for contractor and all contractor affiliated entities operations
B.	Workers' Compensation and Employers Liability Insurance	
	1. Workers' Compensation	Statutory limits
	2. Employers Liability	$500,000 per occurrence
C.	Contractor's Pollution Legal Liability Insurance	$5 million each incident $5 million Annual Aggregate

15.2 At the written request of the Authority, Contractor shall obtain other forms and limits of insurance coverage, if commercially available, against hazards in addition to or different than those specified in this Section, or in limits other than those set forth in this Section. The cost of any additional insurance shall be included in the BFP "Reimbursable Operating Expenses."

15.3 In the event any BFP asset is damaged, destroyed or lost, such damage, destruction or loss shall be, unless otherwise directed by the Authority, repaired or replaced by Contractor with due diligence. Contractor shall apply to such repair or replacement all or so much as may be necessary of the proceeds of insurance, if any, available to it by reasons of such damage, destruction or loss. In the event Contractor is directed by Authority not to repair or replace the damage, destruction or loss of the BFP and Premises, the proceeds of insurance, if any, available to Contractor by reason of such damage, destruction or loss shall be treated as proceeds of the sale of such BFP and paid out to Authority.

15.4 In the event of the damage, destruction or loss of any portion of the BFP, Contractor shall, to the extent of insurance proceeds made available to Contractor, repair or replace such portion with due diligence, unless otherwise instructed by the Authority. Contractor shall not be obligated to expend

more than the amount available to it for such repair or replacement from proceeds of insurance plus the amount available from the Authority, if any.

SECTION 16. FORCE MAJEURE

16.1 The Contractor shall be excused from, and shall not be liable for any impairment or interruption of service due to causes beyond its control. Such causes shall be deemed to include weather, fire (not as a result of Contractor negligence), earthquake, explosions (not as a result of Contractor negligence), terrorism, epidemics, quarantine restrictions, flood, power outages, war, warlike operations, insurrections, acts of public enemies, civil commotions, riots, rebellions, embargoes, transportation delays, materials controls, court orders, regulations, rulings or acts of any government agency (not arising from a breach of the Contractor's obligations under this Agreement), and acts of God. However, in the event of any impairment or interruption of service resulting from such cause or causes, the Contractor shall use its best efforts to eliminate such impairment or interruption as soon as possible and in the interim provide such services hereunder as may practically be performed by the Contractor.

16.2 Contractor agrees to consult with and advise the Authority of any anticipated delay or failure, as soon as it becomes aware of such anticipated delay or failure or the possibility thereof, whether for *force majeure* or not.

SECTION 17. TERMINATION BY CONTRACTOR

17.1 This Agreement shall be subject to termination by Contractor upon sixty (60) days advance written notice should Authority breach any of the material terms, covenants or conditions of this Agreement to be kept, performed and observed by Authority, and if Authority shall fail within said sixty (60) day period to commence and thereafter diligently proceed to cure such default.

17.2 Unless otherwise agreed between the parties, upon expiration or termination of this Agreement, Contractor shall be reimbursed for the unamortized value (as designated in an amortization schedule prepared using generally accepted accounting methods and mutually agreeable to the parties) of any BFP capital asset or equipment Contractor acquired for the maintenance and operation of the Premises under Section 6. of this Agreement. Upon expiration (or termination) of this Agreement and payment of reimbursement to Contractor the asset or equipment shall become the property of the Authority.

SECTION 18. TERMINATION BY AUTHORITY

18.1 Authority may, at its option, immediately terminate or suspend this Agreement if one or more of the following events should occur:

a. Any type of strike, boycott, picketing, work stoppage, slow-down or other labor activity is directed against Contractor at Airport or against any of its operations under this Agreement, whether or not the same is due to the fault of Contractor, and continues for a period of at least twenty-four (24) hours, including the period of any suspension of the operations of Contractor pursuant to the provisions contained herein, and if any of the foregoing in the reasonable opinion of Authority adversely affect the operation of Airport, or other persons using the facilities of Airport or the operations of Contractor under this Agreement;

b. Contractor shall either cease, abandon, stop or discontinue its services in or on Premises for any reason whatsoever and regardless of the fault of Contractor;

c. Any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of Airport facilities and Premises;

d. Authority shall, in lieu of condemnation, give any governmental agency or other person any deed, lease or other conveyance of all or a substantial part of Airport facilities and Premises; then upon the occurrence of any such event or at any item thereafter during the continuance thereof, Authority shall have the right by giving twenty-four (24) hours of written notice to Contractor to terminate this Agreement, effective upon the date and time specified in such notice;

e. Fire or other cause (including condemnation or any deed, lease or other conveyance by Authority in lieu thereof) shall destroy a part or parts of Premises, or shall terminate Authority's operations thereon, Authority shall have the right by giving twenty-four (24) hours written notice to Contractor to terminate this Agreement, effective upon the date and time specified in such notice; or

f. Contractor shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against Contractor and it is therefore adjudicated as bankrupt; or if a court shall take possession of Contractor's assets pursuant to bankruptcy proceedings.

18.2 The right of termination as contained in this Agreement shall be in addition to and not in lieu of any and all rights and remedies that Authority shall have at law or in equity consequent upon Contractor's breach of this Agreement, except as limited by Section 14.3, and the exercise by Authority of such rights and termination shall be without prejudice to any and all such rights and remedies. In the event Authority exercises its rights to terminate this Agreement, then it is understood that said exercise by Authority of its right of termination shall not be, or deemed to be, an exercise by Authority of an election of remedies so as to preclude Authority from any claims it may have as of the date of termination of this Agreement. This provision shall be deemed to survive the termination of Agreement.

18.3 In addition to all other rights or revocation or termination hereunder, and not withstanding any other terms or provisions of this Agreement, Authority shall have the right at any time and without cause to terminate this Agreement upon ninety (90) days written notice to Contractor, effective upon the date and time specified in such notice.

18.4 In the event this Agreement is terminated, any payment due Contractor shall be due and payable within thirty (30) days after the effective date of termination, provided however, that should this Agreement be terminated under circumstances where Authority has claims against Contractor or amounts in dispute, of which it has given written notice, payment of the amount of claims or dispute may be deducted from Contractor's invoice. Payment shall not, however, be deemed a waiver by either party of any rights or remedies it may have under this Agreement or otherwise.

18.5 Authority may further terminate this Agreement at any time, without forfeiture, waiver or release of any other rights of Authority, after written notice and reasonable opportunity to cure, upon default or material breach of Contractor in the performance of the work to be provided by Contractor under this Agreement or in the observance of or compliance with any of the material terms and conditions of this Agreement. Authority shall promptly give Contractor written notice of such termination. Upon notice of such termination, Contractor shall promptly cease or cause to be ceased all services or work. Contractor shall not be deemed to be in breach or default under this Agreement, however, when it is prevented from carrying out its responsibility or services due to the action or inaction of the Authority in providing a BFP that meets reasonable industry standards for operation. Contractor shall invoice and be paid for only those services rendered or work performed through the date of termination which are reasonable and satisfactory to Authority.

18.6 Contractor shall, at its own cost and expense, remove all of its property from Premises on or before the cessation of this Agreement. Any documented damage to the property, normal wear and tear excepted, owned or used by Authority or in which Authority has an interest, resulting from such removal, shall be paid for by Contractor.

18.7 If Contractor's property is not removed as herein provided, Authority may, at its option, as agent for Contractor and at Contractor's risk and expense, remove such property to a public warehouse for deposit, or retain such property in Authority's possession and, after the expiration of thirty (30) days, sell the same, with or without notice, at a public or private sale, in accordance with applicable law, the proceeds of which sale shall be applied first to the expenses of the sale, and second to any sum owed by Contractor to Authority, and any balance remaining shall be paid Contractor.

18.8 Contractor shall keep all insurance policies and bonds required pursuant to this Agreement in effect through surrender of Premises.

18.9 Nothing herein is intended or shall be construed as a waiver or limitation or the right of Authority to assert any lien, which Authority may lawfully assert.

SECTION 19. ATTORNEY'S FEES

In case either party brings any action under this Agreement, and prevails at trial in said action, then prevailing party shall be entitled to recover from the non-prevailing party, its reasonable fees incurred as a result of said action. Such fees shall include, but not be limited to, expert witness' fees, court reporters' fees, court costs and reasonable attorneys' fees. In the event the parties resolve their dispute without the need for a trial, then each party shall bear its own fees and costs.

SECTION 20. AMENDMENT

This Agreement constitutes the entire Agreement between the parties. No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

SECTION 21. AUTHORITY APPROVAL

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions or designations made at any time, and from time to time, may be withdrawn or modified by written notice from Authority to Contractor.

SECTION 22. ENVIRONMENTAL PROTECTION

22.1

a. The Authority hereby agrees to indemnify and hold harmless the Contractor from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Contractor by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the term of this Agreement and the period prior to the term of this Agreement of any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any hazardous substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the error, fraud, negligence, or willful misconduct of Contractor, or persons within the control of the Contractor, its officers, employees, agents, business invitees and/or licensees.

b. In furtherance and not in limitation of any indemnity elsewhere provided to the Authority hereunder, the Contractor hereby agrees to indemnify and hold harmless the Authority and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Authority or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during any term of this Agreement of any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any hazardous substance) if such presence, escape, seepage, leakage, spillage, discharge, emission was caused by the error, fraud, negligence, or willful misconduct or the Contractor, or persons within the control of the Contractor, its officers, employees, agents, and/or licensees.

c. If, during the term of this Agreement, the Contractor receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any Hazardous Substance on the Premises or in connection with the Contractor's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the Contractor (an "Environmental Complaint") from any persons or entity (including, without limitation), the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE"), the Contractor shall promptly notify the Authority in writing of said notice.

d. The Authority shall have the right, but not the obligation, and without limitation of the Authority's other rights under this Agreement, to enter the premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any hazardous substance or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any hazardous substance or an environmental complaint pertaining to the Premises or any part thereof which, if true, could result in an order, suit or other action against the Contractor and/or which, in the reasonable judgment of the Authority, could jeopardize its interests under this Agreement.

e. If an event of default shall have occurred under this Section and be continuing, the Contractor at the request of the Authority shall periodically perform (at the Contractor's expense) an environmental audit and, if reasonably deemed necessary by the Authority, an environmental risk assessment (each of which must be reasonably satisfactory to the Authority) of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the Contractor with respect to the Premises. Such audit and/or risk assessment shall be conducted by an environmental consultant with substantial experience in conducting airport environmental assessments that is mutually satisfactory to the parties. Should the Contractor fail to perform any such environmental audit or risk assessment within ninety (90) days of the written request of the Authority, the Authority shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All reasonable and documented costs and expenses incurred by the Authority in the exercise of such rights shall be payable by the Contractor on demand. Authority shall grant to Contractor and its agents or sub-contractors such access to the Premises or other areas of the Airport as is reasonably necessary to accomplish removal and prepare such audit.

f. The provisions of this subsection shall survive the termination of this Agreement.

22.2 The Contractor will be proactive with regard to all environmental issues and will incorporate best industry standards and practices with regard to environmental matters at all times.

22.3 As used herein "Hazardous Substances" means any hazardous or toxic substance, material or waste, petroleum or petroleum by-product, which is or shall become regulated by any governmental entity or authority.

SECTION 23. AIRPORT SECURITY PROGRAM

23.1 The Contractor must obtain Airport Security Identification Media for its employees, subcontractors, suppliers, agents, and representatives requiring access to the sterile areas, secured air operations area (AOA), and security identification display area (SIDA), or other secured areas as may be identified in the Airport Security Program, and pay any related costs associated with the privileges as set under this Section. Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Public Safety Division within twenty-four (24) hours after expiration or suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement.

23.2 Contractor covenants that it will at all times maintain the integrity of the Airport Security Program and comply with all applicable provisions of 49 CFR Parts 1500, 1544, 1546, 1548, and 1550 as promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access which Contractor maintains. Contractor hereby agrees that it shall also be responsible for conducting and verifying any and all required background checks and for I.D. Media for any and all of its employees, subcontractors, suppliers, agents, and/or representatives. Contractor also hereby agrees that it shall be responsible for any and all of the actions of its employees, subcontractors, suppliers, agents, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. Contractor hereby agrees that it will immediately implement any and all security changes that are directed either directly or indirectly by the Transportation Security Administration (TSA), Federal Aviation Administration (FAA), or Authority.

23.3 Should Contractor, its employees, subcontractors, suppliers, agents, and/or representatives cause any security violations, and should the Authority be cited for a civil fine or penalty for such security violation, Contractor agrees to reimburse the Authority for any monetary civil fine or penalty, which may be imposed on the Authority by the TSA, however, nothing herein shall prevent the Contractor from contesting the legality, validity or application of such fine or penalty to the full extent Contractor may be lawfully entitled. Contractor will have I.D. Media/access privileges immediately suspended and/or revoked by the Authority for failure to adhere to the Airport Security Program or for failure to return all I.D. Media within the time frames specified herein. Such actions may also result in the termination of this Agreement, at the sole discretion of the Authority, if such failure by Contractor is not cured by Contractor within thirty (30) days after receiving written notice from Authority of such failure.

23.4 In accordance with the Airport Security Program, Contractor must obtain Airport Security Identification Media and fingerprinting (if required) for their eligible employees, subcontractors, suppliers, agents, and/or representatives. Authority shall reimburse the Contractor for the first issued I.D. Media and associated fingerprint application for each Contractor employee, subcontractor, supplier, agent, and/or representative, and thereafter for each authorized renewal thereof. However, the Contractor shall be charged, and the Authority shall not reimburse the cost of lost/replacement I.D. Media.

SECTION 24. GENERAL PROVISIONS

24.1 Federal Aviation Act, Section 308. Nothing herein contained shall be deemed to grant the Contractor any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on Airport except that, subject to the terms and provisions hereof, Contractor shall have the right to possess Premises under the provisions of this Agreement.

24.2 Subordination to Agreements with the U.S. Government. This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between Authority and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. Authority covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

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

24.4 Notices. Notices required herein may be given by registered certified, or express mail, and shall be deemed served on the date such notice is deposited in the United States Mail, or by private courier in the continental United States postage prepaid. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to Authority shall be delivered as follows:

The Wichita Airport Authority
2173 Air Cargo Road
Wichita Mid-Continent Airport
P. O. Box 9130
Wichita, Kansas 67277-0130

Until any such change is made, notices to Contractor shall be delivered as follows:

Signature Flight Support Corporation
Attn: Contracts
201 South Orange Avenue
Suite 1100S
Orlando, FL 32801

With copy to:

Signature Flight Support Corporation
1980 Airport Road
Wichita Mid-Continent Airport
Wichita, KS 67209

24.5 Captions. The captions/headings of the several Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

24.6 Severability. If one or more clauses, sections or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, the parties hereto agree that the material rights of either party shall not be affected thereby.

24.7 Waiver of Claims. Contractor hereby waives any claim against Authority and its officers or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or by any judgment or award in any suit proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out.

24.8 Right to Develop Airport. The parties hereto further covenant and agree that Authority reserves the right to further develop or improve Airport Terminal and all landing areas and taxiways as it may see fit, regardless of the desires or view of Contractor and without interference or hindrance.

24.9 Incorporation of Exhibits. All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

24.10 Incorporation of Required Provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

24.11 Non-Liability of Agents and Employees. No member, officer, agent or employees of Authority shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

24.12 Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

24.13 Right to Amend. In the event that the Federal Aviation Administration (FAA) or its successors require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, or otherwise, Contractor agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required.

24.14 Time of Essence. Time is of the essence in this Agreement.

24.15 Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

24.16 Relationship of the Parties. It is understood Contractor is not in any way or for any purpose a partner or joint venturer with or an agent of Authority. Contractor shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

24.17 Interpretation. Authority and Contractor hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

24.18 Kansas Laws to Govern. This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas.

SECTION 25. NON-DISCRIMINATION/EEO/AAP

During the term of this Agreement, 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 Agreement, 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, 11141; 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

Agreement 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 Agreement, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. Contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so 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 Agreement 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. 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.

SECTION 26. FAA REQUIREMENTS

Authority and Contractor further agree that the requirements of the Federal Aviation Administration (FAA) set out below are approved by both parties, and if applicable, Contractor agrees to comply with all FAA requirements with respect to its operations and the use of the Airport.

a. Contractor, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, NonDiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

b. The Contractor, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, NonDiscrimination in

Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

c. The Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, SubPart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, SubPart E. The Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this SubPart. The Contractor assures that it will require that its covered suborganizations provide assurances to the Contractor that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, SubPart E, to the same effect.

d. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

e. Contractor agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

f. Authority reserves the right (but shall not be obligated to Contractor) to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of Contractor in this regard.

g. Authority reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of Contractor, and without interference or hindrance.

h. Authority reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Contractor from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of Authority, would limit the usefulness of the airport or constitute a hazard to aircraft.

i. During time of war or national emergency, Authority shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

j. It is understood and agreed that the rights granted by this agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

k. There is hereby reserved to Authority, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the airport.

l. This Agreement shall become subordinate to provisions of any existing or future agreement between the Authority and the United States of America or any agency thereof relative to the operation, development or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

SECTION 27. ENTIRE AGREEMENT

27.1 The parties hereto understand and agree that this instrument contains the entire Agreement between the parties hereto. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

27.2 The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

27.3 The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

27.4 This Agreement between the parties shall consist of this instrument, the Request for Proposals and Contractor's Proposal, which are incorporated herein as if copied verbatim. In the event of any conflict between the terms of this Agreement and the terms or provisions of the aforesaid documents, the more restrictive on Contractor shall control.

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

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President

"AUTHORITY"

By: _____
Victor D. White, Director of Airports

ATTEST:

SIGNATURE FLIGHT SUPPORT CORPORATION

By: Susan Coates Scott

By: Stephen W. Lee
Stephen W. Lee, President

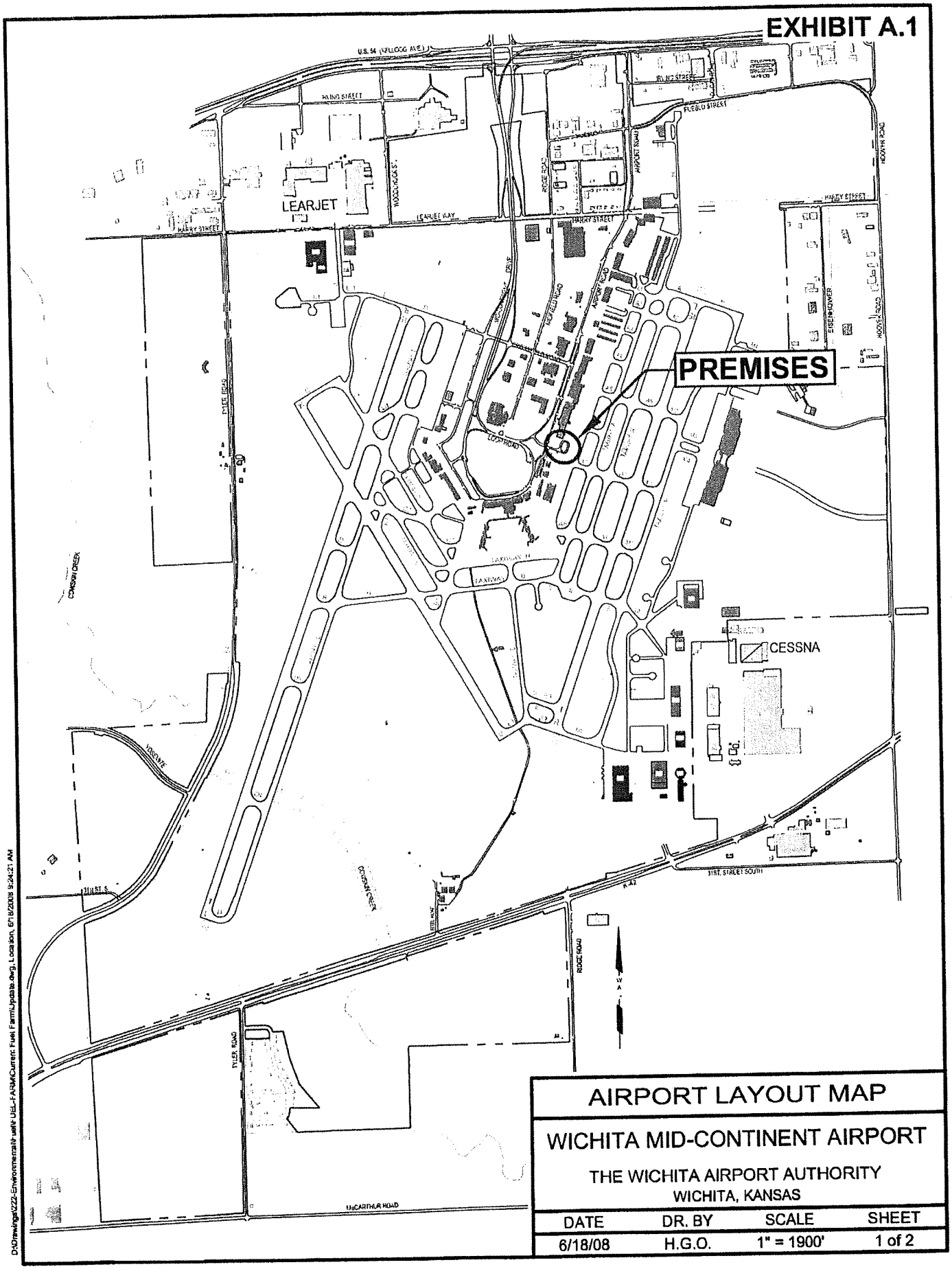
"CONTRACTOR"

APPROVED AS TO FORM:
ACS 09.02.08
LEGAL DEPT.

APPROVED AS TO FORM: _____ Date: _____
Director of Law

Exhibit A

EXHIBIT A.1



AIRPORT LAYOUT MAP

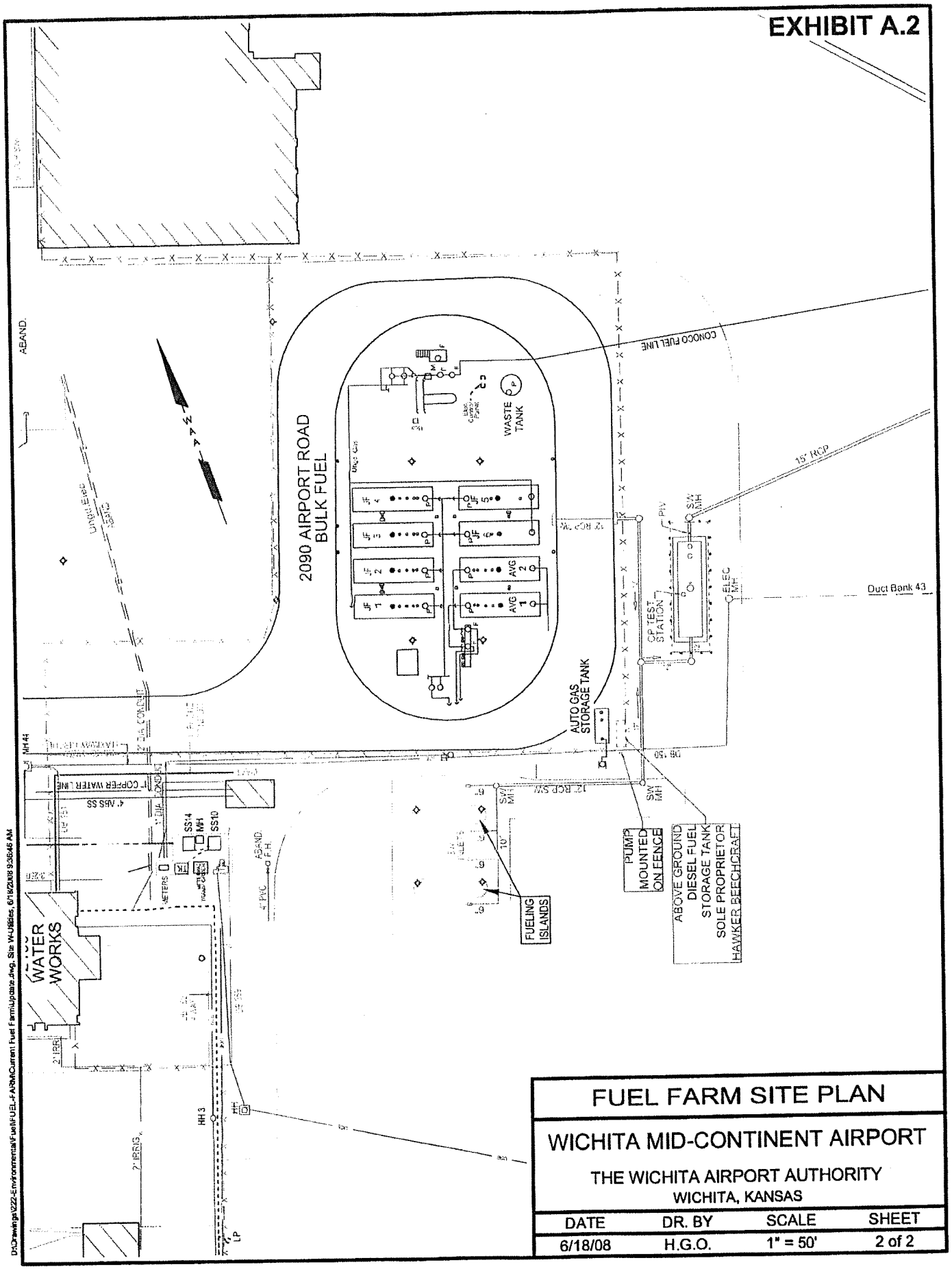
WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
6/18/08	H.G.O.	1" = 1900'	1 of 2

D:\Drawings\222-Environmental\Fuel\FUEL-FARM\Current Fuel Farm\Update.dwg, Location, 6/18/2008 9:24:21 AM

EXHIBIT A.2



FUEL FARM SITE PLAN			
WICHITA MID-CONTINENT AIRPORT			
THE WICHITA AIRPORT AUTHORITY WICHITA, KANSAS			
DATE	DR. BY	SCALE	SHEET
6/18/08	H.G.O.	1" = 50'	2 of 2

Exhibit B

Key Personnel

Name	Title
Bryan Orr	General Manager
Dianne Bassham	Accounting Manager

City of Wichita
City Council Meeting
September 23, 2008

TO: Wichita Airport Authority

SUBJECT: Agreement – U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Agreement.

Background: In 2000, the WAA entered into a service agreement with the U. S. Department of Agriculture-Wildlife Services (USDA) to provide wildlife management services at Mid-Continent and Col. James Jabara Airports. This Agreement Work Plan/Financial Plan has been renewed annually since that time. The Work Plan consists of: assessing/monitoring biological conditions necessary to track seasonal and yearly changes in wildlife populations; training of airport staff; providing wildlife hazing and habitat management; and applying for and maintaining required permits.

Analysis: Through this Agreement, the WAA complies with its obligations to the Federal Aviation Administration under 14 CFR Part 139.337-*Wildlife Hazard Management*, the Airport Certification Manual, and the Airport Wildlife Hazard Management Plan—all of which are mandatory federal compliance programs as a condition for maintaining the Airport Operating Certificate. For the first time, Cessna Aircraft Company has asked the WAA to provide wildlife management services, through the USDA, on Cessna owned property adjacent to Mid-Continent Airport. Upon acceptance of the attached Work Plan/Financial Plan, Cessna Aircraft Company will reimburse the WAA in the amount of $18,584 for wildlife management services.

Financial Considerations: The cost of the services provided is $68,834 for the period October 1, 2008 through September 30, 2009. This amount reflects an increase of $22,005 above the 2007/2008 contract amount. Of this increased amount, Cessna Aircraft Company will reimburse the WAA $18,584. The net cost of wildlife services for the WAA (airport property only) is $50,250, which represents an increase of $3,421 or a 7.3% increase over last year. Funds are included in the Airport Operating Budget.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through maintaining sufficient and economical airport services to serve the community.

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

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

Attachments: Two original signature copies and 12 distribution copies of the Agreement.

Work Plan/Financial Plan

COOPERATOR: Wichita Airport Authority
Victor D. White, Director of Airports, (316) 946-4700

COOPERATIVE AGREEMENT NO.: 09-73-20-5303RA

ACCOUNTING CODE No.: 973-7320-377

LOCATION: Mid-Continent Airport Wichita Kansas

DATES: October 1, 2008 to September 30, 2009

OBJECTIVES/GOALS:

To continue collecting biological assessment information, provide periodic wildlife damage management training to Wichita Airport Authority (WAA) personnel and assist Airfield Operations and Maintenance by responding directly to known wildlife nuisances and hazards. Institute an aggressive monitoring and management program for Canada Geese and other waterfowl using Cessna Aircraft Company (ICT facility). Respond to other nuisance and damaging wildlife complaints as requested by Cessna point of contact. Specific actions requested: a) assess/monitor biological conditions on Mid-Continent Airport and Cessna's Mid-Continent Airport Facility to track seasonal and yearly changes in wildlife population indices, b) provide periodic training to WAA personnel to meet FAA requirements, provide wildlife management updates to Cessna personnel as requested and identify, document, and address wildlife hazards in the airport environment, c) provide direct control of nuisance and hazardous wildlife using hazing (harassment), trapping, shooting and other management tools as appropriate, and d) assist the WAA and Cessna in maintaining appropriate State and Federal depredation permits.

PLAN OF ACTION:

WS personnel will conduct all activities within the above-delineated areas. WS will coordinate all activities with the appropriate WAA and Cessna personnel. WAA and Cessna will be responsible for designating WS points of contact, approving WS activities, and providing the appropriate clearances needed to complete the stated objectives/goals. The project will be supervised by the State Director for Kansas or his designated representative.

One Wildlife Biologist and one Wildlife Specialist will be assigned to the WAA for approximately 32 hours per week October through September and the Cessna project approximately 32 hours per week November through April. Work hours will vary and will be scheduled to most appropriately address wildlife damage management problems. WS may utilize all practical and legal wildlife management techniques.

COST ESTIMATE FOR SERVICES
October 1, 2008 to September 30, 2009

Salary/Benefits (1 Wildlife Biologist & 1 Wildlife Specialist)	$48,127
Lodging/Per Diem	$1,500
Transportation	$7,636

Supplies		$2,000
	SUBTOTAL	$59,263
Program Support @ 16.15% of Subtotal		9,571
	TOTAL	**$68,834**

Billing will be done quarterly. Costs are estimated and may vary according to changing needs.

NOTE: In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by APHIS/WS are due and payable within 30 days of receipt. The DCIA requires that all debts older than 120 days must be forwarded to debt collection centers or commercial collection agencies for more aggressive action.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President

By: _____
Victor D. White, Director of Airports

APPROVED AS TO FORM: _____ Date: _____
Director of Law

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL & PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES

By: _____ Date: _____
State Director, Kansas

By: _____ Date: _____
Director, Western Region

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL SEPTEMBER 23, 2008

a. Storm Water Drain #350 to serve Oak Creek 2nd Addition (south of 21st Street North, west of Greenwich) (468-84534/751479/485370) Does not affect existing traffic. (District II) - $80,000.00

b. Lateral 52, Main 7, Sanitary Sewer #23 to serve Mediterranean Plaza Commercial 2nd Addition (east of Rock, north of 29th Street North) (468-84529/744290/480979) Does not affect existing traffic. (District II) - $35,000.00

c. Country View Lane from the south line of the plat, north to the west line of Fawnwood; Fawnwood from the north line of Lot 11, Block A, south to the south line of City View; City View from the west line of Fawnwood, east to the east line of Lot 31, Block B; Country View Court from the east line of Country View Lane, east to and including the cul-de-sac; sidewalk be constructed on Country View Lane, Fawnwood, and City View to serve The Woods Addition (east of 151st Street West, north of Maple) (472-84359/766218/490236) Does not affect existing traffic. (District V) - $533,330.00

d. The cost of Ridgehurst from the south line of the plat, north to the south line of Graystone and sidewalk on one side of Ridgehurst to serve Stonebridge 2nd Addition (north of 13th Street North, west of 159th Street East). (472-84594/766164/490-182) (DistrictII). – Total Estimated Cost $195,000.00

Agenda Report No. XII-8a.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council

SUBJECT: Community Events (District I & VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for street closures.

Background: In accordance with the Community Events Procedure, the event promoter Duane Carney is coordinating with Staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Wichita River Jump 2008 October 4, 2008 12:00 pm – 11:00 pm

- McLean Blvd, Douglas to 1st Street
- Douglas Avenue, Waco to McLean Blvd.

Wichita River Jump 2008 October 4, 2008 6:00 pm – 8:00 pm

- 1st Street, Waco to McLean Blvd.
- Waco Street, Douglas to 1st Street.

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.

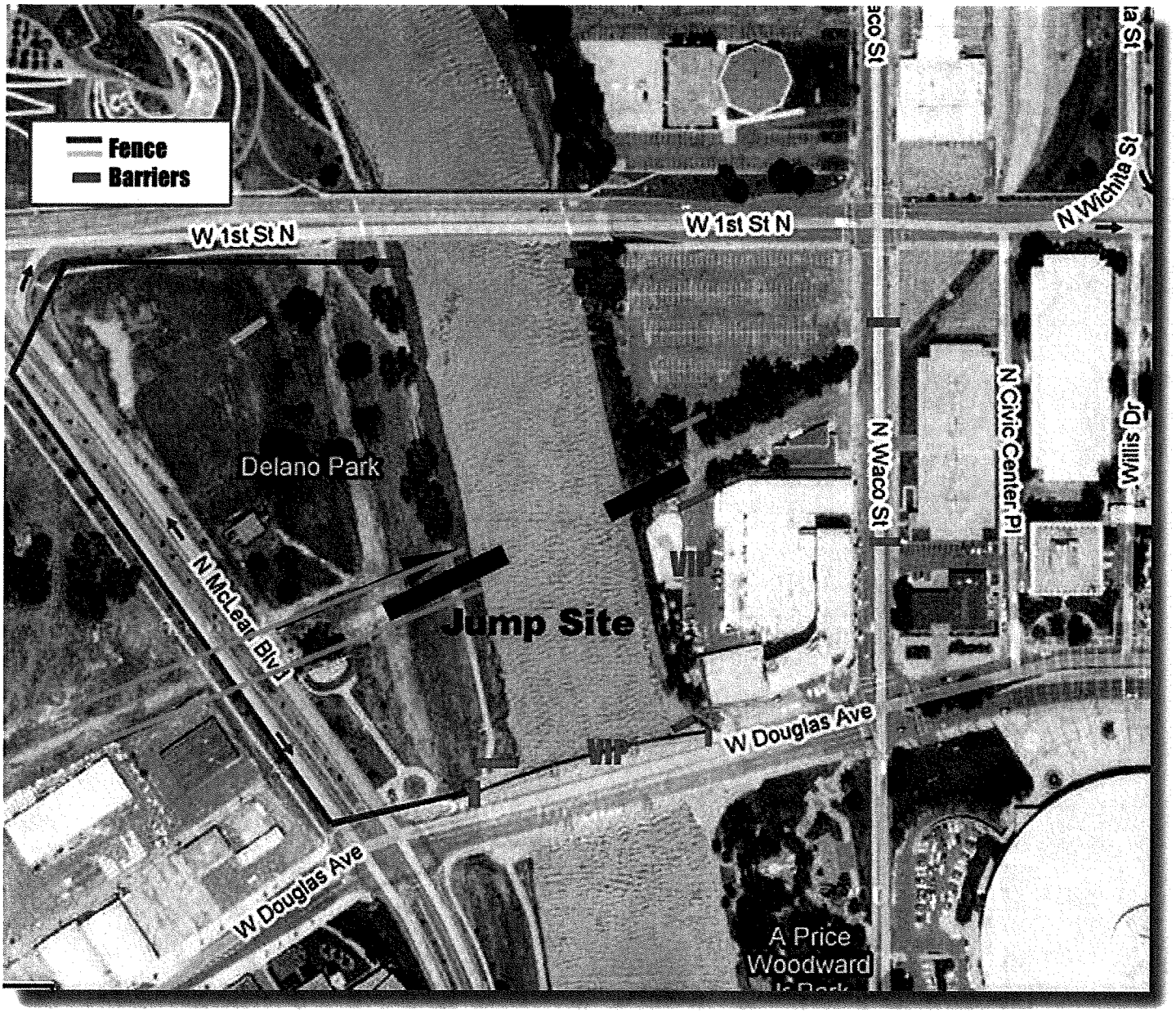
Goal Impact: Enhance the Quality of Life

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.

Special Event Plan & Maps

Site Map:



2

Agenda Report No. XII-8b.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council

SUBJECT: Community Events (District IV)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for street closures.

Background: In accordance with the Community Events Procedure, the event promoter Larry Heck, Professor Newman University is coordinating with City of Wichita Staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Newman University 75th Anniversary Celebration October 11, 2008 8:45 pm – 9:30 pm

- McCormick Avenue, All Hallows to K-42/Edwards

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 Report No. XII-8c.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Street Closure: 13th St. North from Lewellen to Bitting (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the street closure.

Background: The Minisa Bridge reconstruction project was approved by the City Council on December 4, 2007.

Analysis: The temporary closure of 13th St. is being requested to allow a dedication ceremony to recognize the completion of the reconstruction of the Minisa Bridge on Tuesday, September 23rd from 12 noon to 10pm. The City's Department of Public Works is responsible for the placement of the required detour and construction signs and barricades and the notification of area businesses and residents. During the closure, 13th St. traffic will be detoured as follows:

Eastbound 13th St. traffic will be detoured south on Bitting to 11th St. then east to Waco and back north to 13th St.

Westbound 13th St. traffic will be detoured south on Waco to 11th St. then west to Bitting and back north to 13th St.

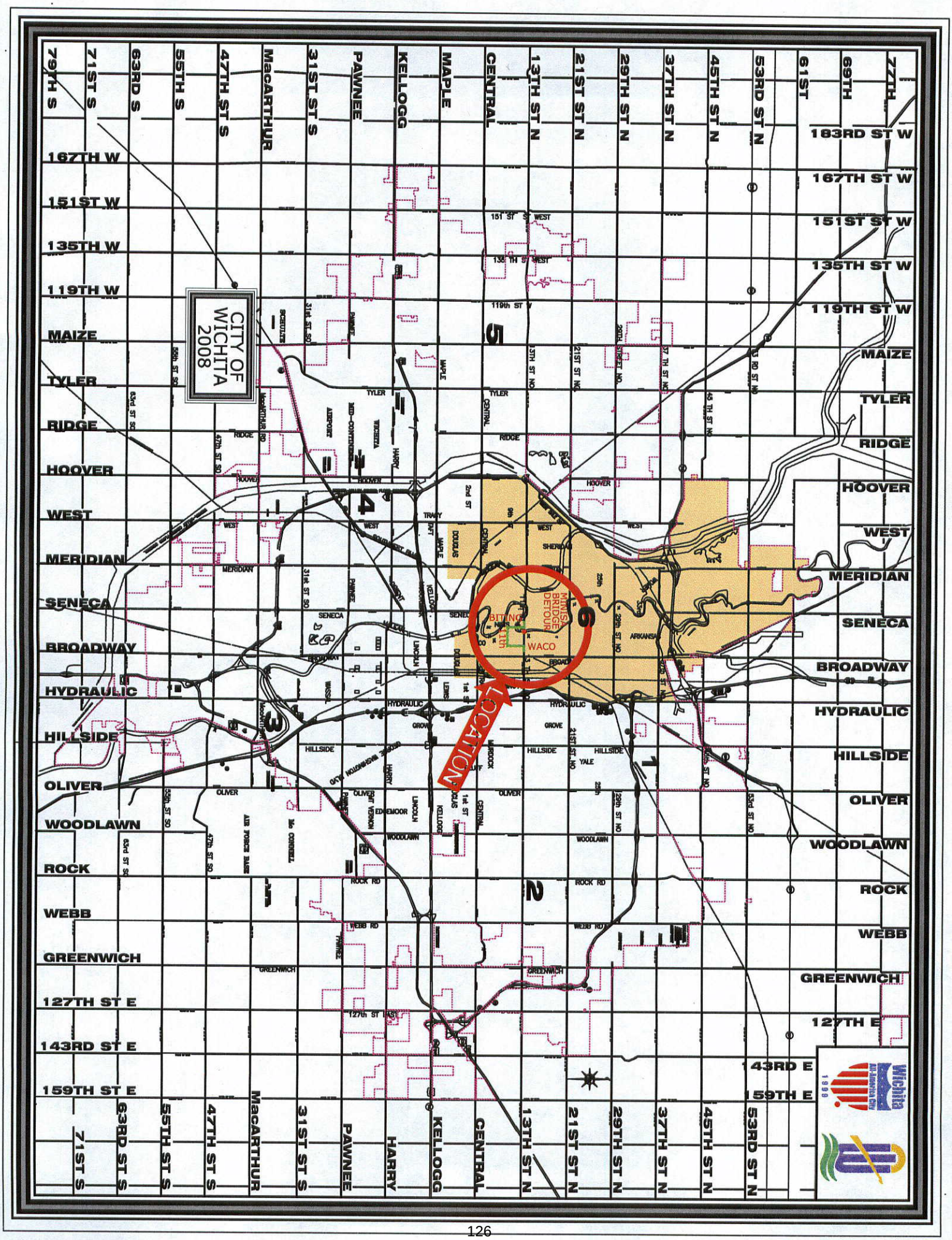
Financial Consideration: None.

Goal Impact: This project addresses the Efficient Infrastructure goal by maintainint safe and dependable transportation systems.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council approve the street closure.

Attachment: Map


CITY OF WICHITA 2008
LOCATION
MINISA BRIDGE DETOUR
BITINGS
WACO
79TH S
71ST S
63RD S
55TH S
47TH ST S
MacARTHUR
31ST ST S
PAWNEE
KELLOGG
MAPLE
CENTRAL
13TH ST N
21ST ST N
29TH ST N
37TH ST N
45TH ST N
53RD ST N
61ST
69TH
77TH
183RD ST W
167TH W
167TH ST W
151ST W
151ST ST W
135TH W
135TH ST W
119TH W
119TH ST W
MAIZE
TYLER
RIDGE
HOOVER
WEST
MERIDIAN
SENECA
BROADWAY
HYDRAULIC
HILLSIDE
OLIVER
WOODLAWN
ROCK
WEBB
GREENWICH
127TH ST E
127TH E
143RD ST E
143RD E
159TH ST E
159TH E
HARRY
Wichita
All-America City
1999

Agenda Report No. XII-9a.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement for Staking in The Woods Addition (east of 151st Street West, north of Maple) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: The City Council approved the water and drainage improvements in The Woods Addition on February 14, 2006. On March 4, 2008 the City approved an Agreement with Baughman Company, P.A. to design the improvements. The Design Agreement with Baughman requires Baughman to provide construction engineering and staking services if requested by the City.

Analysis: The proposed Supplemental Agreement between the City and Baughman provides for staking the improvements. Due to the current workload created by previous projects, City crews are not available to perform the staking for this project.

Financial Considerations: Payment to Baughman will be on a lump sum basis of $21,560 and will be paid by special assessments.

Goal Impact: This Supplemental Agreement addresses the Efficient Infrastructure goal by providing the engineering services needed for the construction of water and drainage improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

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

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

Attachments: Supplemental Agreement

SUPPLEMENTAL AGREEMENT

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED MARCH 4, 2008

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 March 4, 2008) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements in **THE WOODS ADDITION** (east of 151st Street West, north of Maple).

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:

STAKING & AS-BUILT

(as per the City of Wichita Standard Construction Engineering Practices)

WATER DISTRIBUTION SYSTEM NO. 448 90163 serving Lots 1 through 11, Block A; Lots 14 through 31, Block B; Lots 1 through 5, Block C; Lots 25 through 29, Block C, The Woods Addition (east of 151st Street West, north of Maple) (Project No. 448 90163).

STORM WATER DRAIN NO. 287 serving Lots 1 through 12, Block A; Lots 14 through 53, Block B; Lots 1 through 29, Block C; Lots 1 through 14, Block D, The Woods Addition (east of 151st Street West, north of Maple) (Project No. 468 84131).

Construction staking and final as-built of all areas included in the project mass grading plan will be the responsibility of the ENGINEER, with final as-built plans submitted and sealed by a licensed land surveyor or registered professional engineer. Minimum construction staking shall consist of the following: grade stakes set at 50 foot centers in tangent sections, and 25 foot centers through curve sections, at the street centerline (to match CL street stationing per paving plans); both right-of-way lines (at lot corners); back lot/easement lines (at lot corners); as well as any other grade break lines. Grade stake cuts and fills shall be to the dirt grade as required by the mass grading plan details, and shall not be set for final pavement grade, nor to actual final subgrade elevation. Final elevations for all areas outside the street right-of-way to be graded per plans, provisions or otherwise, including lots,

easements, ponds and reserve areas, shall be within +/-0.2' of plan call-outs, unless otherwise stated in plans or provisions. Final elevations within the street right-of-way shall be within +/-0.1' of plan call-outs. The ENGINEER will be responsible to provide initial as-built(s) to the City's Project Engineer, who will coordinate any rework with the contractor. The ENGINEER'S survey and as-built generation responsibilities will include re-checking all points deemed to be out of compliance by the City project engineer, regardless of the number of times to achieve compliance. Two copies of the project specific mass grading and pond construction plan sheets will be submitted to the Project Engineer within 5 days of completion of final grading, will show original plan and final as-built elevations at all original call-out locations. Submittals will include both standard plan sheets as well as an electronic file.

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

Project No. 448 90163	$ **3,860.00**
Project No. 468 84131	$**17,700.00**
TOTAL	$**21,560.00**

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 _____, 2008.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

_____
N. Brent Wooten, President

ATTEST:

_____

Agenda Report No. XII-9b.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement for Staking in Turkey Creek 3rd Addition (north of Pawnee, east of 135th Street West) (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: The City Council approved the paving improvements in Turkey Creek 3rd Addition on February 6, 2007. On June 17, 2008 the City approved an Agreement with Baughman Company, P.A. to design the improvements. The Design Agreement with Baughman requires Baughman to provide construction engineering and staking services if requested by the City.

Analysis: The proposed Supplemental Agreement between the City and Baughman provides for staking the improvements. Due to the current workload created by previous projects, City crews are not available to perform the staking for this project.

Financial Considerations: Payment to Baughman will be on a lump sum basis of $18,210 and will be paid by special assessments.

Goal Impact: This Supplemental Agreement addresses the Efficient Infrastructure goal by providing the engineering services needed for the construction of paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

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

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

Attachments: Supplemental Agreement

SUPPLEMENTAL AGREEMENT

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED JUNE 17, 2008

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 June 17, 2008) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements in **TURKEY CREEK 3RD ADDITION** (north of Pawnee, east of 135th Street West).

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:

STAKING & AS-BUILT

(as per the City of Wichita Standard Construction Engineering Practices)

WHEATLAND from the south line of the plat, north to the north line of Lot 119, Block A, on **BLAKE** from the west line of Wheatland, west to the west line of Lot 17, Block B, and on **LIMUEL** from the north line of Blake, north to the north line of Lot 16, Block G and on **WHEATLAND COURT** from the east line of Wheatland east and south to and including the cul-de-sac, on **LIMUEL CIRCLE** from the south line of Blake, south to and including the cul-de-sac, and on **LIMUEL COURT** from the east line of Limuel, east to and including the cul-de-sac and that sidewalk be constructed along one side of Wheatland, Blake and Limuel (north of Pawnee, east of 135th Street West) (Project No. 472 84486).

Construction staking and final as-built of all areas included in the project mass grading plan will be the responsibility of the ENGINEER, with final as-built plans submitted and sealed by a licensed land surveyor or registered professional engineer. Minimum construction staking shall consist of the following: grade stakes set at 50 foot centers in tangent sections, and 25 foot centers through curve sections, at the street centerline (to match CL street stationing per paving plans); both right-of-way lines (at lot corners); back lot/easement lines (at lot corners); as well as any other grade break lines. Grade stake cuts and fills shall be to the dirt grade as required by the mass grading plan details, and shall not be set for final pavement grade, nor to actual final subgrade elevation. Final elevations for all areas outside the street right-of-way to be graded per plans, provisions or otherwise, including

lots, easements, ponds and reserve areas, shall be within +/-0.2' of plan call-outs, unless otherwise stated in plans or provisions. Final elevations within the street right-of-way shall be within +/-0.1' of plan call-outs. The ENGINEER will be responsible to provide initial as-built(s) to the City's Project Engineer, who will coordinate any rework with the contractor. The ENGINEER'S survey and as-built generation responsibilities will include re-checking all points deemed to be out of compliance by the City project engineer, regardless of the number of times to achieve compliance. Two copies of the project specific mass grading and pond construction plan sheets will be submitted to the Project Engineer within 5 days of completion of final grading, will show original plan and final as-built elevations at all original call-out locations. Submittals will include both standard plan sheets as well as an electronic file.

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

Project No. 472 84486 $**18,210.00**

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 _____, 2008.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

_____
N. Brent Wooten, President

ATTEST:

_____

Agenda Report XII-9c.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council

SUBJECT: Agreement to Respread Assessments: Tyler's Landing 4th Addition (east of Tyler Road, south of 37th Street North) (District V)

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The landowner, R & R Realty, LLC., platted Tyler's Landing 4th Addition and has submitted an Agreement to respread special assessments within the Addition.

Analysis: The land was originally included in an improvement district for sanitary sewer main, storm water drain, and lateral sanitary sewer projects. The purpose of the Agreement is to respread special assessments on a fractional basis for each lot. Without the Agreement, the assessments will be spread on a square foot basis.

Financial Considerations: There is no cost to the City.

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

Legal Considerations: The 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 the necessary signatures.

Attachments: One original and 14 copies of the Respread Agreement.

AGREEMENT
BY AND BETWEEN

THE CITY OF WICHITA, KANSAS
Party of the First Part

And
R & R Realty, L.L.C.,
Party of the Second Part

WHEREAS, Party of the First Part has constructed certain municipal Improvements in the area east of Tyler Rd., and south of 37th St. N., within the City Limits of the City of Wichita; and

WHEREAS, Party of the Second Part has replatted said lots; and

WHEREAS, Party of the Second Part is the landowner of all or part of the improvement district; and desires that a reassessment be made; and

WHEREAS, Party of the First Part and Party of the Second Part are both desirous of accomplishing such a reassessment.

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. Lot 1, Block A, Tyler's Landing 3rd Addition (Key No. D-61519) and Lot 9, Block A, Tyler's Landing 3rd Addition (Key No. D-61527) which are now being platted as Lots 1 through 30, Block A, Tyler's Landing 4th Addition, Wichita, Sedgwick County, Kansas, were part of the improvement district for the following City Project:

Sanitary Sewer Main
Project No. 468-83186

Storm Water Drain No. 218
Project No. 468-83727

Lateral 25, Main 19, S.W.I. Sanitary Sewer
Project No. 468-84064

The Parties agree to make a reassessment for said project in the following manner:

Lots 1 through 30, Block A, Tyler's Landing 4th Addition, Wichita, Sedgwick County, Kansas, shall each pay 1/30 of the total cost apportioned to the property described above.

4. The Party of the Second Part is the owner of the property described in Section One above and said Party of the Second Part hereby waives the notice and hearing requirements of K.S.A. 12-6a12 (b) with respect to the reassessment herein described.

5. The Party of the Second Part further waives its right to appeal the special assessments for the above mentioned projects (including the described reassessment) and agree that no suit to set aside said assessment shall be brought by them nor shall they in any other way bring an action to question the validity of the proceedings taken by the Party of the First Part in levying the special assessments therefore.

6. The Party of the Second Part further agrees that they will indemnify the Party of the First Part against any and all costs, expenses, claims and adjustments for which the Party of the First Part is held responsible or which are entered against the Party of the First Part arising out as a result of the reassessment herein described.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement the _____ day of _____, 2008.

The City of Wichita, Kansas

By: _____
Carl Brewer, Mayor
Party of the First Part

Approved as to form:

_____
Director of Law

Attest:

_____
City Clerk

STATE OF KANSAS)
SEDGWICK COUNTY) SS:

BE IT REMEMBERED, that on this _____ day of _____, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Carl Brewer, as Mayor of The City of Wichita, a Municipal Corporation, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

_____
Notary Public

My Appointment Expires: _____

Party of the Second Part:

R & R Realty, L.L.C.

By: _____
Jay W. Russell, Manager

Ritchie Associates, Inc., Manager

By: _____
Rob Ramseyer, Vice-President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 19th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Jay W. Russell, as Manager of R & R Realty, L.L.C., a Kansas Limited Liability Company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

JUDITH M. TERHUNE
Notary Public - State of Kansas
My Appt. Expires 11-7-09

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-09)

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 21st day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Rob Ramseyer, as Vice-President of Ritchie Associates, Inc., a Kansas Corporation, Manager of R & R Realty, L.L.C., a Kansas Limited Liability Company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

ANGIE M. SIZEMORE
Notary Public - State of Kansas
My Appt. Expires 7-25-11

Angie M. Sizemore
Notary Public

(My Appointment Expires: 7-25-11)

Agenda Report No. XII-10a.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Traffic Signalization at Three Locations (Districts II, III, & VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The 2008 Capital Improvement Program (CIP) includes funding to install traffic signals at major intersections.

Analysis: The proposed Agreement between the City and Professional Engineering Consultants, P.A. (PEC) provides for the design of traffic signalization at three locations (21st & Greenleaf and 29th & Ohio, Pawnee & Webb, and I-135 & Hydraulic (south interchange). The Staff Screening & Selection Committee selected PEC for the design on July 20, 2008.

Financial Considerations: Payment to PEC will be on a lump sum basis of $32,000 and will be paid by General Obligation Bonds.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by improving traffic flow through busy intersections in the community.

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

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

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

for

2008 TRAFFIC SIGNALIZATION PROGRAM

THIS AGREEMENT, made this _____ day of _____, 2008, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

TRAFFIC SIGNALIZATION AT THREE LOCATIONS:

- 21St & Greenleaf and 29th & Ohio
- Pawnee & Webb
- South I-135 & Hydraulic Interchange (South Ramp)

(Project No. 472 84720, OCA No. 706979)

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing traffic signalization at three locations 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 $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

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

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

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

III. THE CITY AGREES:

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

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

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

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

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

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

IV. PAYMENT PROVISIONS

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

21St & Greenleaf and 29th & Ohio	$**16,000.00**
Pawnee & Webb	$ **8,000.00**
South I-135 & Hydraulic Interchange	$ **8,000.00**
TOTAL	**$32,000.00**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

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

V. THE PARTIES HERETO MUTUALLY AGREE:

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

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

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

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

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

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

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

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

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

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, City Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANT, P.A.

_____
(Name & Title)

ATTEST:

_____

SCOPE OF SERVICES

2008 TRAFFIC SIGNALIZATION PROGRAM
(Project No. 472 84720)

TRAFFIC SIGNALIZATION AT 21st & GREENLEAF and 29th & OHIO - The ENGINEER shall design traffic signal installation at the intersection of 21st Street N & Greenleaf and 29th Street N & Ohio. The design shall include video detection, black poles, LED signals, pavement markings, and any modifications to existing sidewalk and wheelchair ramps. The Discovery Phase shall include a review of right-of-way needs and any necessary tract maps. Monument marking of any new right-of-way is considered part of the Construction Design Phase. This project will include coordination of the relocation of utilities as necessary.

TRAFFIC SIGNALIZATION AT PAWNEE & WEBB - The ENGINEER shall design traffic signal installation at the intersection of Pawnee & Webb. The design shall include video detection, black poles, LED signals, pavement markings, and any modifications to existing sidewalk and wheelchair ramps. 3" Conduit and service boxes were installed with Project # 472-83087. A copy of these plans may be found in the City Engineer's Office. The Discovery Phase shall include a review of right-of-way needs and any necessary tract maps. Monument marking of any new right-of-way is considered part of the Construction Design Phase. This project will include coordination of the relocation of utilities as necessary.

TRAFFIC SIGNALIZATION AT THE SOUTH I-135 & HYDRAULIC INTERCHANGE (SOUTH RAMP) - The ENGINEER shall design traffic signal installation at the interchange of I-135 & Hydraulic. The design shall include video detection, **galvanized** signal poles, LED signals, pavement markings, and any modifications to existing sidewalk and wheelchair ramps. The design shall also include conduit to the north ramp and coordinated signal timings between the two ramps. The Discovery Phase shall include a review of right-of-way needs and any necessary tract maps. Monument marking of any new right-of-way is considered part of the Construction Design Phase. This project will include coordination of the relocation of utilities as necessary. This project will require a KDOT right-of-way permit.

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

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

A. <u>PHASE I – PLAN DEVELOPMENT</u>

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing

Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.

4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.
9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
    - Field Check plans are due <u>September 15, 2008</u>.
    - Office Check plans are due <u>November 3, 2008.</u>
    - Final plans are due <u>December 1, 2008</u>.

Attachment No. 1 to Exhibit "A" – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Agenda Report No. XII-10b.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement for Design Services for the 13th Street Bridge at the Little Arkansas River (District VI)

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 PB Americas, Inc. (PB) for designing a plan to rehabilitate the 13th Street Bridge at the Little Arkansas River. The fee was $89,200. On January 8, 2008, the City Council approved a Supplemental Agreement for designing a temporary pedestrian bridge that would be provided until the bridge is reopened to traffic. The fee was $10,700.

Analysis: PB has been asked to design an extension of the Little Arkansas Bike Path under the 13th Street Bridge. Because the River has been lowered for the bridge reconstruction, now is an opportune time to complete this critical section of the bike path. A Supplemental Agreement has been prepared with PB for the additional design services.

Financial Considerations: Payment to PB will be on a lump sum basis of $6,830 and will be paid by General Obligations Bonds.

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 Agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement

SUPPLEMENTAL AGREEMENT NO. 3

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

PB AMERICAS, INC.

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 to **13TH STREET BRIDGE AT LITTLE ARKANSAS RIVER** (Project No. 472 84314).

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:

Little Arkansas Bike Path extension under the 13th Street Bridge
(Project No. 472 84738, OCA No. 706983)

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 will increase the total contract by $6,830.00.

C. COMPLETION

The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including

final tracings), specifications and estimates to the CITY by _____; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions of inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

D. 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 _____, 2008.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

ATTEST:

_____

PB AMERICAS, INC.

_____
John Trotta, Vice President

_____
Abdul Hamada, P.E.
Project Manager

Agenda Report No. XII-10c.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Crystal Gardens Addition (north of 13th, east of 135th Street West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water, sanitary sewer and paving improvements in Crystal Gardens Addition on October 16, 2007.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water, sanitary sewer and paving in Crystal Gardens Addition. Per Administrative Regulation 1.10, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of $56,300 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water, sanitary sewer and paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

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

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

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

CRYSTAL GARDENS ADDITION

THIS AGREEMENT, made this _____ day of _____, 2008, by and 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: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90330 serving Lots 1 through 41, Block A; Lots 1 through 26, Block B, Crystal Gardens Addition (north of 13th, east of 135th Street West) (Project No. 448 90330).

LATERAL 10, MAIN 5, NORTHWEST INTERCEPTOR SEWER serving Lots 1 through 41, Block A; Lots 1 through 26, Block B, Crystal Gardens Addition (north of 13th, east of 135th Street West) (Project No. 468 84424).

NORTH LIBERTY STREET from the south line of the plat, north to and including the cul-de-sac and on **WEST HUNTERS VIEW STREET** from the east side of the cul-de-sac, east, north, west and south to the south line of Lot 29, Block A, and on **WEST NANTUCKET STREET** from the west line of Lot 29, Block A, south and east to the west line of the cul-de-sac (north of 13th Street, east of 135th Street West) (Project No. 472 84606)

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Crystal Gardens Addition 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 $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

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

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

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

III. THE CITY AGREES:

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

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

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

Project No. 448 90330	$ **9,100.00**
Project No. 468 84424	$ **19,400.00**
Project No. 472 84606	$ **27,800.00**
TOTAL	$ **56,300.00**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

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

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

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

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

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

_____
N. Brent Wooten, President

ATTEST:

_____

EXHIBIT "A"

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

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

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each in-

volved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
    a. Plan Development for the water improvements by **September 22, 2008**.
       (Project No. 448 90330).
    b. Plan Development for the sewer improvements by **September 22, 2008**.
       (Project No. 468 84424).
    c. Plan Development for the paving improvements by **October 27, 2008**.
       (Project No. 472 84606).

Attachment No. 1 to Exhibit "A" – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Bids were opened September 19, 2008, pursuant to advertisements published on:

PUBLIC WORKS DEPARTMENT/ENGINEERING DIVISION: Sewers, Paving and Water Mains as per specifications (Exhibit Attached).

Relocation of Main D, Sanitary Sewer #1 from 9th Street North to 10th Street North, between Mead and Mosley (north of Central, east of Broadway) (468-84380/744241/480929) Traffic to be maintained using flagpersons & barricades. (District I)

McCullough Excavation	-	$ 57,200.00

Storm Water Drain #344 to serve The Moorings 10th Addition (south of 53rd Street North, west of Meridian) (468-84468/751470/485361) Does not affect existing traffic. (District VI); Storm Water Sewer #641 to serve The Moorings 10th Addition (south of 53rd Street North, west of Meridian) (468-84469/751471/485362) Does not affect existing traffic. (District VI)

Mies Construction	-	$100,952.00 Group 1
	-	$161,237.00 Group 2
	-	$262,189.00 Total Aggregate Bid

The Purchasing Manager recommended that the contracts be awarded as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be awarded as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

VARIOUS DEPARTMENTS AND DIVISIONS: Concrete Requirements

CMC Concrete Materials Co.	-	$210,950.00*

*Estimate – Contract approved on unit cost basis; refer to attachments.

PUBLIC WORKS DEPARTMENT/BUILDING SERVICES DIVISION: Office Space Remodel, Park and Recreation Department

Caro Construction Co., Inc.	-	$119,000.00

PUBLIC WORKS DEPARTMENT/BUILDING SERVICES DIVISION & STREET MAINTENANCE DIVISION: Uniform Shirt Rental for Public Works

Unifirst Corporation	-	$ 480.26 Alternate Bid*
	-	$ N/C Option 1

*Estimate – Contract approved on unit cost basis; refer to attachments.

PUBLIC WORKS DEPARTMENT/BUILDING SERVICES DIVISION: Janitorial Services – CDO and Old Town Park & RR

His & Hers Cleaning	-	$ 12,000.00 Group 1*
Able Janitorial, Inc.	-	$ 31,744.56 Group 2*

*Estimate – Contract approved on unit cost basis; refer to attachments.

The Purchasing Division recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

ANNUAL BID BONDS:

Cheryl Dunbar, Administrative Assistant, Department of Public Works reported that PCiRoads, LLC, submitted an Annual Bid Bond, written by the Fidelity and Deposit Company of Maryland, in the amount of Five Percent (5%), and dated September 10, 2008, as bid security for items bid on by the Principal. In the event the total of such bid or bids exceeds the maximum amount which the bond will cover in accordance with the specifications at any one time, then sufficient bid security will be required. The bond was approved as to form by the Legal Department.

On motion the Board recommended that the annual bid bond be approved.

On motion the Board of Bids adjourned.

Agenda Report No. XII-14.

City of Wichita
City Council Meeting

September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures
District I

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendations: Adopt the attached resolutions to schedule required City Council public hearings to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes.

Background: On September 8, 2008, the Board of Code Standards and Appeals conducted a hearing on the property listed below. The buildings on this property are considered dangerous and unsafe structures per State statutes and local ordinances, and are being presented in order to schedule a condemnation hearing before the City Council. The Board of Code Standards and Appeals has recommended that the City Council proceed with condemnation, demolition and removal of the dangerous buildings on this property.

Analysis: Minimum Housing Code violation notices have been issued on these structures; however, compliance has not been achieved. Pre-condemnation and formal condemnation letters have also been issued, and the time granted for repair or removal has expired. No actions have been taken by the property owners and/or other interested parties to complete required building repairs or to remove the dangerous buildings.

Property Address	**Council District**
a. 1226 North Lorraine	I

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

Goal Impact: On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area &

Vibrant Neighborhoods. This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods: Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: Per direction for the Law Department, this item is being brought back before the City Council to establish a new hearing date, in accordance with State statute. The structures have defects that under Ordinance No. 28-251 of the Code of the City of Wichita cause them to be deemed dangerous and unsafe buildings for condemnation consideration, as authorized by State Statutes.

Recommendations/Actions: Adopt the attached resolutions to schedule a public hearing before the City Council on November 4, 2008 at 9:30 a.m. or as soon as possible thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

Attachments: Letters to Council, Summaries, and Resolutions.

GROUP # 5

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at 1226 N. Lorraine and legally described as: Lots 74 and 76, Lorraine Avenue, Fairmount Park Addition to Wichita, Sedgwick County, Kansas., is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by November 4, 2008 such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

_____
Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this _____day of _____, 2008, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

_____
Notary Public

My Appointment Expires:
_____

TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A one story frame dwelling about 24x38 feet in size. Vacant and open, this structure has shifting and cracking concrete block basement walls; rotted and missing asbestos siding; sagging and badly worn composition roof, with missing shingles; deteriorating front porch; rotted wood trim and framing members; and the accessory structure is dilapidated.

(b) Street Address: 1226 N. Lorraine

(c) Owners:
Larry L. Huckleby & Dorothy L. Martin
1211 N. Chautauqua
Wichita, KS 67214

Jerry & Doris McCray
PO Box 21023
Wichita, KS 67208

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Don Brace, County Clerk
Sedgwick County Courthouse
525 N.Main
Wichita, KS 67203

Chris McElgunn, Attorney
301 N. Main #1600
Wichita, KS 67202

(g) Mortgage Holder(s): None

(h) Interested Parties: None

DATE: September 8, 2008

CDM SUMMARY

COUNCIL DISTRICT # 1

ADDRESS: 1226 N. Lorraine

LEGAL DESCRIPTION: Lots 74 and 76, Lorraine Avenue, Fairmount Park Addition to Wichita, Sedgwick County, Kansas.

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 24x38 feet in size. Vacant and open, this structure has shifting and cracking concrete block basement walls; rotted and missing asbestos siding; sagging and badly worn composition roof, with missing shingles; deteriorating front porch; rotted wood trim and framing members; and the accessory structure is dilapidated.

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

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

OCA: 230200

Published in the Wichita Eagle on September 26 and October 3, 2008

RESOLUTION NO. 08-473

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: LOTS 74 AND 76, LORRAINE AVENUE, FAIRMOUNT PARK ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS. KNOWN AS 1226 N. LORRAINE MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the 23rd day of September 2008, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.
That a hearing will be held on the 4th day of November 2008, before the governing body of the city at 9:30 A.M., or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at Lots 74 and 76, Lorraine Avenue, Fairmount Park Addition to Wichita, Sedgwick County, Kansas., known as: 1226 N. Lorraine, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one story frame dwelling about 24x38 feet in size. Vacant and open, this structure has shifting and cracking concrete block basement walls; rotted and missing asbestos siding; sagging and badly worn composition roof, with missing shingles; deteriorating front porch; rotted wood trim and framing members; and the accessory structure is dilapidated.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this 23rd day of September 2008.

_____
Carl Brewer, Mayor

(SEAL)

ATTEST:_____
Karen Sublett, City Clerk

City of Wichita
City Council Meeting
September 23, 2008

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 funding allocations and authorize the necessary signatures.

Background: During the 2008-2009 Consolidated Plan funding process, a total of $200,000 in HOME funding was allocated for the Housing Development Loan Program (HDLP). The HDLP is designed to provide subsidies for infill housing projects and 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), Neighborhood Revitalization Area (NRA), as well as Local Investment Areas (LIA). Requests for funding under the program are received through an open application process.

Analysis: The Housing and Community Services Department has received an application from Wichita Habitat for Humanity, Inc. (Habitat) for HOME funding to be provided through the HDLP, in the amount of $100,000, in order to subsidize the development of a total of 11single-family homes in the new Habitat Village housing development, which is located near 33rd and N. Arkansas. Completed homes will be sold to income-eligible owner-occupant homebuyers receiving down payment and closing costs assistance through the City's HOMEownership 80 Program.

Under the HDLP, 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/contractor 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. Habitat's program provides for the utilization of volunteers, donations, and labor contribution on the part of the homebuyer, in connection with the construction of its homes. The HOME Program subsidies will be used to offset costs incurred for components that are not constructed by volunteers, such as foundations and plumbing.

Housing and Community Services has determined that the application meets the criteria of the HDLP, and that the project will assist the City in achieving its neighborhood revitalization and Consolidated Plan goals. Therefore, staff recommends funding of the application, in the amount of $100,000, in order to subsidize the construction of 11 homes.

Financial Considerations: HOME funding for the proposed HDLP projects will be provided in the form of zero-interest, forgivable participation construction loans. Allocated funding will provide for construction of up to a total of 11 homes.

Goal Impact: Projects to be funded under the subject HOME funding agreement will contribute to the goal of Economic Vitality and Affordable Living.

Legal Considerations: Funding provided under the 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. The mortgage serves as the long-term deed restriction required under the HOME regulation to preserve affordability.

Recommendations/Actions: It is recommended that the City Council approve the recommended funding from the HDLP, and authorize the necessary signatures.

Attachments: Funding Agreement.

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Wichita Habitat for Humanity, Inc.,

A Non-Profit Housing Developer

HOME Investment Partnerships
Program

2008 Housing Development Loan Program 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 September 23, 2008, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Wichita Habitat for Humanity, Inc. (Wichita Habitat, hereinafter referred to as the “Developer”), a non-profit housing 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 September 23, 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 $100,000.00 as referenced in Exhibit B. Contract payments above $100,000.00 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 29, 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.

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. 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 17. 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 18. 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 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. 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 21. 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 22. 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 23. 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 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. 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 26. 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 27. 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 28. 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 29. 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 Habitat for Humanity, Inc.

_____
Signature

_____
Title of Wichita Habitat 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 Habitat for Humanity, Inc., hereinafter referred to as the "City" and "Developer" (or WICHITA HABITAT) respectively, that execution of this contract obligates the Developer to the following performance requirements.

In return for the $100,000 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the acquisition of existing vacant lots or vacant lots located within the boundaries of any of the City's six Local Investment Areas or Neighborhood Revitalization Area, or Redevelopment Incentives 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 must also be re-developed with a new single family home on each site. Under this agreement, single-family homes may be developed on sites owned by the developer within the targeted areas. A maximum of eleven new single-family homes are to be constructed/developed and sold to 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 Wichita Habitat President/C.E.O. will supervise operations and administration on a day-to-day basis. The Wichita Habitat 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 Wichita Habitat for this project will be $100,000.00, 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 $100,000.00 for the program described in this contract. A developer fee in an amount not to exceed 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, Developer Fee not exceeding 10%)

	$100,000
TOTAL	$100,000

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 Wichita Habitat 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. WICHITA HABITAT 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, 2009, 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 Wichita Habitat for Humanity, 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**, 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 provide construction financing, and/or 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.

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 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, 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. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

D. 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.

E. 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.

F. 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 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, Developer Fee not exceeding 10%.)	
	$100,000
TOTAL	$100,000

CITY OF WICHITA
City Council Meeting
September 23, 2008

TO: Mayor and City Council

SUBJECT: Notice of Intent to Use Debt Financing
Renovations to 1700 Airport Road (Customs)

INITIATED BY: Department of Airports

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: The Airport Authority relies on the City of Wichita for the issuance of General Obligation bonds and/or notes for capital projects. In order to use debt financing for a project it is necessary to declare that a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of certain capital improvements to the Mid-Continent Airport facility. Additionally, the nature of said improvements, the estimated costs thereof and the manner of payment needs to be disclosed. The actual issuance of the bonds/notes will require a separate authorization from the City Council. Debt financing can be in the form of temporary notes for durations as short as six months for timing considerations or the form of General Obligation bonds for long term financing.

Analysis: On September 23, 2008, the Wichita Airport Authority authorized a project to renovate portions of Hangar 16 to accommodate the U.S. Customs and Border Protection Federal Inspection Services. It is appropriate to make notice of the intent to use debt financing for this project with the specific financing amount and length being identified when the actual issuance of the bonds/notes are authorized in the future by City Council.

Financial Considerations: The total budget is $690,000.00 which represents the maximum cost that will be financed with General Obligation bonds/notes. The source of repayment for the bonds/notes will be Airport revenues.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is leveraged through the use of financing for capital projects.

Legal Considerations: The Law Department has approved the Authorizing Resolution as to form.

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

Attachments: Authorizing Resolution.

Published in the Wichita Eagle on September 26, and October 3, 2008

RESOLUTION NO. 08-474

AN RESOLUTION DECLARING THAT A PUBLIC NECESSITY EXISTS FOR, AND THAT THE PUBLIC SAFETY, SERVICE AND WELFARE WILL BE ADVANCED BY, THE AUTHORIZATION OF LAND ACQUISITION AND/OR CERTAIN CAPITAL IMPROVEMENTS TO THE WICHITA MID-CONTINENT AIRPORT FACILITY;AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport and

WHEREAS, K.S.A. l3-1348a provides that a city having an airport authority established pursuant to K.S.A. 3-162 is authorized to issue general obligation bonds for the purpose of purchasing land for airport purchases or for the construction, enlargement, reconstruction, repair or addition to or of any improvements to any such lands.

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

SECTION 1. That a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of land acquisition and/or certain capital improvements, specifically,

Renovations to 1700 Airport Road (Customs)

to the Wichita Mid-Continent Airport facility operated by the Wichita Airport Authority of the City of Wichita, Kansas (such land acquisition and/or improvement to be referred to herein as the "Project").

SECTION 2. That the cost of the above described Project is estimated to be Six Hundred and Ninety Thousand Dollars ($690,000), exclusive of the cost of interest on borrowed money, to be paid by the Wichita Airport Authority of the City of Wichita. Said Wichita Airport Authority cost shall be financed through the issuance of general obligation bonds under the authority of K.S.A. l3-1348a, as amended by Charter Ordinance No. 78 of the City of Wichita, Kansas. The maximum principal amount of bonds issued for this Project shall not exceed $690,000.

SECTION 3. To the extent the Project is a capital improvement, the above described Project shall be made in accordance with the Plans and Specifications prepared under the direction of the Airport Engineering and Planning Manager and approved by the Wichita Airport Authority. Said plans and specifications are to be placed on file in the office of the Airport Engineering and Planning Manager located at Wichita Mid-Continent Airport.

SECTION 4. That the City Clerk shall make proper publication of this resolution, which shall be published once each week for two consecutive weeks in the official City paper and which shall be effective from and after said publication.

ADOPTED at Wichita, Kansas, September 23, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

Agenda Report No. XII-18.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Increased Budget – Equipment and Facilities Project

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the amended bonding resolution.

Background: On August 12, 2008, the City Council approved a project and bonding resolution for $360,000 to retro-fit City snow plows and associated facility modifications. This project will reduce salt and sand usage by an estimated 28%, while providing a more effective solution for melting snow and ice. The project is estimated to have a payback of approximately three years, depending on the severity of future winters.

Analysis: The initial project budget of $360,000 was established based on initial estimates. Bids were received on Friday September 5, 2008. The bids exceed the project budget by approximately $100,000.

Financial Considerations: Implementation of this project will reduce future City operating expenditures. In addition to using fewer materials, there will be a reduction in the number trips to re-load trucks with materials. This increases time spent clearing snow and ice, and reduce deadhead fuel and time expenses.

Goal Impact: Removing snow and ice promotes a Safe and Secure community by reducing the potential for injury and accidents on City streets.

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

Recommendations/Actions: It is recommended that the City Council approve the amended bonding resolution for the Equipment and Facilities Improvement project.

Attachment: Bonding Resolution.

OCA037002

Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-471

A RESOLUTION AMENDING RESOLUTION NO. **08-421** AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE TO IMPLEMENT **EQUIPMENT AND FACILITY IMPROVEMENTS REQUIRED TO FACILITATE PREWETTING DURING SNOW AND ICE OPERATIONS.**

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

SECTION 1. SECTION 2 of Resolution **08-421** is hereby amended to read as follows:

"SECTION 2. The total cost is estimated not to exceed **$460,000**, exclusive of the costs of interest on borrowed money, with the full amount paid by the issuance of bonds by the City of Wichita at large."

SECTION 2. The original of SECTION 2 of Resolution No. **08-421** is hereby rescinded.

SECTION 3. 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 23rd day of September, 2008.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council

SUBJECT: Transportation Services Agreement with Sedgwick County

INITIATED BY: Urban Development Office

AGENDA: Consent

Recommendation: Approve the contract.

Background: Since 2002, first the City of Wichita and then Sedgwick County have entered into annual revenue guarantee agreements with AirTran Airways that have resulted in more than $100 million in cost savings to businesses and individuals flying in and out of Wichita Mid-Continent Airport.

On April 18, 2006, Governor Sebelius signed into law legislation that provides state funding in the amount of $5 million per year for five years to support efforts to ensure affordable airfares in Kansas. The annual grants are to be made through the Regional Area Economic Partnership (REAP) for programs that provide more flight options, more competition for air travel, and affordable air fares for Kansas. The state funding requires a local match.

The first and second years of state funding were awarded to Sedgwick County to defray most of the cost of the AirTran revenue guarantee. The third year of state funding, for the current state fiscal year, also has been awarded to Sedgwick County.

On August 13, 2008, the Sedgwick County Board of County Commissioners approved a new contract with AirTran Airways for discount air service to Atlanta with a revenue guarantee capped at $6.5 million for the period from July 1, 2008 through June 30, 2009. The revenue guarantee is based on stated costs of operating Boeing 717 jet service between Wichita and Atlanta, plus 5%. The County's commitment is to pay AirTran the difference between these cost calculations and AirTran's customer revenue for these flights. Whenever AirTran collects revenue in amounts greater than costs, the excess revenue is used to defray County revenue guarantees in subsequent reporting periods.

On October 1, 2007, Frontier Airlines initiated that low-fare service between Wichita and Denver based on approval of the City of Wichita Airport Authority to certain incentives and of Sedgwick County to a revenue guarantee. The introduction of Frontier's low fare service to Denver and, via connection, cities throughout the western U.S. is expected to produce substantial increases in traffic through the Wichita airport and economic savings to area business and residents. The County's revenue guarantee is to pay up to $500,000 per contract year upon Frontier's satisfaction of specified service obligations. The revenue guarantee agreement was executed by the Commission September 5, 2007, and covers two contract years ending June 30, 2009.

A local match of $1.67 million is required to secure the state funding. However, $2 million in local funding commitment is needed, in addition to the $5 million in state funding, to cover the AirTran and Frontier contract obligations for the twelve months ending June 30, 2009. The proposed contract between the City and County will provide up to $1 million of City funding to partially offset the County's $2 million obligation.

Analysis: The proposed agreement between Wichita and Sedgwick County (which is being submitted for consideration by the Board of County Commissioners on September 24) is virtually the same as a similar agreement entered into one year ago. Under the proposed agreement, the City will provide up to $1 million in support of the County's obligations to AirTran and Frontier.

Financial Considerations: Funding for the 2008-2009 transportation service agreement with Sedgwick County will come from funds appropriated for that purpose to the Economic Development Fund in the amount of $1 million. The total cost of providing revenue guaranty payments under both the AirTran and Frontier contracts is $7 million. Funding sources include the State of Kansas for $5 million and the City and Sedgwick County for $1 million each.

Goal Impact: Economic Vitality and Affordable Living. Affordable air service is one of the most critical cost factors impacting the decision of businesses to move to Wichita or to remain in Wichita. It also has a strong impact on the ability to attract and retain workers, and to provide a high quality of life to families in the region.

Legal Considerations: The attached funding agreement between the City and County has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the City Council approve the contract and authorize the necessary signatures, and authorize any necessary budget adjustments.

Attachments: Transportation Service Agreement

TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT is made and entered into on this ____ day of August, 2008, by and between the CITY OF WICHITA, KANSAS, hereinafter referred to as "City," and SEDGWICK COUNTY, KANSAS, hereinafter referred to as "County."

WHEREAS, County has requested that AirTran Airways, Inc. ("AirTran") operate daily round-trip jet service subject to the terms and conditions hereinafter set forth; and

WHEREAS, AirTran has entered an agreement with County to operate jet service upon the terms and conditions hereinafter set forth (attached hereto and made a part hereof as Appendix A); and

WHEREAS, County has requested that Frontier Airlines ("Frontier") operate daily round-trip airline service between Wichita and Denver; and

WHEREAS, Frontier has entered an agreement with County to operate airline service upon the terms and conditions hereinafter set forth (attached hereto and made a part hereof as Appendix B); and

WHEREAS, County has submitted a request to City for joint funding of said jet service; and

WHEREAS, City finds that maintaining competitive airfares for this community will benefit both residents and businesses of Wichita and provide an economic benefit to all citizens; and

WHEREAS, the purpose of this agreement is to state the terms and conditions under which City will provide said funding.

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

1. SERVICE(S).

A. County will fulfill its obligations as set forth in Appendix A (the "AirTran Funding Agreement"), and in doing so will fully enforce AirTran's contractual obligations to County at no cost to the City. County will in turn provide City copies of or access to all documents and information received by County relating to AirTran pursuant to the AirTran Funding Agreement.

B. County will fulfill its obligations as set forth in Appendix B (the "Frontier Funding Agreement"), and in doing so will fully enforce Frontier's contractual obligations to County at no cost to the City. County will in turn provide City copies of or access to all documents and information received by County relating to Frontier pursuant to the Frontier revenue guarantee.

2. STATUS OF COUNTY. County and City agree that service(s) rendered under this agreement are rendered by County as a self-governing entity, and not as an officer, agency, agent or employee of City. City supplies funding to County under this agreement as a secondary source of funding

to support the service(s) described in Paragraph One (1) above, because of the benefit of the service(s) to residents of Wichita.

3. TERM. The term of this agreement shall commence July 1, 2008 and shall terminate on June 30, 2009.

4. TERMINATION. This contract may be terminated in whole or in part by either party, for any reason, upon thirty days written notice to the other party, stating the reasons for the termination and the effective date of the termination. Whether this contract is canceled by City or County, County shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by County.

5. COMPENSATION. In consideration for the service(s) described in Paragraph 1 above, provided by County for residents of Wichita, City shall cause payment to be made to County in the amount of up to $1,000,000.00. County agrees that billing and payment under this agreement shall be processed in accordance with established budgeting, purchasing, and accounting procedures of Wichita, Kansas. Payment shall be made to County only for service(s) described in Paragraph 1 of this agreement. Payment shall be mailed to County's address as follows:

Chief Financial Officer
Sedgwick County
525 N. Main, Ste. 823
Wichita, KS 67203
Telephone 316.660.7591
Fax 316.383.7729

The City's payment obligation hereunder is expressly contingent upon the County's full performance of its payment obligations under the AirTran Funding Agreement and the Frontier Funding Agreement. The City's payment obligation shall in no event exceed the sum of one million dollars, and to the extent that a lesser aggregate sum is due under the AirTran Funding Agreement and the Frontier Funding Agreement due to decreased required subsidy, then the City shall be deemed to have fully performed its obligations hereunder.

6. FUNDING PURPOSE. County shall apply all compensation received from City toward no purpose other than to fulfill County's obligation to AirTran as set forth in Appendix A "Transportation Services Agreement" and the County's obligation to Frontier as set forth in Appendix B "Transportation Services Incentive Agreement".

7. CASH BASIS AND BUDGET LAWS. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.

8. MONTHLY REPORTS. County shall furnish to City, on a monthly basis copies of the reconciled block hour reports it receives from AirTran.

9. INTEREST OF PUBLIC OFFICIALS AND OTHERS. No officer or employee of City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this agreement shall participate in any decision relating to this agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested, nor shall any officer or employee of City, any member of its governing body or any other public official have any interest, direct or indirect, in this agreement or the proceeds thereof.

10. TRANSFER OR MODIFICATION. Neither this agreement nor any rights or obligations hereunder shall be assigned, subcontracted, or otherwise transferred by either party without the prior written consent of the other. Any modifications to this agreement must be set forth in writing and signed by both parties.

11. APPLICABLE LAW. This agreement shall be construed in accordance with the laws of the State of Kansas.

12. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION. County shall comply with all applicable local, state and federal laws, and regulations, and applicable service standards, in carrying out this agreement, regardless of whether those legal requirements are specifically referenced in this agreement. Equal Opportunity and Affirmative Action: In carrying out this contract, County shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 *et seq*.

A. County shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, County shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If County fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, County shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by City.

D. If County 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, County shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by City.

E. County shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the City cumulatively total $5,000.00 or less during the fiscal year

of the City pursuant to K.S.A. 44-1031(c).

13. AUTHORITY. Each person executing this Agreement represents and warrants that he isduly authorized to do so on behalf of an entity that is a party hereto.

14. INCORPORATION OF APPENDICES. APPENDIX A - "Transportation Services Agreement" and APPENDIX B – “Transportation Services Incentive Agreement” is attached hereto and made a part hereof as if fully set out herein.

IN WITNESS WHEREOF, City and County have executed this contract as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

_____
DON BRACE, County Clerk

_____
THOMAS WINTERS, Chairman
Third District

APPROVED AS TO FORM:

_____
JENNIFER MAGANA
Assistant County Counselor

CITY OF WICHITA, KANSAS

_____
CARL BREWER, Mayor

_____
KAREN SUBLETT, City Clerk

_____
GARY REBENSTORF, City Attorney

4311-9

EXECUTION VERSION

TRANSPORTATION SERVICES INCENTIVE AGREEMENT

WICHITA, KANSAS – SEDGWICK COUNTY

This Transportation Services Incentive Agreement (this "Agreement") is entered into as of September 5, 2007 (the "Effective Date") by and among Frontier Airlines Holdings, Inc., a Delaware corporation ("Holdings") and Sedgwick County, Kansas (the "Sedgwick County") Holdings and Sedgwick County are sometimes referred to in this Agreement individually, as a "Party," and collectively, as the "Parties."

Recitals

A. Sedgwick County is economically interested in the expansion, development or improvement of the Wichita Mid-Continent Airport (the "Airport").

B. The Frontier Controlled Airlines (as defined below) provide scheduled air transportation service to various cities throughout North America.

C. This Agreement documents the terms upon which the Frontier Controlled Airlines will provide air transportation service between the Airport and Denver International Airport ("DIA"), in exchange for certain incentives from Sedgwick County and for other consideration set forth in this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound by this Agreement, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

For convenience, certain terms used but not otherwise defined in this Agreement are defined as follows, with such terms equally applicable to both the singular and plural forms of the terms defined:

"Affiliates" means Lynx Aviation, Inc., Frontier Airlines, Inc., and any other entity that is directly or indirectly owned or controlled by Holdings.

"Applicable Third Party" means any third party which, as of the date of this Agreement, has committed to make or waive any payment (including any fee abatements) to or from Holdings to induce Holdings to provide Service and enter into this Agreement.

"Budget Law" has the meaning set forth in Section 5.8 below.

"Cash Basis Law" has the meaning set forth in Section 5.8 below.

"Confidential Information" means any information concerning any of the Parties and the terms of this Agreement that is not subject to mandatory disclosure by the Parties pursuant to the Kansas Open Records Act, K.S.A., 45-215 through K.S.A. 42-223, inclusive and other applicable law.

"First Service Date" means the date that any of the Frontier Controlled Airlines first provide Service, as determined in the sole discretion of Holdings.

"Force Majeure" means any act of God (including weather), terrorism, or war or other act or matter that is beyond the reasonable control of the Frontier Controlled Airlines and prevents or delays performance under this Agreement, including without limitation any government action or decree, labor strike or disruption, airport closure, or air traffic control systems disruption.

"Frontier Controlled Airlines" means Holdings, any of its Affiliates that operate an airline, and the Relationship Airlines.

"Incentives" means the incentives set forth on attached **Exhibit A**.

"Intellectual Property" means all patents, trademarks, copyrights, service marks, trade secrets, trade names, logotypes, design marks, trade dress, and other indicia of origin and any other property or rights commonly referred to as intellectual property.

"Losses" means any and all losses, liabilities, claims, damages, actions, fines, penalties, expenses, and costs (including court costs and reasonable attorney's fees).

"Relationship Airlines" means airlines operating scheduled air transportation service pursuant to a code share agreement, capacity agreement, block purchase agreement, or any other contractual agreement with Holdings or its Affiliates pursuant to which Holdings or its Affiliates controls the scheduling, marketing, or sale of the scheduled air transportation service.

"Sedgwick County" means Sedgwick County, Kansas.

"Service" means air transportation service by any of the Frontier Controlled Airlines between DIA and the Airport, as more particularly described on attached **Exhibit B**.

"Termination Date" means the final date of the Term or the first date of early termination under Section 3.2, whichever comes first.

ARTICLE II
INCENTIVES AND SERVICE

2.1 Incentives. In order to induce Holdings to operate Service or to cause Service to be operated at the Airport, Sedgwick County shall, subject to the terms and conditions of this Agreement, provide each of the Incentives to Holdings.

2.2 Service. In consideration of the Incentives, Holdings shall, subject to the terms and conditions of this Agreement, cause one or more of the Frontier Controlled Airlines to provide Service as of the First Service Date.

ARTICLE III
TERM AND TERMINATION

3.1 Term. This Agreement is effective as of the Effective Date and continues through the second anniversary of the First Service Date (such period, the "Term"), unless earlier terminated in accordance with Section 3.2.

3.2 Termination.

(a) Sedgwick County, in its sole discretion, may terminate this Agreement if Holdings fails to comply with the terms or conditions of this Agreement, including but not limited to the failure of any representation or warranty to be true, within 30 days after Sedgwick County provides written notice of the failure to Holdings, except if such failure is due to a Force Majeure event.

(b) Sedgwick County, in its sole discretion, may terminate this Agreement immediately if Holdings is declared bankrupt or petitions under the bankruptcy laws for protection from creditors, either voluntarily or involuntarily. Holdings, in its sole discretion, may terminate this Agreement immediately if Sedgwick County is declared bankrupt or petitions under the bankruptcy laws for protection from creditors, either voluntarily or involuntarily.

(c) Sedgwick County, in its sole discretion, may terminate this Agreement in the event that compliance by Sedgwick County with the terms and provisions of this Agreement will violate the Cash Basis Law. Sedgwick County shall provide Holdings with 30 days prior written notice of its desire to terminate the Agreement pursuant to this provision. Termination of this Agreement as a consequence of compliance with the Cash Basis Law shall not be construed as a breach by Sedgwick County.

(d) Holdings, in its sole discretion, may suspend or terminate this Agreement five days after written notice to Sedgwick County that Sedgwick County has failed to make any payment or reimbursement required under this Agreement. Should Sedgwick County default in any other non-payment or non-reimbursement obligation arising under this Agreement, including the failure of any representation or warranty to be true, Holdings will have the right, in its sole discretion, to terminate this Agreement if such non-payment or non-reimbursement default is not cured to the satisfaction of Holdings within 30 days following written notice of such default.

(e) Holdings, in its sole discretion, may suspend or terminate this Agreement ten days after written notice to Sedgwick County that any Applicable Third Party has failed to timely make or waive any required payments to Holdings.

(f) This Agreement may be terminated at any time upon the mutual written consent of the Parties.

(g) The termination of this Agreement under this Section 3.2 in no way constitutes a waiver of any obligations of the Parties that have accrued and are existing as of the Termination Date.

(h) Upon a Force Majeure, Holdings has the right to suspend Service immediately. If, due to a Force Majeure, Service is suspended for three consecutive months, then Sedgwick County or Holdings will have the right to terminate this Agreement upon 15 days prior written notice to Holdings.

(i) If this Agreement expires or is terminated for any reason, Holdings will not return any of the Incentives and will not be responsible for any special, indirect, incidental, consequential, or punitive damages suffered in connection with this Agreement, howsoever caused and regardless of the form or cause of action, even if such damages are foreseeable.

(j) If this Agreement expires or is terminated for any reason, then Sedgwick County will not provide Holdings with any Incentive accruing after the Termination Date and Sedgwick County will not be responsible for any special, indirect, incidental, consequential, or punitive damages suffered, howsoever caused and regardless of the form or cause of action, even if such damages are foreseeable. Provided, however, if there is a breach by Sedgwick County or any Applicable Third Party, and Holdings, within its sole discretion, continues to provide Service consistent with this Agreement and if Holdings, in its discretion chooses not terminate or suspend the Agreement, Sedgwick County will continue to pay the Incentives outlined herein during the Term of the Agreement so long as such payments are not in violation of the Cash Basis Law.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Holdings. Holdings represents and warrants to Sedgwick County that the statements contained in this Section 4.1 are true, correct, and complete:

(a) Holdings has the requisite power and authority to enter into and perform its obligations under this Agreement. The execution, delivery, and performance of this Agreement by Holdings have been duly authorized by all necessary corporate action.

(b) This Agreement constitutes the valid and legally binding obligation of Holdings, enforceable in accordance with its terms and conditions.

(c) The execution, delivery, or performance of this Agreement by Holdings, does not: (i) contravene, conflict with, or cause a default under any applicable law, rule, or regulation binding on Holdings or any provision of the Certificate of Incorporation or Bylaws of Holdings; or (ii) contravene, or cause a breach or violation of, any agreement or instrument to which Holdings is a party or by which it is bound, except (in either case) where such conflict, contravention, or breach would not have a material adverse effect on the Frontier Controlled

Airlines taken as a whole or on the ability of Holdings to perform its obligations under this Agreement.

(d) The execution, delivery, or performance by Holdings of this Agreement does not require the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of, any competent authority, any trustee, or any other person or entity, except where failure to take or obtain such action would not have a material adverse effect on Holdings or the ability of Holdings to perform its obligations under this Agreement.

4.2 Representations and Warranties of Sedgwick County. Sedgwick County represents and warrants to Holdings that the statements contained in this Section 4.2 are true, correct, and complete:

(a) Sedgwick County has the requisite power and authority to enter into and perform its obligations under this Agreement. The execution, delivery, and performance of this Agreement by Sedgwick County have been duly authorized by all necessary action (including governmental action, if necessary).

(b) This Agreement constitutes the valid and legally binding obligation of Sedgwick County, enforceable in accordance with its terms and conditions.

(c) The execution, delivery, or performance of this Agreement by Sedgwick County, does not: (i) contravene, conflict with, or cause a default under any applicable law, rule, or regulation binding on Sedgwick County or any provision Sedgwick County's charter, bylaws, operating agreement, or other governance documents (as applicable); or (ii) contravene, or cause a breach or violation of, any agreement or instrument to which Sedgwick County is a party or by which it is bound, except where such conflict, contravention, or breach would not have a material adverse effect on Sedgwick County or on the ability of Sedgwick County to perform its obligations under this Agreement.

(d) The execution, delivery, or performance of this Agreement by Sedgwick County does not require the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of, any competent authority, any trustee, or any other person or entity, except where failure to take or obtain such action would not have a material adverse effect on by Sedgwick County or on the ability of by Sedgwick County to perform its obligations under this Agreement.

(e) Any payments or other Incentives being granted to Holdings under this Agreement are not subject to voter approval, or any other contingency that might result in the inability of by Sedgwick County to meet its obligations under this Agreement.

ARTICLE V
COVENANTS

5.1 Publicity. Except as required by applicable law, no Party may issue any written press release concerning this Agreement without receiving the prior written consent of the other Parties (which consent may not be unreasonably withheld or delayed).

5.2 Confidentiality. Each Party shall, and shall cause each entity under its control to, hold in confidence all Confidential Information relating to or obtained from the other Parties, and each Party shall refrain from disclosing, publishing, releasing, transferring, or otherwise making available to any person any Confidential Information of the other party in any form. Each Party may, however, disclose to its officers, directors, contractors, advisors, or employees such Confidential Information to the extent that such disclosure is reasonably necessary for the performance of the disclosing Party's obligations under this Agreement; provided, however, that the disclosing Party shall cause such officers, directors, contractors, advisors, or employees to comply with this Section 5.2 and to preserve the confidentiality of such Confidential Information in accordance with this Section 5.2. The obligations in this Section 5.2 do not prohibit disclosure to the extent required by law, but any Party making any such required disclosure pursuant to a subpoena or other legal process shall provide to the other Parties with advance notice of such requirement and with an opportunity to seek a court order or other relief preventing such disclosure.

5.3 Governmental Approval. Each Party shall give any notices, make any filings, and use its best efforts to take all action and do all things necessary or advisable in order to obtain any authorizations, consents, or approvals of any governmental authority in order to effect this Agreement.

5.4 Compliance with Law. In performing its obligations under this Agreement, each Party shall, at its own cost and expense, fully comply with, and have all licenses under, all applicable federal, state, and local laws, including rules and regulations promulgated by the U.S. National Transportation Safety Board, Department of Transportation, U.S. Federal Aviation Administration, and the U.S. Department of Defense. If any Party has notice that a provision of this Agreement is contrary to any applicable law or governmental regulation, then that Party shall immediately notify the other Parties of such perceived violation in writing and shall provide a description of the perceived violation and any supporting written materials that might facilitate the other Parties' investigation of such perceived violation.

5.5 Audit Rights. Sedgwick County shall provide Holdings and its representatives with reasonable access, as Holdings may request from time to time, to its books, records and other information relating to the Incentives or Service.

5.6 Further Assurances. Each Party shall execute and deliver such other instruments and documents, and take such other actions, as another Party reasonably requests to evidence or effect the purposes of this Agreement.

5.7 Equal Opportunity and Affirmative Action. In accordance with the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq. (the "Act") Holdings agrees that:

(a) Holdings shall observe the provisions of the Act and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin, or ancestry.

(b) In all solicitations or advertisements for employees, Holdings shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission.

(c) If Holdings fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, then Holdings will be deemed to have breached this Agreement, and this Agreement may be canceled, terminated or suspended, in whole or in part, by Sedgwick County.

(d) If Holdings is found guilty of a violation of the Act under a decision or order of the Kansas Human Rights Commission which has become final, then Holdings will be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated, suspended, in whole or in part, by Sedgwick County.

(e) Holdings shall include the provisions of paragraphs (a)-(d) above in every subcontract or purchase order relating to Service, so that such provisions will be binding upon such subcontractor or vendor.

5.8 Cash Basis Law and Budget Law. It is the Parties' intent that this Agreement not violate the Kansas Cash Basis Law, K.S.A. 10-1101 et. seq. (the "Cash Basis Law") or the Kansas Budget Law, K.S.A. 79-2925 (the "Budget Law"). Therefore, notwithstanding anything to the contrary in this Agreement, Sedgwick County's obligations under this Agreement will be construed in a manner that assures that Sedgwick County is at all times in compliance with the Cash Basis Law and the Budget Law, and Sedgwick County's obligations under this Agreement will be subject to the sufficiency of annual appropriations.

ARTICLE VI
INTELLECTUAL PROPERTY

6.1 Ownership of Intellectual Property. Sedgwick County is and will be the sole owner of all right, title, and interest in and to its Intellectual Property as well as to the goodwill associated with its Intellectual Property. Holdings is and will be the sole owner of all right, title, and interest in and to its Intellectual Property and the goodwill associated with its Intellectual Property. The Intellectual Property of Holdings, its Affiliates, and each Frontier Controlled Airline will remain each of their Intellectual Property, except as previously provided in this Agreement.

6.2 Grant of License. Each Party grants the other Parties a limited, non-transferable, royalty-free, non-exclusive, revocable license to use its Intellectual Property identified by it solely for the purposes contemplated by this Agreement and as necessary to advertise and market Service. No other rights are granted hereby except for the rights explicitly granted in this Agreement. A receiving Party may use a granting Party's Intellectual Property only in accordance with the terms of this Agreement and as agreed to in writing by the granting Party. A

receiving Party shall not intentionally take or encourage any action that will in any way impair a granting Party's rights in and to its Intellectual Property or to the goodwill inherent in its Intellectual Property. A receiving Party's use of a granting Party's Intellectual Property inures to the sole and exclusive benefit of the granting Party. No Party is acquiring or claiming any title to any other Party's Intellectual Property by virtue of this Agreement or through a receiving Party's use of a granting Party's Intellectual Property. Each Party is estopped from challenging the validity of any other Party's Intellectual Property or from setting up any claim related thereto adverse to any other Party. Each receiving Party must comply with a granting Party's written conditions concerning the style, color, appearance, and manner of use of a granting Party's Intellectual Property. The nature and quality of all services, advertising, promotional or other uses of a granting Party's Intellectual Party, that a receiving Party renders must conform to the standards of quality of the granting Party, and be in full compliance with all applicable laws and regulations. Each Party has sole discretion to determine the acceptability of both the quality and presentation of advertising and promotional materials using its Intellectual Property. Each Party may revoke this license at any time in its sole discretion.

ARTICLE VII
INDEMNIFICATION

7.1 Indemnification by Holdings. Holdings shall indemnify, defend, and hold harmless Sedgwick County and its respective officers, directors, employees, agents, and representatives (each, a "Sedgwick County Indemnified Party") from and against all Losses suffered or incurred by a Sedgwick County Indemnified Party arising from or in connection with: (a) Holdings' breach of any representation or warranty made by Holdings under this Agreement; or (b) Holdings' failure to comply with any of its covenants, agreements, or obligations under this Agreement. Sedgwick County reserves the right to retain its own counsel and provide for its own defense of any claim subject to indemnification pursuant to this Section 7.1, if Sedgwick County determines, in its sole discretion, that the subject matter of the claim relates to the reputation or brand image of a Sedgwick County Indemnified Party. Notwithstanding a decision by Sedgwick County to control the claim, Holdings will remain obligated under this Section 7.1 to reimburse and indemnify a Sedgwick County Indemnified Party for all costs and expenses, including attorneys' fees, of such defense. However, in no event will the indemnification by Holdings pursuant to this Section 7.1 exceed the Guaranty Amount (as defined on **Exhibit A**) during each Guaranty Period (as defined on **Exhibit A**).

7.2 Indemnification by Sedgwick County. Sedgwick County shall indemnify, defend, and hold harmless Holdings, its Affiliates, and its officers, directors, employees, agents, and representatives (each, a "Holdings Indemnified Party") from and against all Losses suffered or incurred by any Holdings Indemnified Party arising from or in connection with: (a) Sedgwick County's breach of any representation or warranty made by Sedgwick County under this Agreement; or (b) Sedgwick County's failure to comply with any of its covenants, agreements, or obligations under this Agreement. Holdings reserves the right to retain its own counsel and provide for its own defense of any claim subject to indemnification pursuant to this Section 7.2, if Holdings determines, in its sole discretion, that the subject matter of the claim relates to the reputation or brand image of a Holdings Indemnified Party. Notwithstanding a decision by Holdings to control the claim, Sedgwick County will remain obligated under this Section 7.2 to

reimburse and indemnify a Holdings Indemnified Party for all costs and expenses, including attorneys' fees, of such defense. However, in no event will the indemnification by Sedgwick County pursuant to this Section 7.2 exceed the Guaranty Amount (as defined on **Exhibit A**) during each Guaranty Period (as defined on **Exhibit A**).

ARTICLE VIII
MISCELLANEOUS

8.1 Cooperation. During the Term, the Parties shall cooperate and communicate (without charge to any Party) in good faith to ensure the performance of Service and the Incentives.

8.2 Assignment; Binding Effect. No Party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other Parties; provided, however, that Holdings may: (a) assign any or all of its rights and interests under this Agreement to one or more of its Affiliates; and (b) designate one or more of its Affiliates to perform its obligations under this Agreement. This Agreement is binding upon, and inures to the benefit of, the Parties and each of their respective successors and permitted assigns.

8.3 Notices. All notices, requests, demands, claims, and other communications made under this Agreement must be in writing. Any notice, request, demand, claim, or other communication made under this Agreement is duly given either: (a) when delivered personally to the recipient; (b) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) one business day after being sent to the recipient by facsimile transmission or electronic mail; or (d) four business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Holdings:

Frontier Airlines Holdings, Inc.
7001 Tower Road
Denver, Colorado 80239
Attn: Senior Vice President – Marketing

With a copy to:

Frontier Airlines Holdings, Inc.
7001 Tower Road
Denver, Colorado 80239
Attn: David Sislowki, Vice President & General Counsel

If to Sedgwick County:

Sedgwick County, Kansas
Attn: Chief Financial Officer
525 North Main, Suite 823
Wichita, Kansas 67203
Tel: (316) 660-7591
Fax: (316) 383-7729

With a copy to:

Sedgwick County, Kansas
Attn: Sedgwick County Counselor
525 North Main, Suite 359
Wichita, Kansas 67203
Tel: (316) 660-9340
Fax: (316) 383-7007

Any Party may change the address to which notices, requests, demands, claims, and other communications under this Agreement are to be delivered by giving the other Parties notice of such change in the manner set forth above.

8.4 Relationship. With respect to provision of the Incentives or Service under this Agreement, each Party is an independent contractor and is not an agent or representative of the other Parties. Nothing in this Agreement is deemed to create a partnership, joint venture, or other similar relationship.

8.5 Incorporation of Exhibits and Schedules. All Exhibits and Schedules to this Agreement are incorporated into this Agreement by reference and are made a part of this Agreement.

8.6 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and communications with respect to provision of Service and the Incentives, whether oral or written, and whether explicit or implicit. No amendment to this Agreement is valid unless such amendment is in writing and signed by each Party to this Agreement.

8.7 Severability. Any term or provision of this Agreement that is held invalid or unenforceable in any situation or in any jurisdiction does not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

8.8 Governing Law. Except solely with respect to the specific sections of the Kansas Statutes Annotated that are referenced in this Agreement, this Agreement will be governed by, and construed in accordance with, the domestic laws of the State of Colorado without giving effect to any choice or conflict of law provision.

8.9 Headings. The section headings in this Agreement are inserted for convenience only and do not affect in any way the meaning or interpretation of this Agreement.

8.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument. This Agreement may be executed by telefacsimile or .PDF signature and a telefacsimile or .PDF signature constitutes an original signature for all purposes.

8.11 No Third Party Beneficiaries. This Agreement does not confer any rights or remedies upon any person other than the Parties and each of their respective heirs, successors, and assigns, as applicable.

8.12 Waiver. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant under this Agreement, whether intentional or not, is valid unless the same is in writing and signed by the Party making such waiver, nor does such waiver extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant under this Agreement or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

[*The remainder of this pages is intentionally left blank.*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

FRONTIER AIRLINES HOLDINGS, INC.

By: _____
Name:
Title: John Happ
Senior VP Marketing & Planning

BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS

By: _____
Name: David M. Unruh
Title: Chairman, First District

ATTEST:

_____
Don Brace, County Clerk

APPROVED AS TO FORM:

_____
Ed L. Randels
Assistant County Counselor

CLERK OF SEDGWICK COUNTY
SEDGWICK COUNTY
KANSAS
KANSAS

[SIGNATURE PAGE TO TRANSPORTATION SERVICES INCENTIVE AGREEMENT]

EXHIBIT A

INCENTIVES

A. Minimum Revenue Guaranty

Sedgwick County agrees to pay a minimum annual revenue guaranty (the "Minimum Revenue Guaranty") to Holdings in the total amount of not more than $500,000 (the "Guaranty Amount") per each Guaranty Period (as defined below).

Sedgwick County shall provide Holdings with the Minimum Revenue Guaranty for a period of time from the First Service Date through June 30, 2008 (the "First Guaranty Period") and for a period of time from July 1, 2008 through June 30, 2009 (the "Second Guaranty Period," and together with the First Guaranty Period, each a "Guaranty Period," and collectively, the "Guaranty Periods") in accordance with the following terms and conditions:

1. Within approximately 25-35 days after the end of each month during each Guaranty Period, Holdings shall prepare and deliver to Sedgwick County an operational report (each report, an "Operational Report"), summarizing the passenger load factor, revenue, expenditures, and profit or loss recognized by Holdings for Service during the month covered (the "Covered Month") by the Operational Report.

2. If total profit for Holdings during any Covered Month (after subtracting all applicable taxes, user fees, security fees, fuel surcharges, and expenses associated with Passenger Revenue and other similar fees, charges, and expenses during the Covered Month) as set forth on the Operational Report, is *greater than or equals* $0.00, then Sedgwick County will not be required to make any payments to Holdings under the Minimum Revenue Guaranty for such Covered Month. "Passenger Revenue" means all origin and destination passenger revenues received by Holdings for tickets sold on scheduled flights of Service. For the purposes of determining Passenger Revenue attributable to Service for any connecting fare, Holdings will use a "square root of the miles prorate" formula, which uses the square root of the distance of the Wichita-Denver segment as the numerator, and the sum of the square root of the distance of each segment on the ticket as the denominator, multiplied by the total ticket value. For fares applied to Service, the actual fares will be used, and not reduced rate industry fare revenues. By way of example, the following illustrates how the "square root of the miles prorate" formula would apply to two different segments for a $100 fare on a two segment trip totaling 750 miles:

Fare	$ 100			
	Miles	√	Prorate	Prorate fare
Seg1	250	15.81	41.4%	$ 41.42
Seg2	500	22.36	58.6%	$ 58.58
Total	750	38.17	100%	$ 100.00

3. If total profit for Holdings during any Covered Month (after subtracting all applicable taxes, user fees, security fees, fuel surcharges, and expenses associated with Passenger Revenue and other similar fees, charges, and expenses during the Covered Month) as set forth on the Operational Report, is *less than* $0.00, then Sedgwick County shall reimburse Holdings for any such loss recognized by Holdings during the Covered Month, up to a maximum amount of the Guaranty Amount. In the event of such a loss, Holdings shall prepare and deliver to Sedgwick County an invoice (simultaneously with the Operational Report) reflecting the amount that Holdings is owed by Sedgwick County for such Covered Month.

4. Sedgwick County shall make any and all payments due to Holdings under the Minimum Revenue Guaranty in readily available funds and within 15 days after receiving the Operational Report and invoice for any Covered Month. Holdings will not be entitled to receive, nor will Sedgwick County be obligated to pay any Incentive for periods during which this Agreement has been suspended or terminated. Provided, however, if there is a breach by Sedgwick County or Any Applicable Third Party, and Holdings, within its sole discretion, continues to provide Service consistent with this Agreement and chooses not terminate or suspend the Agreement, Sedgwick County will continue to pay the Incentives outlined herein during the Term of the Agreement. Termination of this Agreement as a consequence of compliance with the Cash Basis Law shall not be construed as a breach. Notwithstanding the foregoing, provided that the Guaranty Amount has not been exceeded, Sedgwick County will be obligated to pay any amounts earned by Holdings under this Minimum Revenue Guaranty during periods when this Agreement is not suspended, even if such payments occur after the initiation of suspension of this Agreement.

5. Holdings' calculation of profits and losses in each Operational Report will be binding and conclusive on Sedgwick County, absent manifest error. In the event of any perceived errors or misunderstandings, the Parties agree that they will meet prior to the end of the applicable payment deadline to resolve any such errors or misunderstandings. All data shown in each Operational Report will be derived from the Frontier Airlines Flight Profitability System. This system comports to generally accepted industry standards and reflects actual revenue and costs incurred for the reporting period on a segment basis.

6. Profits and losses will be tracked cumulatively during each Guaranty Period. If a profitable month for Holdings is reported for Service during a Guaranty Period, then a credit for such amount will be issued to Sedgwick County which may be used to offset any future monthly payments due from Sedgwick County to Holdings under the Minimum Revenue Guaranty for such Guaranty Period. Any amounts paid by Sedgwick County to Holdings under the Minimum Revenue Guaranty will reduce the then outstanding and available Guaranty Amount for such Guaranty Period. Notwithstanding the foregoing, in no event will Sedgwick County be required to make any payments (in the aggregate during any one Guaranty Period) to Holdings relating to the Minimum Revenue Guaranty in excess of the original Guaranty Amount.

7. Sedgwick County recognizes that there is an inherent risk that profits by Holdings for Service may be less than $0.00 during any particular Covered Month, thus possibly resulting in a required payment by Sedgwick County to Holdings under the Minimum Revenue Guaranty. Sedgwick County is assuming such risk in order to induce Holdings to enter into this

EXHIBIT B

SERVICE

From the First Service Date through the end of the Term, unless Service is earlier terminated in accordance with this Agreement, the Frontier Controlled Airlines shall provide three daily flights between DIA and the Airport during the business week and a reduced number of daily flights between DIA and the Airport during the weekends.

Service will be provided by Holdings or its Affiliates (as defined herein) utilizing Bombardier Q400 aircraft or aircraft equivalent or superior to Bombardier Q400 aircraft; provided, however, that Holdings or its Affiliates may substitute another type of aircraft for Service if the Bombardier Q400 aircraft (or equivalent or superior aircraft) is not available for Service due to scheduled maintenance, safety, or other Force Majeure reasons. Any change of operator by Holdings or its Affiliates will require the approval of Sedgwick County, which approval will not be unreasonably withheld.

Holdings is a low cost carrier, and its fares will be reasonably competitive during the Term of this Agreement.

4979-8

TRANSPORTATION SERVICES AGREEMENT

This Agreement made and entered into this 31st day of July , 2008, by and between AirTran Airways, Inc. ("AirTran"), and Sedgwick County, Kansas (the "County").

WITNESSETH:

WHEREAS, the County has requested that AirTran operate daily round-trip jet service subject to the terms and conditions hereinafter set forth;

WHEREAS, AirTran has agreed to operate jet service upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual obligations and undertakings hereinafter set forth, the parties agree as follows:

1. Effective July 1, 2008, AirTran will operate daily scheduled round-trip jet service between Wichita ("ICT") and Atlanta ("ATL"), as outlined on Exhibit A. AirTran agrees that the Timetable attached hereto as Exhibit A sets out the model of the services to be provided hereunder. The flight frequencies set out in Exhibit A shall be the number of flights to be provided in the identified city pair markets and may be adjusted or reduced by up to a single daily frequency to address overall market, weekend, and seasonal changes in demand. The flight times and aircraft type set out in Exhibit A may be varied from time-to-time in accordance with AirTran's usual procedures and operational requirements.

2. All flights will be operated with AirTran's normal passenger in-flight services. Fares offered on these flights will not vary significantly in price level or terms and conditions from those normally offered by AirTran Airways in markets of similar distance.

3. AirTran will determine the fare levels and inventory allocations by fare level for all jet services. AirTran agrees to use its best efforts to maximize seat sales on this and any future jet service using its normal marketing, promotion and revenue management systems.

4. AirTran will include the jet services provided herein in its published flight schedules and in its regular marketing, advertising and distribution programs.

5. AirTran agrees to periodically consult with the County on the promotional efforts and performance of the jet service.

6. The County agrees that AirTran will have the right of prior approval which shall not be unreasonably withheld with respect to the use of its name and/or logo in any and all advertising, promotional material or other similar such promotional activity of any sort or kind undertaken directly or indirectly by the County.

7. AirTran will be responsible for all operating expenses related to the jet service provided herein including but not limited to aircraft, crew, maintenance, insurance, fuel, ground services, reservations and normal distribution. AirTran's operations pursuant to this Agreement and its continuing obligations hereunder will be conducted under the authority of AirTran's air carrier certificate or operating certificate issued by the Federal Aviation Administration ("FAA") and under the economic authority issued to AirTran by the Department of Transportation. AirTran may and will only operate hereunder in accordance with rules and regulations issued by the FAA as such may be amended from time to time. AirTran will at all times have operational control of the aircraft.

8. As an inducement to AirTran to provide Boeing 717 jet service, the County guarantees to AirTran gross passenger revenues of U.S. $3,747 plus appropriate fuel adjustment per block hour for the ATL-ICT service, plus

an amount equal to five percent (5%) of such amount, as such amount may be adjusted from time to time in accordance with the terms hereunder, for each whole or apportioned block hour of jet service flight time for each daily scheduled round trip jet service flight provided herein ("Block Hour Guarantee").

AirTran agrees to maintain a schedule of Boeing 717 jet service that includes a minimum of three roundtrips in the ICT-ATL market for the term of this Agreement.

9. In order to reflect fuel price variations on the cost of operating jet aircraft the Block Hour Guarantee will be adjusted as follows:

- A base all-in fuel price of $1.50 per gallon is established. On a monthly basis AirTran will adjust the Block Hour Guarantee by $8.00 per block hour for each one-cent increase or decrease in AirTran's all-in fuel cost above or below the base fuel price of $1.50 per gallon. For information purposes, AirTran's an-in fuel cost for first quarter 2006 was $1.97 per gallon.

10. The proposed block hour time for the jet service between Wichita ("ICT") and Atlanta ("ATL") is 125 minutes per flight segment or approximately 12.5 scheduled block hours per day. AirTran and County agree that the scheduled block hour time is based on optimum routings, forecast winds and historical taxi times. All parties agree that the proposed scheduled block hour time is a seasonal estimate only and that actual block hour times will vary by date and time due to uncontrollable factors such as weather conditions and air traffic control. AirTran reserves the right to adjust scheduled block hour times as necessary to ensure schedule integrity. County agrees that AirTran's determination of actual block hour times will be the basis for the Block Hour Guarantee, subject to periodic audits by the County as herein provided.

11. The County agrees that with respect to any additional jet service operations provided under this Agreement, AirTran will have the right to establish the initial scheduled block hour times for the purposes of determining the Block Hour Guarantee and that all such scheduled block hour times can be adjusted under the terms set forth herein.

12. At the end of each calendar month, AirTran will determine if at any time during the month its gross passenger revenues from ticket sales on any jet service fell below the Block Hour Guarantee ("Block Hour Shortfall"). The Block Hour Shortfall will be determined by comparing the monthly aggregate gross passenger revenue to aggregate Block Hour Guarantee amounts. In the event a Block Hour Shortfall occurs for any calendar month subject to this agreement, AirTran will provide a written report to the County setting forth the date, route and the Block Hour Shortfall. The report will contain the total gross passenger segment revenue and actual block hours per flight determined in accordance with AirTran's standard accounting procedures. Within thirty (30) days of its receipt of the Block Hour Shortfall billing, the County will remit in U.S. dollars to AirTran by wire transfer an amount equal to the Block Hour Shortfall. During any month the aggregate gross passenger revenue exceeds the aggregate Block Hour Guarantee amount, gross passenger revenue above the aggregate Block Hour Guarantee for the month will be carried forward as a credit and applied to any Block Hour Shortfalls in subsequent months and/or contract periods. In no event shall the cumulative Block Hour Shortfall exceed $6,500,000 per year during the term of this agreement.

13. The County shall have the right to audit pertinent financial records of AirTran to evaluate the accuracy of Block Hour Shortfall calculations. Such audits may be performed by an independent third party audit firm, selected by mutual agreement of the parties. If a third party audit firm is used, the firm shall be engaged by AirTran and the County shall reimburse AirTran the cost of such audit, up to an aggregate amount of $25,000 per year. All such records of AirTran are proprietary materials and the information contained therein shall be kept confidential to the extent permissible under the statutes of the State of Kansas relating to open records and open meetings.

14. AirTran may terminate this Agreement upon thirty (30) calendar days' written notice if the County fails to remit

the Block Hour Shortfall in substantial compliance with the terms of this Agreement and/or if changes in any applicable governmental regulations preclude operations with AirTran's existing fleet of aircraft. The County may terminate this agreement if AirTran reduces service below the level described herein; if more than fifty percent (50%) of the outstanding voting stock of AirTran is sold to another airline; if AirTran files a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights; if AirTran consents to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights; or if an order is entered for relief against AirTran or a receiver, trustee or custodian is appointed for all or a substantial part of the property or assets of AirTran in any involuntary proceeding, and such order and/or appointment continues unstayed for any period of ninety (90) consecutive days.

156. The County or AirTran may terminate this Agreement at any time upon seventy five (75) calendar days' written notice.

16. The term of this Agreement shall commence on July 1, 2008 and shall continue to June 30, 2009.

17. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) (the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"). Therefore, notwithstanding anything to the contrary herein contained, the County's obligations under this Agreement are to be construed in a manner that assures that the County is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, the County's obligations hereunder will be subject to sufficiency of annual appropriations.

18. AirTran and County each agree to defend, indemnify and hold harmless the other, and each other's respective officers, directors and employees from and against any and all claims, damages, liabilities, losses, proceedings, judgments, costs and expenses (including without limitation reasonable attorney's fees) arising out of the performance by each of its obligations hereunder, except that, any indemnification by the County pursuant to this provision shall not exceed 1.5 times the maximum contribution by the County set out in paragraph number 13 above. The foregoing indemnity shall survive any expiration or termination of this Agreement

19. All notices, demands, requests, consents, and approvals by either party to this agreement shall be made in writing and sent by U.S. mail, or by recognized overnight courier, or by hand delivery, or by facsimile transmission (if confirmed by mail, overnight courier or hand delivery). All such notices shall be addressed as follows:

If to the County:

Chief Financial Officer
Sedgwick County
525 N. Main, Ste. 823
Wichita, KS 67203
Tel: (316) 660-7591
Fax.: (316) 383-7729

With a copy to:

Sedgwick County Counselor
525 N. Main, Suite 359
Wichita, Kansas 67203
Tel: (316) 660-9340
Fax: (316) 383-7007

If to AirTran:

AirTran Airways, Inc.
Office of General Counsel

9955 AirTran Boulevard
Orlando, FL 32827
Tel: (407) 251-5581
Fax: (407) 251-5567

20. This Agreement and any issue arising out of or relating to the parties' relationship hereunder shall be governed by, and construed in accordance with the laws of the State of Kansas.

21. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter hereof, and any and all prior agreements, arrangements, understandings, or representations, oral or written, are merged into and superseded by the terms of this Agreement. This Agreement cannot be altered, amended or modified except by a writing signed by an authorized representative of each party.

22. The obligations and undertakings set forth herein are severable, such that if any provision hereof is found to be invalid or unenforceable, such invalid or unenforceable provisions shall not affect the validity or enforceability of the remaining provisions.

23. Failure to insist on strict compliance with any provisions hereof by either party shall not constitute a waiver of compliance with such provision nor preclude either party from demanding strict compliance in the future.

24. This Agreement may not be assigned by either party hereto.

25. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

26. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

In carrying out this Agreement, AirTran shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

A. AirTran shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this agreement because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, AirTran shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If AirTran fails to comply with the provisions of K. S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, AirTran shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by County.

D. If AirTran 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, AirTran shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by County.

E. AirTran shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the

County cumulatively total $5,000.00 or less during the fiscal year of the County pursuant to K.S.A. 44-1031(c).

27. "The Parties each represent to the other that they have the right, power, legal capacity, and authority to enter into and perform their respective obligations under this Agreement, and no approvals or consents of any persons other than the Parties hereto are necessary in connection with it. The execution and delivery of this Agreement by the Parties has been duly authorized by the parties' respective boards of directors, or commissioners."

IN WITNESS WHEREOF, the parties hereto affix their duly authorized signatures as of the date set forth on the first page of this Agreement.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

Thomas Winters, Chairman
Commissioner, Third District

ATTEST:

DON BRACE, County Clerk

APPROVED AS TO FORM:

RICHARD A. EUSON, County Counselor

AIRTRAN AIRWAYS, INC

KEVIN P. HEALY, V.P. - Planning

EXHIBIT "A"

AirTran Airways will operate the following service between Wichita and Atlanta.

Wichita - Atlanta:

AL	FLT	ORG	DST	DEPT-TM	ARRV-TM	FREQ	EQP	SEATS	MILES	MONTH
F	682	ICT	ATL	710	1011	1234567	717	117	781	JU
F	684	ICT	ATL	1259	1600	1234567	717	117	781	JU
F	686	ICT	ATL	1629	1930	1234567	717	117	781	JU

Atlanta - Wichita:

AL	FLT	ORG	DST	DEPT-TM	ARRV-TM	FREQ	EQP	SEATS	MILES	MONTH
F	683	ATL	ICT	1113	1229	1234567	717	117	781	JU
F	685	ATL	ICT	1441	1159	1234567	717	117	781	JU
F	687	ATL	ICT	2110	2229	1234567	717	117	781	JU

The flight frequencies set out in the timetables shall be the number of flights to be provided in the identified city pair markets and may be adjusted to address overall market, weekend and seasonal changes in demand. The flight times set out in the timetable may be varied from time-to-time in accordance with AirTran's usual procedures and operational requirements.

All flights will be operated with AirTran's normal passenger in-flight services. Fares offered on these flights will not vary significantly in price level or terms and conditions from those normally offered by AirTran Airways in markets of similar distance or stage length.

Agenda Report No. XII-20.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Correcting Resolution: Drainage Project in Cedar View Village Addition (east of Greenwich, south of Kellogg) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: On June 3, 2008, the City Council approved a petition and adopted an authorizing resolution for a drainage project in Cedar View Village Addition. The project number contained in the resolution was in error.

Analysis: A resolution has been prepared to correct the error.

Financial Considerations: The project budget is not affected.

Goal Impact: The project will address the Efficient Infrastructure goal by providing drainage improvements required for new development.

Legal Considerations: State Statutes provide the City Council the authority to correct the error by resolution.

Recommendation/Action: It is recommended that the City Council adopt the Resolution.

Attachment: Resolution.

132019

First Published in the Wichita Eagle on September 26, 2008

RESOLUTION NO. 08-472

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER SEWER NO. 640 (EAST OF GREENWICH, SOUTH OF KELLOGG) 468-84464 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER SEWER NO. 640 (EAST OF GREENWICH, SOUTH OF KELLOGG) 468-84464 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-691 adopted on December 4, 2007 and Resolution No. 08-293 adopted on June 3, 2008 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to improve Storm Water Sewer No. 640 (east of Greenwich, south of Kellogg) 468-84464.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be One Hundred Eighty-Three Thousand Dollars ($183,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after November 1, 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:

<u>CEDAR VIEW VILLAGE ADDITION</u>
Lots 1 through 12, Block 1
Lots 1 through 17, Block 2

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis:

> The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 5, Block 1; and Lots 12 through 13, Block 2; <u>CEDAR VIEW VILLAGE ADDITION</u>, shall each pay 206/10,000 of the total cost payable by the improvement district. Lots 14 through 17, Block 2; <u>CEDAR VIEW VILLAGE ADDITION</u>, shall each pay 227/10,000 of the total

cost payable by the improvement district. Lots 6 through 12, Block 1; and Lots 1 through 11, Block 2; CEDAR VIEW VILLAGE ADDITION shall each pay 425/10,000 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 9.Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of September, 2008.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

Agenda Report No. XII-21.

CITY OF WICHITA
City Council Meeting
September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Sale of Remnant at the Southwest Corner of Yellowstone and Pawnee (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the sale.

Background: The City acquired a 70 foot by 40 foot parcel at the southwest corner of Yellowstone and Pawnee (2407 South Yellowstone) in 1990 as the site of a sewer lift station and force main. Additions to the sewer system in the area made the lift station unnecessary and it was removed in approximately 2004. The owner of 2407 has submitted an offer to acquire the parcel. Due to its small size, the only user would be the adjacent owner.

Analysis: The owner of 2407 South Yellowstone has offered $150 ($.053 per square foot) for the site. This equates to the County appraised value of the adjacent land. The site is underlain with several sanitary sewer lines. The buyer has granted the City an easement to protect the sewer improvements.

Financial Considerations: The City will receive cash consideration for the sale of the property. In addition, the sale of this property to a private party will place additional value into the tax base and relieve the City of any maintenance costs.

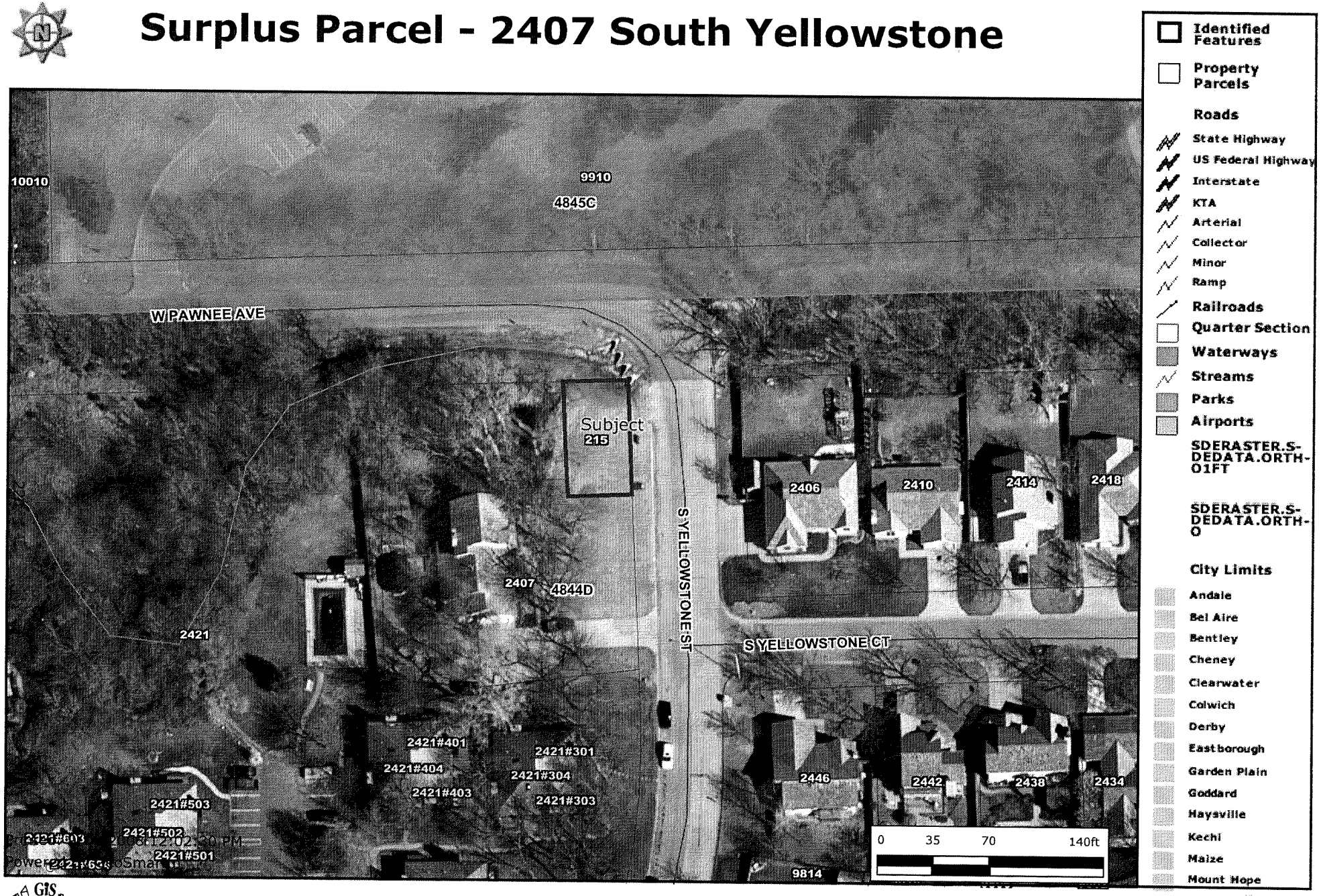
Goal Impact: The sale and redevelopment of this property will support a dynamic core area and vibrant neighborhood.

Legal Considerations: The Law Department has approved the deed and easement as to form.

Recommendation/Action: It is recommended that the City Council approve the Real Estate Purchase Contracts and authorize all necessary signatures.

Attachments: Quit claim deed, permanent easement and aerial.

Surplus Parcel - 2407 South Yellowstone



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

QUIT CLAIM DEED

THIS INDENTURE, Made this ____day of _____, 2008 between the City of Wichita, a Municipal Corporation, herein referred to as Grantor, party of the first part, and the Timothy L. and Lori L. Casey, husband and wife, herein referred to as Grantee, party of the second part.

WITNESSETH:

That said Grantor, in consideration of the sum of One Hundred and Fifty Dollars and No Cents ($150.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, does by these presents, release and quit claim, unto said parties of the second part, their heirs and assigns, all the following described real estate situated in the City of Wichita, County of Sedgwick and State of Kansas, to-wit:

> Beginning at the Northeast corner of Lot 1, Block 1, The Park Addition, Wichita, Sedgwick County, Kansas; thence South along the West right –of-way line of Yellowstone Drive as platted, 70 feet: thence West, parallel with the South line of Pawnee avenue, as dedicated, 40 feet; thence North , parallel with the West right-of-way line of Yellowstone Drive, as platted, 70 feet to a point on the South lien of said Pawnee Avenue, thence East, along the South line of Said Pawnee Avenue, 40 feet to the point of beginning.

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, forever.

IN WITNESS WHEREOF, the said party of the first part had hereunto set its hand the day and year first above written.

City of Wichita, a Municipal Corporation:

By_____
Carl Brewer, Mayor

Attest:

_____
Karen Sublett, City Clerk

State of Kansas)
) ss:
Sedgwick County)

This instrument was acknowledged, before me this ___ day of _____2008, by Carl Brewer and Karen Sublett, Mayor and City Clerk of the City of Wichita, Kansas.

SEAL

_____
Notary Public

My Commission Expires: _____

PERMANENT EASEMENT

THIS EASEMENT made this 8 day of September, 2008, by and between Timothy L. and Lori L. Casey, husband and wife, party of the first part, and the City of Wichita, Kansas, a Municipal Corporation, party of the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar and other Good and Valuable Considerations ($1.00), the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said second party a perpetual right-of-way and easement for the public purposes including constructing, maintaining, and repairing sanitary sewer and other public utilities over, along and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

> Beginning at the Northeast corner of Lot 1, Block 1, The Park Addition, Wichita, Sedgwick County, Kansas; thence South along the West right –of-way line of Yellowstone Drive as platted, 70 feet: thence West, parallel with the South line of Pawnee avenue, as dedicated, 40 feet; thence North , parallel with the West right-of-way line of Yellowstone Drive, as platted, 70 feet to a point on the South lien of said Pawnee Avenue, thence East, along the South line of Said Pawnee Avenue, 40 feet to the point of beginning.

And said second party, heirs and assigns is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such public improvements.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

Timothy L. Casey

Lori L. Casey

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

LINDSAY DALBOM
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 6-3-2012

This instrument was acknowledged before me on 8 day of September, 2008 by Timothy L. and Lori L. Casey, husband and wife.

Lindsay Dalbom
Notary Public

My Commission Expires: 6-3-2012

Agenda Report No. XII-22.

City of Wichita
City Council Meeting

September 23, 2008

TO: Mayor and City Council Members

SUBJECT: Office of Central Inspection Penalty Fee Collections Agreement – Addendum to Municipal Court fine collection contract

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendations: Approve the addendum to the Municipal Court Dept Collections Contract

Background: In November of 2006, City Council adopted the Neglected Building Ordinance, Title 30 of the City of Wichita. Since that time, the Office of Central Inspection has initiated over 900 Neglected Building cases, mostly on boarded up structures. Notices have been issued, and registrations processed. There are currently over 500 cases still active, with around 200 in penalty status.

Analysis: Penalty notices have been issued on these 200 cases. The cases have not been resolved, nor have the penalties been paid. The City's Municipal Court contracts with Gila Corporation d/b/a Municipal Services Bureau for collection of delinquent court fines. The Office of Central Inspection wishes to enter into a contract with the current vendor for collection of delinquent penalty fees.

Financial Considerations: Municipal Services Bureau will deduct a 25% collection fee from monies collected prior to remitting the net amount to the City of Wichita, Office of Central Inspection. No budget will be required for this activity.

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: Neglected Building enforcement helps address blighting buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The addendum to the contract will be reviewed and approved as to form by the Law Department.

Recommendations/Actions: Approve the addendum to the contract with Gila Corporation, d/b/a Municipal Services Bureau and authorize the necessary signatures.

Attachments: Addendum to Municipal Court collection contract.

ADDENDUM TO DELINQUENT COURT FINES & FEES CONTRACT RFP #700011 BETWEEN THE CITY OF WICHITA AND MUNICIPAL SERVICES BUREAU

WHEREAS, the City of Wichita currently has a contract by and between Gila Corporation d/b/a Municipal Services Bureau (hereafter MSB) for the collection of delinquent court fines and fees;

WHEREAS, MSB desires to perform work which both the City of Wichita and MSB consider as a special project to collect unpaid delinquent neglected building penalty fees, assessed by the Superintendent of Central Inspection pursuant to Chapter 30 of the Code of the City of Wichita. Additional types of accounts may be added at a later date.

NOW, THEREFORE, the City of Wichita hereby contracts with MSB for additional services over and above those required by the existing contract as follows:

I. ADMINISTRATIVE RESPONSIBILITIES

A. Property Owner Contact. MSB will mail notices, telephone or otherwise contact property owners with unpaid neglected building penalties in order to attempt to notify property owners of the amount of their fees due ("obligation") with the City. The purpose of the contact is to offer property owners the opportunity to resolve their obligation voluntarily before further action is contemplated by the City. The City will provide the name and last known address of the property owners, the date the fee was assessed by the Superintendent of Central Inspection, and the amount of any such obligation(s). When appropriate, MSB will attempt to locate property owners when the last known address is invalid.

B. Correct Information. MSB will rely completely on the City to provide correct information about the property owners and, specifically, about any dollar amount in question, and the City will update and correct daily any information it has provided MSB. In particular, the City will immediately notify MSB of any payment or other satisfaction of judgment made directly to the City or any other action affecting the amount or timing of monies owed by the property owner to the City.

C. Property Owners Referred to the City. MSB will refer property owners, who wish to resolve their obligation with the City other than by payment, to the city department or person designated by the City to respond to the property owner's request.

II. COMMISSION ON FINES COLLECTED

A. Basic Commission Rate. For fees assessed that are referred by the City to MSB for the collection or resolution for which the City is paid (in whole or in part), regardless of whether payment is accepted directly by the City or by MSB on the City's behalf, the City will pay to MSB, in Travis County, Texas, a 25% commission rate on all fees collected.

Additionally, per section 30.01.150 (c) of the Code of the City of Wichita, MSB will add a $250 penalty fee every 90 days, at the direction of the City.

B. Notification of Collections. MSB will notify the City daily of any monies it receives from property owners toward payments of obligations. The City, through the Superintendent of Central Inspection, may then accept or reject the payment offered by the property owner. By the fifteenth of each month, MSB will provide detailed reporting to the City to identify all cases known to be resolved during the prior month and to net remit monies collected on the City's behalf. The City authorizes MSB to endorse negotiable instruments made payable to the City and provide to MSB in payment of fines collected and to deduct commissions due on those obligations paid directly to MSB from amounts collected by MSB. If MSB is required to invoice the City for commission due, the City agrees to review the invoice and forward payment to MSB within 10 days of receipt of the invoice.

All other terms of the original contract between the City and MSB dated July 3, 2007, including the option of renewal, shall remain in effect.

Dated this _____ day of _____, 2008.

ATTEST:

_____
Karen Sublett, City Clerk

THE CITY OF WICHITA

_____
Carl Brewer, Mayor

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

_____
Melinda Walker,
Purchasing Manager

MUNICIPAL SERVICES BUREAU

_____
Signature

_____
Print Signature Name

_____
Title (President or Corporate Officer)

Agenda Report No. XII-23.

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council

SUBJECT: Blind and Physically Handicapped (Talking Books) Contract

INITIATED BY: Library

AGENDA: Consent

Recommendation: Approve the contract.

Background: The Wichita Public Library is one of five agencies that deliver library service to blind and physically handicapped residents of Kansas through contracts with the Kansas State Library. The Wichita site delivers service to eligible customers from all of Sedgwick County and fifteen counties in Southeast Kansas. Although Wichita's participation as a contracting agency has been in place for many years, annual contracts renewing the relationship with the State Library are required because federal funds are included in the contract payment.

Analysis: Wichita's ability to house a subregional library for the blind and physically handicapped allows the Library to enhance service to customers with special needs. While most users of this service must rely on toll-free phone and mail access to the library service, Wichita's customers have the added benefit of receiving walk-in service from Wichita's Central branch library. Senior centers, retirement and nursing homes, special education centers and other agencies also benefit from having subregional staff locally available to promote and/or present training about this program. The program budget was reviewed and approved by the Library Board of Directors during its September 16, 2008 meeting.

Financial Considerations: The grant includes a base payment with supplemental funds divided by the share of the statewide service delivery. No local match is required. The Wichita contract for the 2008-2009 year is offered at $131,333, an increase of 3.7% ($4,781) from the previous year.

Goal Impact: The plan addresses the Quality of Life goal by enabling the Wichita Public Library system to extend access to information and recreation resources to citizens who do not have the visual or physical ability to use traditional print materials.

Legal Considerations: The contract has been reviewed and approved by Law Department staff.

Recommendation/Action: It is recommended that the City Council approve the 2008-2009 Talking Books Service contract and authorize the necessary signatures.

Kansas State Library Contract No. **09-LSTA-G**

KANSAS STATE LIBRARY
F.Y. **2009**
Library Services and Technology Act
Talking Book Service

Project No. **09-LSTA-G**

THIS CONTRACT, made and executed this **FIRST** day of **OCTOBER, 2008,** by and between the Kansas State Library, hereinafter referred to as the State Library, and the CITY OF WICHITA, a municipal corporation in the state of Kansas. This contract shall be administered through the City's Department of Libraries, by its Board of Directors, hereinafter referred to as the Board.

WITNESS THAT:

WHEREAS, the Kansas Legislature has allocated funding for services to the Kansas Talking Book Service, and the Board meets the requirements of the Kansas Administrative Regulations, for Kansas Talking Book Service and

WHEREAS, the Congress of the United States has enacted the Library Services and Technology Act, and

WHEREAS, the Board submitted to the State Library a budget for funds and agrees to comply with all the terms and conditions of the LSTA Five Year State Plan;

NOW THEREFORE, it is mutually understood and agreed that the Board shall administer a program in compliance with the Five-Year State Plan, Project No. **09-LSTA-3** of the FY **2009** and the approved application.

The Board shall expend or encumber all moneys received under this contract no later than **September 30, 2009.** The Board shall expend all moneys received under this contract solely for the purposes stated, with no administrative fees allowed, in the Five-Year State Plan of FY **2009,**

Project No. **09-LSTA-3**, the approved budget, and this contract, and shall repay to the State Library all moneys lost or diverted to purposes other than those stated herein.

The State Library shall pay to the Board from state funds a base payment of $17,500.00 plus **SEVENTY-SIX THOUSAND EIGHT HUNDRED EIGHTY-NINE DOLLARS ($76,889.00** in **ONE** payment(s) as follows: upon completion of this contract and approval by the State Library, on or about October 1, **2008**.

The State Library shall pay to the Board from available Federal funds the sum of **THIRTY-SIX THOUSAND NIEN HUNDRED FORTY-FOUR DOLLARS ($36,944.00)** in **ONE** payment(s) as follows: upon completion and approval by the State Library, on or about April 1, **2009**.

AND IT IS FURTHER mutually understood and agreed that the money shall be payable to the Board only upon receipt of the moneys by the State Library through funds of the State of Kansas and LSTA. If the funds are not received by the State Library, this contract shall be void and the obligations of both parties herein shall be terminated.

IT IS FURTHER mutually understood that the provisions found in Contractual Provisions Attachment (Form DA-146a), which is attached hereto and executed by the parties to this agreement, are hereby incorporated in this contract and made a part hereof.

SIGNED:

Library Board President

Mayor

Signature of person responsible for financial reporting (please print and sign)

Phone # (_____) _____

Kansas State Librarian

Approved as to form: _____
Director of Law

State of Kansas
Department of Administration
DA-146a (Rev. 3-00)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 3-00), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of OCTOBER 2008.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. **Agreement With Kansas Law**: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

City of Wichita
City Council Meeting
September 23, 2008

TO: Mayor and City Council

SUBJECT: Bentley Reserve Wellfield Improvements - Design/Build

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Approve the Contract with Burns & McDonnell/Utility Inc. for the design and construction of the Bentley Wellfield improvements.

Background: In the mid-1950s, water supply wells were installed in the Bentley Reserve Wellfield, which is an area adjacent to the Arkansas River and south of Bentley. The wells were installed to supplement the City's water supply during the intense drought that occurred from 1952-1956. They were eventually abandoned due to the high salt content in the water.

On October 3, 2000, City Council authorized projects to begin the development of new water supplies for the City. The projects were to develop water supply to meet the City's needs through the year 2050. One of the authorized projects is the redevelopment of the Bentley Reserve Wellfield, and on April 2, 2002, City Council approved initiating a design/build project to construct the improvements in the Bentley Wellfield.

Analysis: The Water Supply Plan recommends that new wells be constructed at the Bentley site to provide water during peak summer days. Though the water would have some salt content, it could be diluted so that it would not affect the City's water quality. Projections are that up to 10 million gallons per day could be obtained from this site.

Using the design/build approach, the engineer and contractor can work together to develop the most effective design while acquiring appropriate hydrogeologic information. This would reduce the cost of the wells and expedite completion of the facilities.

A Request for Proposals was issued on May 13, 2008, with three proposals received. All three design/build teams were interviewed by the Staff Screening and Selection Committee on July 8, 2008. Based on the proposals and presentations, the committee unanimously recommended the proposal from Burns & McDonnell/Utility Inc.

Financial Considerations: Completion of the project will not exceed $3,257,461. Funding has been approved in CIP W-549, Water Supply Plan, which has over $10 million budgeted for 2008 and is dedicated to new water supply development.

Goal Impact: This project will ensure efficient infrastructure by providing reliable, compliant and secure utilities and will help assure that adequate water supplies are available for future customers.

Legal Considerations: The Law Department has approved the Contract as to form.

Recommendations/Actions: It is recommended that the City Council approve the Contract for Design/Build with the team of Burns & McDonnell/Utility Inc. and authorize the necessary signatures.

Attachments: Contract for design and construction services with Burns & McDonnell/Utility Inc.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

SUGGESTED FORM OF AGREEMENT BETWEEN OWNER AND DESIGN/BUILDER ON THE BASIS OF A STIPULATED PRICE

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

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This Agreement has been prepared for use with the Standard General Conditions of the Contract Between Owner and Design/Builder (No. D-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the other. The suggested language contained in the Guide to Use of EJCDC Design/Build Documents (No. D-001, 2002 Edition), including guides to preparation of the Request for Proposal, the Proposal Form, and Supplementary Conditions, is also carefully interrelated with the language of this Agreement. The Guide also contains additional comments concerning use of this Agreement.

Note to User

Before entering into this Agreement, it is recommended that the parties determine if applicable Laws and Regulations prohibit or require alterations in the contemplated contractual arrangements and the assignments of responsibilities for a design/build project. Check competitive bidding, contractor licensing, design professional licensing, and professional practice Laws and Regulations, among others.

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1420 King Street, Alexandria, VA 22314-2794

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

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EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between **The City of Wichita, Kansas** (Owner)

and **Burns & McDonnell Engineering Co., Inc Kansas City, Missouri** (Design/Builder).

Owner and Design/Builder, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01. Design/Builder shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Redevelopment of the Bentley Well Field
Halstead, Kansas

ARTICLE 2 - THE PROJECT

2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Provide engineering design, labor, materials and equipment for the redevelopment of the Bentley Well Field, generally in conformance with the Design Builders Proposal Dated June 17, 2008, and the contract documents attached hereto.

A. Owner has elected to accept Alternate 1, incorporating 17.4-inch CertiLok PVC casing and 16-inch stainless steel wire wrapped screen as the basis for well construction.
B. Owner has elected to decline proposed Alternates 2 and 3. These items are excluded from the Agreement.
C. Owner has elected to accept proposed Alternate 4. Alternate 4 is included as an Allowance item.
D. Owner has elected to decline proposed Alternate 5. This item is excluded from the Agreement except that the Owner has elected to include the furnishing and installation of four down hole data loggers. This item has been included in the Agreement.
E. The Owner has indicated the potential for lead contamination of soils in the vicinity of Existing Well No. 4. Design Builder has developed a scope of services to identify, test, remediate and dispose of lead contaminated soils. The Agreement is based on remediation and disposal of 300 tons of contaminated soil as further identified in the Work Description, SECTION 01010 Special Site Conditions. This item is included in the agreement as an allowance item with a Schedule of Unit Price Adjustments for actual quantities which are excavated stabilized and disposed of.

ARTICLE 3 - CONTRACT TIMES

3.02. Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 242 days after the date when the Contract Times commence to run as provided in paragraph 2.02 of the General Conditions, and completed and ready for final payment in accordance with paragraph 13.08 of the General Conditions within 319 days after the date when the Contract Times commence to run.

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3.03. Liquidated Damages

A. Design/Builder and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.02.A above, plus any extensions thereof allowed in accordance with paragraph 11.02 of the General Conditions. The parties also recognize the delays, expenses and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design/Builder agree that as liquidated damages for delay (but not as a penalty), Design/Builder shall pay Owner $300 for each day that expires after the time specified in paragraph 3.02.A for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Design/Builder shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.02.A for completion and readiness for final payment or any proper extension thereof granted by Owner, Design/Builder shall pay Owner $300 for each day that expires after the time specified in paragraph 3.02.A for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.01.A, 4.01.Band 4.01.C below:

A. For all Work other than Unit Price Work, a Lump Sum of:

Three Million Two Hundred and Fifty Seven Thousand, Four Hundred and Sixty One **$3,257,461**

B. Allowances:

1. Installation of 30-inch well field isolation valve: An allowance of $5,346 is included in the contract price for installation of the 30-inch well field isolation valve in a wet condition. In the event that the new 30-inch valve can be installed in a dry condition, a deductive change order will be issued for $5,346.

2. Remediation of soils potentially impacted by lead contamination: An allowance of $138,249 is included in the contract price for the remediation of soils potentially impacted by lead contamination in the vicinity of Existing Well No 4. The allowance amount is based on the assumptions, approach and quantities contained in SECTION 01010 Special Site Conditions of the Work Description and is not guaranteed. The Allowance amount is subject to the unit price adjustments provided in Paragraph 4.01.C

C. Schedule of Adjustment Unit Prices: The lump sum Contract Price includes the quantities identified in the proposal dated June 17, 2008 and in the Contract Documents contained herein. In the event the Work indicated in the Proposal or Contract Documents is increased or decreased, the contract price set forth above shall be increased or decreased according to the following Schedule of Adjustment Unit Prices.

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Schedule of Adjustment Unit Prices.
City of Wichita Bentley Well Field

Item Description		Units	Unit Price
TEST HOLE DRILLING AND PIEZOMETERS			
Borehole drilling		LF	$16
Borehole abandonment, bottom 20 feet of 6 borings		FT	$6
Installation of 2" belled end PVC		FT	$11
Installation of annular material		FT	$7
Well abandonment		FT	$3
PRODUCTION WELL DRILLING			
Furnish and install 30" casing in 42" borehole		LF	$368
Drill 29" borehole to 135 feet		LF	$78
Furnish and install 16" stainless steel wire wrapped screen		LF	$310
Furnish and install 17.4" PVC blank pipe		LF	$161
Furnish and install gravel pack		LF	$42
Furnish and install annular bentonite seal		LF	$122
Furnish and install annular cement seal		LF	$66
PERMANENT PUMPING EQUIPMENT			
Furnish and install 8" Certilok Drop Pipe		LF	$68
Furnish and install submersible pump cable		LF	$23
Furnish and install airline, airline assembly, sounding tube		LF	$11
EXISTING WELL ABANDONMENT			
Furnish and install neat cement grout		CUYD	$307
LEAD ABATEMENT			
Excavate and stock pile impacted soils		Ton	$29
Screen impacted material		Day	$5864
On site stabilization		Ton	$74
Load transport & dispose of impacted material as a special waste		Ton	*$126

*Fuel surcharge shall apply if the average cost of on-road diesel fuel exceeds $5.10 per gallon.

4.02. The factor used to calculate the cost of fee for employees in the direct employ of Design/Builder performing Design Professional Services in accordance with paragraph 10.01.A.1.b of the General Conditions shall be 3.3.

ARTICLE 5 - PAYMENT PROCEDURES

5.01. Design/Builder shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. *Progress Payments; Retainage.* Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment which are to be submitted on or about the 21st day of each month during performance of the Work as provided in paragraphs 5.01.A.1 and A.2 below. All such payments will be based on the Schedule of Values established in paragraph 2.06.A.3 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

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1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions.

   a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, Owner may determine that as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the remaining Work completed.

   b. 100 percent of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 13.02.A of the General Conditions).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design/Builder to 100% percent of the Contract Price (with the balance being retainage), less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions.

B. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 6 - INTEREST

6.01. Not used.

ARTICLE 7 - DESIGN/BUILDER'S REPRESENTATIONS

7.01. To induce Owner to enter into this Agreement, Design/Builder makes the following representations:

A. Design/Builder has examined and carefully studied the Contract Documents (including the Addenda) listed in paragraphs 8.01.A through J and the other related data identified in the Request for Proposals but excluding the documents described in paragraph 8.01.K.

B. Design/Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Design/Builder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Design/Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

E. Design/Builder has correlated the information known to Design/Builder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

F. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that Design/Builder has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Design/Builder.

G. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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ARTICLE 8 - CONTRACT DOCUMENTS

8.01. The Contract Documents consist of the following:

A. This Agreement (pages 1 to 7, inclusive);

B. Performance Bond (pages _____ to _____, inclusive); (To Be Added)

C. Payment Bond (pages _____ to _____, inclusive); (To Be Added)

D. Kansas Statutory (Public Works) Bond _____ and consisting of _____ pages; (To Be Added)

E. Standard General Conditions of the Contract Between Owner and Design/Builder (pages 1 to 28, inclusive);

F. Supplementary Conditions (pages 1 to 6, inclusive);

G. Revised Non-Discrimination and Equal Employment Opportunity / Affirmative Action Program Requirements Statement for Contracts or Agreements.

H. Conceptual Documents provided with Design Builders Proposal;

Work Description
Figure 1 - Site Layout
Figure 2 - Manhole Details
Figure 3 - One Line Diagram

I. Design/Builder's Proposal; Dated June 17, 2008

J. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:

1. Notice to Proceed;

2. All Work Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;

3. Specifications as defined in Paragraph 1.01.A.40 of the General Conditions; and

4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.

8.02. The documents listed in paragraph 8.01 above are attached to this Agreement (except as expressly noted otherwise above).

8.03. There are no Contract Documents other than those listed above in this Article 8.

8.04. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.

9.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in

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any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.04. Owner and Design/Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder.

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IN WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed or identified by Owner and Design/Builder.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

The City of Wichita, Kansas

By: _____

[CORPORATE SEAL]

Attest: _____

Address for giving notices:

_____

_____

_____

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Designated Representative:

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Facsimile: _____

DESIGN/BUILDER:

Burns & McDonnell Engineering Co. Inc.

By: James L. Foil P.E. (Vice-President)

[CORPORATE SEAL]

Attest: _____

Address for giving notices:

9400 Ward Parkway

Kansas City, Missouri 64114

_____

Engineer License No. or Certificate No.: E-65
(Where applicable)

State: Kansas

Contractor License No.:: 3952
(Where applicable)

State: City of Wichita

(If Design/Builder is a corporation, attach evidence of authority to sign.)

Designated Representative:

Name: James F. Foil, P.E.

Title: Vice President

Address: 9400 Ward Parkway

_____

Phone: 816-822-3180

Facsimile: 816-822-3414

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Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement

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EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

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2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

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AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

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These General Conditions have been prepared for use with either one of the two Agreements between Owner and Design/Builder (Nos. D-520 and D-525, 2002 Editions) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the others. The suggested language and instructions contained in the Guide to Use of EJCDC Design/Build Documents (No. D-001, 2002 Edition) is also carefully interrelated with the language of these General Conditions. The Guide also contains comments concerning the use of the General Conditions.

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STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Addenda* – Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.

2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Design/Builder covering the Work.

3. *Application for Payment* – The form which is to be used by Design/Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bonds* – Performance and payment bonds and other instruments of security.

6. *Change Order* – A written order which is signed by Design/Builder and Owner which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

7. *Claim* – A demand or assertion by Owner or Design/Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.

8. *Conceptual Documents* – The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.

9. *Construction* – The result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

10. *Construction Subagreement* – A written agreement between Design/Builder and a construction Subcontractor for provision of Construction.

11. *Contract* – The entire and integrated written agreement between Owner and Design/Builder concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

13. *Contract Price* – The moneys payable by Owner to Design/Builder for completion of the Work in accordance with the Contract Documents.

14. *Contract Times* – The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment in accordance with paragraph 13.08.

15. *Design/Builder* – The individual or entity with whom Owner has entered into the Agreement.

16. *Design Subagreement* – A written agreement between Design/Builder and a design professional for provision of Design Professional Services.

17. *Design Professional Services* – Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases.

18. *Drawings* – Those portions of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of drawings, diagrams,

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illustrations, schedules and other data which show the scope, extent, and character of the Work.

19. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

20. *Field Order* – A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.

22. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

23. *Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

24. *Liens* – Charges, security interests or encumbrances upon real property or personal property.

25. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

26. *Notice of Award* – The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Agreement.

27. *Notice to Proceed* – A written notice given by Owner to Design/Builder fixing the date on which the Contract Times will commence to run and on which Design/Builder shall start to perform the Work.

28. *Owner* – The individual or entity with whom Design/Builder has entered into the Agreement and for whom the Work is to be performed.

29. *Owner's Consultant* – An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the Project and who is identified as such in the Supplementary Conditions.

30. *Partial Utilization* – Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

31. *PCBs* – Polychlorinated biphenyls.

32. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

33. *Project* – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

34. *Proposal* – The documents submitted by Design/Builder in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.

35. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Request for Proposals* – The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.

37. *Resident Project Representative* – The authorized representative of Owner who may be assigned to the Site or any part thereof.

38. *Schedule of Values* – A schedule prepared by Design/Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.

39. *Site* – Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design/Builder.

40. *Specifications* – The part of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

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41. *Subcontractor* – An individual or entity other than a Supplier having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.

42. *Submittal* – A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.

43. *Substantial Completion* – The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions* – The part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Design/Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design/Builder or any Subcontractor.

46. *Unit Price Work* – Work to be paid for on the basis of unit prices.

47. *Work* – The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.

48. *Work Change Directive* – A written directive to Design/Builder, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. Intent of Certain Terms or Adjectives:

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

4 The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design/Builder, "provide" is implied.

7. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

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ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When Design/Builder delivers the executed Agreements to Owner, Design/Builder shall also deliver to Owner such Bonds as Design/Builder may be required to furnish in accordance with paragraph 5.01.A.

2.02 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. Unless agreed to in writing by Owner and Design/Builder, the Contract Times will commence to run no later than the ninetieth day after the last day for receipt of the Proposal or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.03 Starting the Work

A. Design/Builder shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.04 Before Starting the Work

A. *Design/Builder's Review of Contract Documents:* Before undertaking each part of the Work, Design/Builder shall carefully study and compare those Contract Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design/Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Design/Builder knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;

3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

C. *Evidence of Insurance:* Before any Work at the Site is started, Design/Builder and Owner shall each deliver to the other, certificates of insurance as required by paragraph 5.03 which Design/Builder and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.05 Initial Conference

A. Within twenty days after the Contract Times start to run, Design/Builder will arrange a conference attended by Owner and Design/Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in paragraph 2.04.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records, items required pursuant to paragraph 8.01.A.6 and other matters.

2.06 Initial Acceptance of Schedules

A. At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2.04.B. Design/Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design/Builder until the acceptable schedules are submitted to Owner.

1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.

2. Design/Builder's schedule of Submittals will be acceptable to Owner if it provides a workable

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arrangement for reviewing and processing the required Submittals.

3. Design/Builder's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to Owner.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws or Regulations.

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, code, or instruction of a Supplier shall be effective to change the duties and responsibilities of Owner, Design/Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Conceptual Documents will control except when Owner has approved a Submittal pursuant to paragraph 6.17.B.

B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. Owner's approval of required Submittals (pursuant to paragraph 6.17.B);

2. A Work Change Directive;

3. A Change Order;

4. A Field Order.

3.05 *Reuse of Documents*

A. All documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement are for Design/Builder's own use, and Design/Builder shall retain an ownership and property interest therein whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse or any continued use after any termination without written verification or adaptation by Design/Builder for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design/Builder and Owner shall indemnify and hold harmless Design/Builder and Subcontractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Design/Builder to further compensation at rates to be agreed upon by Owner and Design/Builder.

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3.06 Electronic Data

A. Copies of data furnished by Owner to Design/Builder or Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Design/Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site which Design/Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design/Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design/Builder may make a Claim therefor as provided in Article 9.

B. Upon reasonable written request, Owner shall furnish Design/Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws or Regulations.

C. Design/Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Differing Site Conditions

A. Design/Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Design/Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.

C. No request by Design/Builder for an equitable adjustment under paragraph 4.02 shall be allowed unless Design/Builder has given the written notice required; provided that the time prescribed in 9.03.A for giving written notice may be extended by Owner.

D. The provisions of this paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03 Reference Points

A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to paragraph 8.01.A.6.e, and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 Hazardous Environmental Condition at Site

A. Design/Builder will not be responsible for any Hazardous Environmental Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work. Design/Builder shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by Design/Builder, Subcontractors, Suppliers or anyone else for whom Design/Builder is responsible.

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B. If Design/Builder encounters a Hazardous Environmental Condition, Design/Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

C. Design/Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design/Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design/Builder, either party may make a Claim therefor as provided in Article 9.

D. If after receipt of such special written notice Design/Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

E. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (iii) was not created by Design/Builder or by anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

F. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition created by Design/Builder or anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.F shall obligate Design/Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. Design/Builder shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Design/Builder's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Design/Builder shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the Audit Staff, Bureau of Government Financial Operations, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by Design/Builder is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B and 5.02, Design/Builder shall within twenty days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Design/Builder shall be obtained from surety or insurance companies that are duly licensed or authorized in the

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jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

A. Design/Builder shall deliver to Owner, with copies to each additional insured indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Design/Builder is required to purchase and maintain. Owner shall deliver to Design/Builder, with copies to each additional insured indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Design/Builder or any other additional insured) which Owner is required to purchase and maintain.

5.04 Design/Builder's Liability Insurance

A. Design/Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design/Builder's performance of the Work and Design/Builder's other obligations under the Contract Documents, whether it is to be performed by Design/Builder, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;

4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) by any other person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by paragraph 5.04.A shall:

1. With respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, (subject to any customary exclusion in respect of professional liability) include as additional insureds Owner and Owner's Consultants and any other persons or entities indicated in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, and employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. Include at least the specific overages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. Include completed operations insurance;

4. Include contractual liability insurance covering Design/Builder's indemnity obligations under paragraphs 6.11.A.3 and 6.21;

5. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Design/Builder pursuant to paragraph 5.03 will so provide);

6. Remain in effect at least until final payment and at all times thereafter when Design/Builder may be correcting, removing or replacing defective Construction in accordance with paragraphs 12.06 and 12.07; and

7. With respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Design/Builder shall furnish Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 Owner's Liability Insurance

A. In addition to the insurance required to be provided by Design/Builder under paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense

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Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Construction at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance will:

1. Include the interests of Owner, Owner's Consultant, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Construction, temporary buildings, falsework and all materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Construction, provided that such materials and equipment have been included in an Application for Payment approved by Owner;

5. Allow partial utilization in accordance with paragraph 13.06;

6. Include testing and startup; and

7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner and Design/Builder with thirty days' written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws or Regulations which will include the interests of Owner, Owner's Consultants, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Owner in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days' prior written notice has been given to Design/Builder and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Design/Builder, Subcontractors, Suppliers, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by Design/Builder, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Design/Builder requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Design/Builder by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Design/Builder whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

A. Owner and Design/Builder intend that all policies purchased in accordance with paragraph 5.06 will protect Owner, Owner's Consultant, Design/Builder, Subcontractors, Suppliers, and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Design/Builder waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition,

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waive all such rights against Owner's Consultant, Subcontractors, Suppliers, and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Design/Builder, Subcontractors, and Suppliers and the officers, directors, employees and agents of any of them for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property caused by, arising out of or resulting from fire or other peril whether or not insured by Owner; and

2. Loss or damage to the completed Project or any part thereof caused by, arising out of. or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to paragraph 13.06, after Substantial Completion pursuant to paragraph 13.05, or after final payment pursuant to paragraph 13.08.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Design/Builder, Subcontractors, Owner's Consultant, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Design/Builder has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.04.C. Owner and Design/Builder shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurance

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 13.06, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES

6.01 Design Professional Services

A. *Standard of Care.* The standard of care for Design Professional Services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and locality.

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B. *Preliminary Design Phase.* After the Contract Times commence to run, Design/Builder shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;

2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services of the types provided in paragraph 8.01.A.6.a-g and assist Owner in obtaining such reports, data, or services;

3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the Project;

4. Obtain such additional geotechnical and related information which it deems necessary for performance of the Work;

5. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;

6. Furnish the preliminary design documents to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and

7. Identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

C. *Final Design Phase.* After written acceptance by Owner of the preliminary design phase documents Design/Builder shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute);

2. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;

3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and

4. Identify any deviations from other Contract Documents in accordance with paragraph 6.17.B.

6.02 Supervision and Superintendence of Construction

A. Design/Builder shall supervise, inspect and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction. Design/Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.

B. At all times during the progress of Construction, the Design/Builder shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be Design/Builder's representative at the Site and shall have authority to act on behalf of Design/Builder. All communications given to or received from the superintendent shall be binding on Design/Builder.

6.03 Labor, Working Hours

A. Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of Construction on Saturday, Sunday or any legal holiday without Owner's written consent, which will not be unreasonably withheld.

6.04 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the Work.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and

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guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If reasonably required by Owner, Design/Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 Progress Schedule

A. Design/Builder shall adhere to the progress schedule established in accordance with paragraph 2.06.A as it may be adjusted from time to time as provided below:

1. Design/Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 11.02. Such adjustments may only be made by a Change Order or .

6.06 Concerning Subcontractors, Suppliers, and Others

A. Design/Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner may have reasonable objection. Design/Builder shall not be required to employ any Subcontractor, Supplier or other individual or entity to furnish or perform any of the Work against whom Design/Builder has reasonable objection.

B. Design/Builde0r shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work just as Design/Builder is responsible for Design/Builder's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

C. Design/Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design/Builder.

D. Design/Builder shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner through Design/Builder.

E. All Work performed for Design/Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design/Builder and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the Design/Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design/Builder, Owner's Consultant, and all other additional insureds (and their officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design/Builder will obtain the same.

6.07 Patent Fees and Royalties

A. Design/Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.

B. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner and Owner’s Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not identified in the Conceptual Documents.

C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees or agents, Subcontractors and Suppliers from and against all claims, costs, losses and damages (including but not limited to

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all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Conceptual Documents.

6.08 Permits

A. Unless otherwise provided in the Contract Documents, Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Owner shall assist Design/Builder, when necessary, in obtaining such permits, licenses and approvals. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Design/Builder shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto.

6.09 Laws or Regulations

A. Design/Builder shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.

B. If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder shall bear all costs arising therefrom.

C. Changes in Laws or Regulations not known on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 Taxes

A. Design/Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design/Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas.

1. Design/Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Construction.

B. *Removal of Debris.* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning.* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures*. Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals, including a

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reproducible set of record drawings, will be delivered to Owner.

6.13 Safety and Protection

A. Design/Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design/Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;

2. All Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

B. Design/Builder shall comply with applicable Laws or Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design/Builder shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Design/Builder, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design/Builder.

D. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Design/Builder in accordance with paragraph 13.08.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Design/Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Design/Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Owner prompt written notice if Design/Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Submittals

A. Owner will review and approve Submittals in accordance with the schedule of required Submittals accepted by Owner as required by paragraph 2.06.A. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

B. Owner's review and approval of Submittals shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has in a separate written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.

C. Construction prior to Owner's review and approval of any required Submittal will be at the sole risk of Design/Builder.

6.18 Continuing the Work

A. Design/Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending

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resolution of any disputes or disagreements, except as Design/Builder and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

A. Design/Builder shall:

1. Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.

2. Assist Owner in training staff to operate and maintain the Work.

3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

6.20 Design/Builder's General Warranty and Guarantee

A. Design/Builder warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective. Design/Builder's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than Design/Builder, Subcontractors, or Suppliers or any other individual for whom Design/Builder is responsible; or

2. Normal wear and tear under normal usage.

B. Design/Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Design/Builder's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by Owner;

2. The making of any progress or final payment;

3. The issuance of a certificate of Substantial Completion;

4. Use or occupancy of the Work or any part thereof by Owner;

5. Any acceptance by Owner or any failure to do so;

6. Any review and approval of a Submittal;

7. Any inspection, test or approval by others; or

8. Any correction of defective Construction by Owner.

6.21 Indemnification

A. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants, and the officers, directors, partners, employees, agents, other consultants and subcontractors of each from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the performance of Construction, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom) but only to the extent caused by any negligent act or omission of Design/Builder, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work.

B. In any and all claims against Owner, Owner's Consultant or any of their respective consultants, agents, officers, directors, partners or employees by any employee (or the survivor or personal representative of such employee) of Design/Builder, any Subcontractor, any Supplier, any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.21.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Design/Builder or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

C. The indemnification obligations of Design/Builder under paragraph 6.21.A shall not extend to the liability of Owner's Consultant, and their officers, directors, partners, employees, agents, other consultants, and subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 Related Work at Site

A. Owner may perform other Work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

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1. Written notice thereof will be given to Design/Builder prior to starting any such other work; and

2. Design/Builder may make a Claim therefor as provided in Article 9 if Design/Builder believes that such performance will involve additional expense to Design/Builder or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. Design/Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Design/Builder under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Design/Builder in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Article 7, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or nonapparent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

2. The specific matters to be covered by such authority and responsibility will be itemized; and

3. The extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design/Builder:

1. Designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner’s policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon;

2. Provide such legal services as Owner may require with regard to legal issues pertaining to the Project including any that may be raised by Design/Builder;

3. If requested in writing by Design/Builder, furnish reasonable evidence satisfactory to Design/Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design/Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days notice to the Owner;

4. Make payments to Design/Builder promptly when they are due as provided in paragraph 13.03 and 13.08;

5. Furnish the Site as set forth in paragraph 4.01.A;

6. Furnish to Design/Builder, as required for performance of Design/Builder's Services the following, all of which Design/Builder may use and rely upon in performing services under this Agreement:

a. Environmental assessment and impact statements;

b. Property, boundary, easement, right-of-way, topographic, and utility surveys;

c. Property descriptions;

d. Zoning, deed, and other land use restrictions;

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e. Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;

f. Assistance to Design/Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;

g. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and

h. All subsurface data at or contiguous to the Site which Owner may have obtained.

7. Review Submittals subject to Owner review pursuant to paragraph 6.17.A; and

8. Provide information known to or in the possession of Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.02 Insurance

A. Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.03 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design/Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design/Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design/Builder's failure to perform the Work in accordance with the Contract Documents.

8.04 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in paragraph 4.04.

8.05 Resident Project Representation

A. Owner may furnish a Resident Project Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

8.06 Owner's Consultant

A. Owner's Consultant, if any, has no duties, responsibilities, or authorities with respect to Design/Builder, unless so provided in the Supplementary Conditions.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order or a Work Change Directive. Upon receipt of any such document, Design/Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

A. Design/Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Construction as provided in paragraph 12.04.

9.03 Claims

A. *Notice.* If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than 15 days after the start of the occurrence or event giving rise to the Claim.

B. *Documentation.* Substantiating documentation shall be submitted by the claiming party within 30 days after delivery of the notice required by paragraph 9.03.A.

C. *Decision.* The other party shall render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.

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D. *Time Limit Extension.* The time limits of paragraphs 9.03.B and 9.03.C may be extended by mutual agreement.

9.04 Execution of Change Orders

A. Owner and Design/Builder shall execute appropriate Change Orders covering:

1. Changes in the Work which are (i) ordered by Owner pursuant to paragraph 9.01, (ii) required because of acceptance of defective Construction under paragraph 12.08 or Owner's correction of defective Work under paragraph 12.09 or (iii) agreed to by the parties; and

2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive.

9.05 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design/Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

A. *Costs Included.* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Design/Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 10.01.B:

1. Payroll costs for employees in the direct employ of Design/Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design/Builder.

a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this paragraph 10.01.A.1, Design/Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design/Builder unless Owner deposits funds with Design/Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design/Builder shall make provisions so that they may be obtained.

3. Payments made by Design/Builder to Subcontractors (excluding payments for Design Professional Services pursuant to paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design/Builder's Cost of the Work and fee.

4. Payments made by Design/Builder for Design Professional Services provided or furnished under a Design Subagreement.

5. Costs of special consultants (including but not limited to testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

6. Supplemental costs including the following items:

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a. The proportion of necessary transportation, travel and subsistence expenses of Design/Builder's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Design/Builder.

c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design/Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Design/Builder is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of Design/Builder, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Design/Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design/Builder's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. Cost of premiums for all Bonds and insurance Design/Builder is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded.* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design/Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by Design/Builder whether at the Site or in Design/Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.01.A.1, all of which are to be considered administrative costs covered by the Design/Builder's fee.

2. Expenses of Design/Builder's principal and branch offices other than Design/Builder's office at the Site.

3. Any part of Design/Builder's capital expenses, including interest on Design/Builder's capital employed for the Work and charges against Design/Builder for delinquent payments.

4. Costs due to the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.01.A.

C. *Design/Builder's Fee.* When all the Work is performed on the basis of cost-plus, Design/Builder's fee shall be as set forth in the Agreement. When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design/Builder's fee shall be determined as set forth in paragraph 11.01.C.

D. *Documentation.* Whenever the cost of any Work is to be determined pursuant to paragraph 10.01.A and 10.01.B, Design/Builder will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

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10.02 Cash Allowances

A. The Contract Price includes all allowances so named in the Contract Documents. Design/Builder shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Design/Builder agrees that:

1. The allowances include the cost to Design/Builder (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Except as set forth in the Contract Documents, Design/Builder's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Design/Builder on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.03 Unit Prices

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design/Builder will be made by Owner.

B. Each unit price will be deemed to include an amount considered by Design/Builder to be adequate to cover Design/Builder's overhead and profit for each separately identified item.

C. Design/Builder or Owner may make a Claim for an adjustment in the Contract Price in accordance with Article 9 if:

1. the quantity of any item of Unit Price Work performed by Design/Builder differs materially and significantly from the estimated quantity of such item indicated in the Contract Documents;

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Design/Builder believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes it is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party promptly in accordance with paragraph 9.03.A.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 10.03); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.01.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 10.01) plus a Design/Builder's Fee for overhead and profit (determined as provided in paragraph 11.01.C).

C. Design/Builder's Fee: The Design/Builder's fee for overhead and profit on Change Orders shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under paragraphs 10.01.A.1.a and 10.01.A.2, the Design/Builder's fee shall be 15 percent;

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b. For costs incurred under paragraph 10.01.A.3 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Design/Builder's fee shall be five percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.01.C.1 and 11.01.C.2.a is that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor and Design/Builder will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. The amount of credit to be allowed by Design/Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design/Builder's fee by an amount equal to five percent of such net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in Design/Builder's fee shall be computed on the basis of the net change in accordance with paragraphs 11.01.C.2.a through 11.01.C.2.d, inclusive.

11.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to paragraph 9.03.A.

B. *Delays Beyond Design/Builder's Control.* Where Design/Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design/Builder, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Design/Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Design/Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design/Builder's ability to complete the Work within the Contract Times.

D. If Design/Builder is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Design/Builder, then Design/Builder shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Design/Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design/Builder's sole and exclusive remedy for the delays described in this Paragraph 11.02.C.

E. Owner and Owner's Consultant shall not be liable to Design/Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design/Builder on or in connection with any other project or anticipated project.

F. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design/Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design/Builder.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

12.01 Notice of Defects

A. Owner shall give Design/Builder prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

A. Owner, Owner's Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design/Builder shall provide them proper and safe conditions for such access and advise them of Design/Builder's Site safety procedures and programs so that they may comply therewith as applicable.

12.03 Tests and Inspections

A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all

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costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Design/ Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the Work.

B. Design/Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.

C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation at Design/Builder's expense unless Design/ Builder has given Owner timely notice of Design/Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Design/Builder's expense.

B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Design/Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design/Builder may make a Claim therefor as provided in Article 9.

12.05 Owner May Stop Construction

A. If Construction is defective, or Design/Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design/Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design/Builder or any other party.

12.06 Correction or Removal of Defective Construction

A. Owner will have authority to disapprove or reject defective Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with non-defective Construction. Design/Builder shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal.

12.07 Correction Period

A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design/Builder.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial

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Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, removed or replaced under this paragraph 12.07, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 Acceptance of Defective Construction

A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. Design/Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Design/Builder to Owner.

12.09 ***Owner May Correct Defective Construction***

A. If Design/Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction as required by Owner in accordance with paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Construction in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Design/Builder, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design/Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design/Builder's services related thereto, take possession of Design/Builder's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere. Design/Builder shall allow Owner, Owner's Consultant, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this paragraph 12.09 will be charged against Design/Builder and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9.

D. Design/Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 12.09.

ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION

13.01 ***Schedule of Values***

A. The Schedule of Values established as provided in paragraph 2.06.A will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 ***Application for Progress Payment***

A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design/Builder shall submit to Owner for review an Application for Payment filled out and signed by Design/Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

B. Beginning with the second Application for Payment, each Application shall include an affidavit of Design/Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design/Builder's legitimate obligations associated with prior Applications for Payment.

C. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

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13.03 ***Progress Payments***

A. *Procedure.* Progress payments shall be made by the Owner to the Design/Builder according to the following procedure:

1. Owner will, within ten days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design/Builder indicating in writing its reasons for refusing to accept the Application. Not more than ten days after accepting such Application the amount will become due and when due will be paid by Owner to Design/Builder.

2. If Owner should fail to pay Design/Builder at the time the payment of any amount becomes due, then Design/Builder may, at any time thereafter, upon serving written notice that he will stop the Work within seven days after receipt of the notice by Owner, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.

3. Payments due but unpaid shall bear interest at the rate specified in the Agreement.

4. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

B. *Reduction in or Refusal to Make Payment.* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

1. the Construction is defective, or completed Construction has been damaged requiring correction or replacement; or

2. the Contract Price has been reduced by Change Order; or

3. Owner has been required to correct defective Construction or complete Work in accordance with paragraph 12.09.A; or

4. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.A.; or

5. Claims have been made against Owner on account of Design/Builder's performance or furnishing of the Work; or

6. Liens have been filed in connection with the Work, except where Design/Builder has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

7. There are other items entitling Owner to a set off against the amount for which application is made.

C. If Owner refuses to make payment of the full amount requested by Design/Builder, Owner must give Design/Builder immediate written notice stating the reasons for such action and promptly pay Design/Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design/Builder the amount withheld or any adjustment thereto agreed to when Design/Builder corrects to Owner's satisfaction the reason for such action.

13.04 ***Design/Builder's Warranty of Title***

A. Design/Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.05 ***Substantial Completion***

A. When Design/Builder considers the Work ready for its intended use Design/Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design/Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Design/Builder a written determination as to division of responsibilities pending final payment between Owner and Design/Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.

B. Owner will have the right to exclude Design/Builder from the Site after the date of Substantial Completion, but Owner will allow Design/Builder reasonable access to complete or correct items on the list of items to be completed.

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13.06 ***Partial Utilization***

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Design/Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/ Builder's performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design/Builder in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Design/Builder agrees that such part of the Work is substantially complete, Design/Builder will certify to Owner that such part of the Construction is substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Construction. Design/Builder at any time may notify Owner in writing that Design/Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Owner and Design/Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

13.07 ***Final Inspection***

A. Upon written notice from Design/Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design/Builder and will notify Design/Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design/Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.08 ***Final Payment***

A. Application for Payment.

1. After Design/Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in paragraph 6.12) and other documents, Design/Builder may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by paragraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.

3. In lieu of such releases or waivers of Liens specified in paragraph 13.08.A.2 and as approved by Owner, Design/Builder may furnish receipts or releases in full and an affidavit of Design/Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Design/Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Final Payment and Acceptance. If Owner is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within ten days after receipt of the final Application for Payment, give written notice to Design/Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design/Builder, indicating in writing the reasons for refusing to process final payment, in which case Design/Builder shall make the necessary corrections and resubmit the Application.

C. *Payment Becomes Due.* Thirty days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Design/Builder.

13.09 ***Final Completion Delayed***

A. If, through no fault of Design/Builder, final completion of the Work is significantly delayed, Owner shall, upon receipt of Design/Builder's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held

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by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design/Builder to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

13.10 ***Waiver of Claims***

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against Design/Builder, except Claims arising from unsettled Liens, from defective Construction appearing after final inspection pursuant to paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design/Builder's continuing obligations under the Contract Documents; and

2. A waiver of all Claims by Design/Builder against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 ***Owner May Suspend Work***

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design/Builder which will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.

14.02 ***Owner May Terminate for Cause***

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design/Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.06.A as adjusted from time to time pursuant to paragraph 6.05).

2. Design/Builder's disregard of Laws or Regulations of any public body having jurisdiction.

3. Design/Builder's violation in any substantial way of provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 14.02.A occur, Owner may, after giving Design/Builder (and the surety, if any) seven days' written notice, terminate the services of Design/Builder, take possession of any completed Drawings and Specifications prepared by or for Design/Builder (subject to the indemnification provisions of paragraph 3.05.A), exclude Design/Builder from the Site, and take possession of the Work and of all Design/Builder's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Design/Builder (without liability to Design/Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design/Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design/Builder. If such costs, losses and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

C. Notwithstanding paragraph 14.02.B, Design/Builder's services will not be terminated if Design/Builder begins, within seven days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

D. Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability.

14.03 ***Owner May Terminate for Convenience***

A. Upon seven days' written notice to Design/Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design/Builder shall be paid (without duplication of any items) for:

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1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. Amounts paid in settlement of terminated contracts with Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with termination of contracts with Subcontractors, Suppliers and others); and

4. Reasonable expenses directly attributable to termination.

B. Except as provided in paragraph 14.03.C, Design/Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

14.04 ***Design/Builder May Stop Work or Terminate***

A. If, through no act or fault of Design/Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within thirty days after it is submitted or Owner fails for thirty days to pay Design/Builder any sum finally determined to be due, then Design/Builder may, upon seven days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in paragraph 14.03.A. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design/Builder any sum finally determined to be due, Design/Builder may upon seven days' written notice to Owner stop the Work until payment is made of all such amounts due Design/Builder, including interest thereon. The provisions of this paragraph 14.04.A are not intended to preclude Design/Builder from making Claim under Article 9 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design/Builder's stopping Work as permitted by this paragraph.

ARTICLE 15 – DISPUTE RESOLUTION

15.01 ***Methods and Procedures***

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no such method and procedure has been set forth, Owner and Design/Builder may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 16 – MISCELLANEOUS

16.01 ***Giving Notice***

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail, postage prepaid, to the last business address known to the giver of the notice.

16.02 ***Computation of Times***

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.03 ***Cumulative Remedies***

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or

2. any special warranty or guarantee; or

3. other provisions of the Contract Documents.

B. The provisions of paragraph 16.03.A will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 ***Survival of Obligations***

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive

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final payment, completion and acceptance of the Work and termination or completion of the Contract.

16.05 ***Controlling Law***

A. The Contract Documents will be construed in accordance with the law of the place of the Project.

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SUPPLEMENTARY CONDITIONS

SC-1	Definitions
SC-1.01	Definitions
SC-4.02.A	Differing Site Conditions
SC-4.04.A	Hazardous Environmental Condition at Site
SC-4.04.B	Hazardous Environmental Condition at Site
SC-4.04.D	Hazardous Environmental Condition at Site
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SC-5.03.A	Certificates of Insurance
SC-5.04.A	DESIGN/BUILDER's Liability Insurance
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SC-5.04.B.5	DESIGN/BUILDER's Liability Insurance
SC-5.06.A	Property Insurance
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SC-6.19	Indemnification
SC-7.01.C	Related Work at Site
SC-8.05	Resident Project Representative
SC-9.03.A	Claims
SC-10.01.B	Cost of Work
SC-11.01.B.3	Change of Contract Price
SC-11.01.C	Change of Contract Price
SC-11.03	Change of Contract Times
SC-12.06.A	Correction or Removal of Defective Construction
SC-14.02.B	OWNER May Terminate for Cause
SC-16 03.A	Cumulative Remedies
SC-17	Waiver

These Supplementary Conditions amend or supplement the Standard General Conditions of the Contract between the OWNER and DESIGN/BUILDER (EJCDC D-520, 2002 ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1 Definitions

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Contract between the OWNER and the DESIGN/BUILDER (EJCDC D-520, 2002 ed.) have the meanings assigned to them in the General Conditions.

SC-1.01 Definitions

Add the following definition following Item 20: "*Gross Negligence*- Any act or omission which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others."

SC-4.02.A Differing Site Conditions

Add the following additional paragraph: Severe inclement weather shall not constitute a differing Site condition, but will entitle the DESIGN/BUILDER to additional time."

SC-4.04.A Hazardous Environmental Condition at Site

Delete Paragraph 4.04.A in its entirety, replace with the following paragraph 4.04.A "DESIGN/BUILDER will not be responsible for any Hazardous Environmental Condition encountered at the Site except as specifically provided for herein. DESIGN/BUILDER shall be responsible for materials creating a Hazardous Environmental Condition only where such condition is created by DESIGN/BUILDER, Subcontractors, Suppliers or anyone else for whom DESIGN/BUILDER is responsible."

SC-4.04.B Hazardous Environmental Condition at Site
Add the following to the beginning of the first sentence. "Except to the extent a Hazardous Condition is identified as the Work,"

SC-4.04.D Hazardous Environmental Condition at Site
Insert the following paragraphs between paragraph 4.04.D and 4.04.E.
"E. OWNER shall disclose to DESIGN/BUILDER the location and types of any known or suspected toxic, hazardous or chemical materials or wastes existing on or near the premises upon which work is to be performed by Consultants employees or subcontractors. If any Hazardous Wastes not identified by OWNER in the Contract Documents are discovered after this Agreement is executed, the Work, schedule and compensation shall be adjusted upon mutual agreement of OWNER and DESIGN/BUILDER.

F. OWNER acknowledges that DESIGN/BUILDER is performing professional services for OWNER, and that DESIGN/BUILDER is not and shall not become a Potentially Responsible Party (such as an "arranger", "operator", "generator", "transporter", "treator", "storer", "handler", or "disposer" as defined the CERCLA or RCRA,) related to any Hazardous Environmental Condition or any Hazardous Waste which are or may be encountered at or near the Site or in connection with DESIGN/BUILDER'S activities under this Agreement."

SC-4.04.E Hazardous Environmental Condition at Site
Replace paragraph 4.04.E with the following: "G. For claims involving or related to any Hazardous Environmental Condition, pollution, toxic substances or Hazardous Waste and to the fullest extent permitted by Laws or Regulations, OWNER agrees to release, defend, indemnify and hold harmless DESIGN/BUILDER and its officers, directors, employees, agents, and Subcontractors of each and any of them from (1) all liability, (2) claims (including, without limitation, claims of OWNER and other third parties, persons, organizations, or agencies, whether public or private), (3) demands, (4) damages, (5) losses, (6) fines, (7) penalties, and (8) expenses (including without limitation reasonable attorney' s fees, court costs, arbitration costs or other dispute resolution costs) arising out of or resulting from any Hazardous Environmental Condition, provided: (i) that such liability, claim, demand, damage, loss, fine, penalty or expense is not due to the DESIGN/BUILDER'S Gross Negligence or reckless disregard of its obligations under this Agreement; or (ii) that such Hazardous Environmental Condition, pollution, toxic substance or Hazardous Waste was not created by DESIGN/BUILDER or anyone for whom DESIGN/BUILDER is responsible. Such indemnification and release includes claims which arise out of the actual, alleged, or threatened dispersal, escape, or release of chemicals, wastes, liquids, gases or any other material, irritant, contaminant or pollutant (whether sudden or not); indemnification shall also extend to claims or allegations that DESIGN/BUILDER is a "Potential Responsible Party" or to "Environmental Impact Claims" and associated liabilities, including damages assessed DESIGN/BUILDER, including any finding or strict liability or joint and several liability. This indemnification obligation shall survive the completion of termination of this agreement."

SC-5.03.A Certificates of Insurance

Delete the phrase "(and other evidence of insurance requested by OWNER or any other additional insured)" in lines 3-4 and lines 8-9.

SC-5.04.A DESIGN/BUILDER's Liability Insurance

Add the following at the end of the paragraph 5.04.A:

The limits of liability for the insurance required by paragraph 5.04.A of the General Conditions shall provide the following coverage for not less than the following amounts or greater where required by the Laws and Regulations:

1. Worker's Compensation under paragraph 5.04.A
   a. State: Statutory
   b. Applicable Federal (e.g. Longshoreman's): Statutory
   c. Employer's Liability: $500,000
2. Contractor's General Liability Insurance which shall include completed operations and product liability coverages:
   a. General Aggregate (Except Product - Completed Operations): $1,000,000
   b. Products - Completed Operations Aggregate: $1,000,000
   c. Personal and Advertising Injury (per Person/Organization): $1,000,000
   d. Each Occurrence (Bodily Injury and Property Damage): $1,000,000
   e. Limit per person Medical Expense: $5,000
   g. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable
3. Excess / Umbrella liability:
   a. Damage coverage applicable to underlying primary Employer's General and Automobile Liability: Per occurrence and aggregate. $5,000,000
4. Professional (Errors and Omissions) Liability: Coverage for claims arising out of DESIGN BUILDERS negligent acts, errors and omissions. Each claim and annual aggregate: $500,000

SC-5.04.B.5 DESIGN/BUILDER's Liability Insurance

Delete the words "materially changed" from the first sentence.

SC-5.06.A Property Insurance

The Builder's Risk coverage will be provided by the DESIGN/BUILDER.

SC-6.08.A Permits

Delete Paragraph 6.08.A in its entirety replace with the following: DESIGN/BUILDER shall obtain and pay for the following permits: Sedgwick County Building Permit, City of Wichita Building Permit (if required and permit fee shall be waived). Application for and costs associated with acquisition of additional permits shall remain the responsibility of the OWNER. DESIGN / BUILDER shall provide a site assessment for potential environmental and cultural resource permitting. It is anticipated that no additional services will be required. The site assessment may reveal the need to obtain and comply with environmental or cultural preservation permits. Revisions to the scope of work and revisions to the project schedule that are a result of permit requirements determined during the course of the project shall require an adjustment in contract price or contract schedule or both.

SC-6.10 Taxes

Add the following language at the end of paragraph 6.10 of the General Conditions:
"Materials and equipment incorporated into this Project are exempt from the payment of sales tax under the Laws of the State in which the Project is located and such sales tax shall not be included in Project cost. OWNER will provide DESIGN / BUILDER with a proper exemption certificate number within ten days of the date of the Agreement. Should OWNER fail to provide an exemption certificate number within the required time period, DESIGN / BUILDER will be reimbursed monthly for sales tax amounts for which he becomes liable until such certificate number is provided. To minimize DESIGN / BUILDER'S record keeping expense, OWNER will provide an exemption certificate number within 60 days or it shall be presumed that the Project will proceed on a non-exempt basis, and the Contract amount will be equitably adjusted in writing in a lump sum amount sufficient to cover DESIGN / BUILDER'S sales tax expense. Upon issuance of a proper exemption certificate number to DESIGN / BUILDER, DESIGN / BUILDER shall assume full responsibility for his own proper use of the certificate number, and shall pay all costs of any legally assessed penalties relating to DESIGN / BUILDER'S improper use of the exemption certificate number."

SC-6-17.A Submittals
Add the following to the end of the first sentence. "Which shall include 15 days for the OWNER's review and approval"

SC-6.20 DESIGN/BUILDERS General Warranty and Guarantee
Add the following sub-sections:

"C. If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, the OWNER shall promptly notify the DESIGN/BUILDER in writing.

1. Unless the OWNER provides written acceptance of the condition, the DESIGN/BUILDER shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the OWNER discovers and does not promptly notify the DESIGN/BUILDER or give the DESIGN/BUILDER an opportunity to test and/or correct Defective Work as reasonably requested by the DESIGN/BUILDER, the OWNER waives the DESIGN/BUILDER's obligation to correct that Defective Work as well as the OWNER's right to claim a breach of the warranty with respect to that Defective Work.

2. With respect to any portion of Work first performed after Substantial Completion, the one year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the DESIGN/BUILDER.

3. If the DESIGN/BUILDER fails to correct Defective Work within a reasonable time after receipt of written notice from the OWNER prior to final payment, the OWNER may correct such Defective Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the DESIGN/BUILDER. If payments then or thereafter due DESIGN/BUILDER are not sufficient to cover such amounts, the DESIGN/BUILDER shall pay the difference to the OWNER.

4. If after the one-year correction period but before the applicable limitation period the OWNER discovers any Defective Work, the OWNER shall, unless the Defective Work requires emergency

correction, promptly notify the DESIGN/BUILDER. The DESIGN/BUILDER and OWNER shall mutually agree upon whether the DESIGN/BUILDER shall complete the correction of Work. If DESIGN/BUILDER and OWNER agree that the DESIGN/BUILDER will correct the Defective Work, the DESIGN/BUILDER and OWNER shall mutually agree upon the nature of the corrective action to be taken and the allowable time frame for effecting such action. If the DESIGN/BUILDER does not correct the Work, the OWNER may have the Work corrected by itself or by others and charge the DESIGN/BUILDER for the reasonable cost of the correction. OWNER shall provide DESIGN/BUILDER with an accounting of correction costs it incurs.

5. If the DESIGN/BUILDER's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, the DESIGN/BUILDER shall be responsible for the cost of correcting the destroyed or damaged construction.

6. The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the DESIGN/BUILDER's other obligations under the Contract Documents or the OWNER's rights under any applicable statute of limitations.

7. Prior to final payment, at the OWNER's option and with the DESIGN/BUILDER's agreement, the OWNER may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted."

SC-6.21 Indemnification
Delete "including loss of use resulting there from" from lines twelve and thirteen of this paragraph.

7.10.C Related Work at the Site
Replace the word "promptly" with the word "timely" in line 5. Delete the last sentence in its entirety.

SC-9.03.A Claims
Replace the phrase "after the start of the occurrence or event giving rise to the Claim" with the phrase "after failure to reach agreement."

SC-10.01.B Cost of Work
The exclusions provided for in B.1 and B.2 shall not be applicable to personnel whose efforts are directly related to the Work.

SC-10.01.C Cost of Work
Add a new paragraph: 3. Where Engineering services are provided; the fee would be a multiplier of 3.3 times the direct cost of such services.

SC-11.01.B.3 Change of Contract Price.
Add the following words after 11.01.B.2…….change in contract price shall be determined….

SC-11.02.D Change of Contract Times
Change to read as follows. "If DESIGN/BUILDER is delayed in the performance or progress of the work by fire, flood, epidemic, abnormal weather conditions, acts of God, war, shortage, civil unrest, failures to act of utility OWNER's not under the control of OWNER, or other causes not the fault of or under control of the OWNER and DESIGN/BUILDER, then DESIGN/BUILDER shall be entitled to an equitable adjustment of Contract Time or Contract Price or both.

SC-12.06.A Correction or Removal of Defective Construction
Delete the phrase “indirect, and consequential” in line 10.

SC-14.02.B OWNER May Terminate for Cause
Delete the fourth and sixth sentence in paragraph 14.02.B

SC-16.03.A Cumulative Remedies
Delete paragraph 16.03.A and replace with the following: “These obligations and remedies stated herein are the sole and exclusive obligations of DESIGN/BUILDER and remedies of OWNER, whether liability of DESIGN/BUILDER is based on contract, warranty, strict liability, tort (including negligence), indemnity or otherwise.”

SC-17 Waiver
Add the following provision:
"Consequential Damages: In no event will DESIGN/BUILDER be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of OWNER, or governmental fines or penalties.

Limitation of Liability: The DESIGN/BUILDER'S aggregate liability for all damages connected with its services for the Project will not exceed the compensation paid under this Agreement. The obligations and remedies state in this Agreement are the sole and exclusive obligations of DESIGN/BUILDER and remedies of OWNER, regardless of the cause of action pled including, without limitation, negligence of every character."

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.

WORK DESCRIPTION

01000 GENERAL CONDITIONS

- Supervision, Administrative Costs, Temporary Facilities.
- No Sales or Use Tax included, Owner to provide Exemption Certificate for Project.
- No Building Permits and/or Fees included for Local Government.
- Cost for electrical consumption during construction included.
- No cost for water consumption during construction.
- Storm Water Pollution Plan and permit fees are included.
- Builders Risk insurance is provided
- Design services are included
- Civil testing lab services include soil compaction, concrete compressive strength, sieve analysis for well design, and resistivity.
- Performance Bond is provided for construction cost only, design cost is excluded.
- No Owner's Protective insurance is included.
- Existing access roads to well sites will be restored to original condition following construction. New access roads will be constructed as indicated.
- Startup / Testing of systems is includes well pumps electrical systems and SCADA communications..
- No boundary survey is provided.
- No easement descriptions or property acquisition is provided.
- Site assessment for potential cultural and environmental permitting is included. It is anticipated that no additional services will be required. The site assessment may reveal the need to obtain and comply with environmental or cultural preservation permits. Costs associated with revisions to the scope of work or schedule proposed herein that result from the site assessment will necessitate an adjustment in price or schedule or both.
- Cost of any upgrade to the utility owned power distribution to the central control platform is excluded.
- The existing central control platform will be reused, as it provides excellent protection from small arms fire. A masonry block wall will be added to the east side of the existing platform to extend the protection. It is assumed that its elevation is above the 100 year flood plain. Hydrologic evaluation of the 100 year flood plain elevation will be conducted during the design phase to verify this assumption. Cost to modify the existing platform or modify the design and construction due to the 100 year flood elevation is excluded.
- Existing barbed wire fence will be restored where disturbed by Design Builders activities.
- Proposal is based on receiving notice of award within 45 days of proposal submittal. After 45 days prices may be subject to escalation.

- Standard 1-year warranty is provided.
- Design Builder does not warrant that wells will yield 1600 gpm.

01005 ALTERNATES

1. Base proposal is based on utilizing the existing 30" valve located west of 151st Street to isolate the Bentley Reserve Well Field. A new 30 inch valve will be installed east of 151st Street and the existing pipe crossing 151st Street will remain in service. In the event the existing valve cannot be closed then the existing 66-inch pipeline will be dewatered and the existing valve will be replaced. In either case the existing 30-inch pipeline crossing 151st Street will be reused.
2. Base proposal for well construction includes: 20-inch splined PVC casing , 20-inch splined slotted PVC pipe for screen. Pump is standard cast iron / bronze fitted steel construction 3600 rpm standard motor construction. Drop pipe is 8-inch CertiLok, discharge head is epoxy coated carbon steel.
3. Alternate 1 includes 17.4" CertiLok PVC casing, 16-inch stainless steel wire wrapped screen. Pump is standard cast iron / bronze fitted steel construction 3600 rpm standard motor construction. Drop pipe is 8-inch CertiLok, discharge head is epoxy coated carbon steel.
4. Alternate 2 includes 16-inch low carbon steel casing 16-inch stainless steel wire wrapped screen. Pump is standard cast iron / bronze fitted steel construction 3600 rpm standard motor construction. Drop pipe is 8-inch epoxy coated steel, discharge head is epoxy coated carbon steel.
5. Alternate 3 includes addition of pressure transducers to transmit water level in each well.
6. Alternate 4 includes assisting the City in dewatering the 66-inch raw water transmission line in the event that the existing 30-inch valve cannot be closed.
7. Alternate 5 includes 2 years of data collection and reporting and installation of data loggers.

01010 SPECIAL SITE CONDITIONS

- Geotechnical information was not provided. All pricing assumes no rock excavation or dewatering will be necessary.
- Costs for handling or remediation hazardous or special waste or contaminates soils have not been included.
- Trees and brush will be cleared to a maximum of 20-feet each side of pipeline alignments. Debris will be chipped and wasted on site.
- Trees and brush will be cleared to a maximum of 10-feet each side of buried electrical conduits. Debris will be chipped and wasted on site.

- Valve vaults and Meter vaults shall be permit required confined spaces and signed as such. No permanent lighting or ventilation is provided.

01015 OWNER FURNISHED ITEMS

- USGS Gaging station and SCADA interface will be provided by others.
- Local building permits fees to be waived by City.
- Signage identifying confined space and permit requirements for valve vaults and meter vaults.
- Costs associated with upgrade an installation of primary power to the existing control platform.

02050 DEMOLITION - GENERAL

- Existing wells to be abandon per attached GMD #2 Abandonment details dated April 23 2004, except that the existing well casings will not be perforated prior to grouting.
- Existing soil berms to be removed and material wasted on site at a location to be determined by Design Builder.
- Existing structures to be knocked down 36-incheds below grade and filled compacted clay. Waste material to be disposed of on site.
- Existing electrical gear and conduits to be demolished from existing transformer station.
- Existing buried electrical conduits will be abandon in place.
- Existing waterlines will be plugged with concrete where breached by Design Builders activities. Otherwise existing water lines will be abandon in place.
- City staff indicates that all existing down hole equipment has been removed from the existing wells. Therefore, removal of down hole equipment is excluded.

02275 TRENCH EXCAVATION / BACKFILL

- Native material will be used for backfill and bedding.
- Backfill compaction around pipe to 2’ above pipe 95%, to 90%, for the balance of the trench depth.
- Trench will maintain a minimum cover of 42-inches over water lines and 30 inches over electrical conduit.

02510 PRESSURE PIPE

- Exposed interior and exterior piping – Ductile Iron, cement mortar lined
- Buried Piping 24 inches and less C905 PVC.
- Buried Piping 30 inches and greater, cement mortar lined ductile iron.
- Pipe restraint by thrust blocking.

02515 VALVES AND ACCESSORIES

• AWWA Butterfly valves	Exposed in vault	8-inch (6)
	Buried in yard	8-inch (12)
• Check valves	Exposed in Vault	8-inch (6)
• Air / Vacuum Valves	2 - inch (6) One provided at each well	
• Drain valves	½ - inch (6)	

02521 WATER WELL DRILLING, CONSTRUCTION AND TESTING

- Drill 6 water supply wells
    - Depth 135 feet
    - 20-inch PVC casing
    - 50 feet of 20-inch slotted PVC screen
    - 34-inch bore
    - 20 feet of 36-inch surface casing
    - Designed for 1600 gpm
- Perform final design of gravel pack, screen slot size and screen placement based on test boring information
- Perform aquifer test on 4 bank storage wells (one – 7-day, three – 3-day tests)
- Perform 24-hour well acceptance tests on non-bank storage wells (two tests)
- Well head completion including well head piping, concrete surface pad, junction box for motor wiring, airline and sounding access, and well vents.
- Abandon 6 existing wells according to state and GMD2 regulations except that well casings will not be perforated prior to grouting.

02522 TEST BORINGS

- Drill 6 pilot (test) holes at well location
- Obtain geophysical logs including resistivity, spontaneous potential and gamma logs
- Obtain formation samples
- Perform grain-size analysis on select samples (up to 6 per boring)

02523 PIEZOMETERS

- Complete pilot holes as permanent monitoring well near each production well
- Complete three permanent regulatory monitoring wells
- Complete two permanent deep monitoring wells for City
- Install 5 additional temporary piezometers for the 7-day bank storage well test
- Install 1 additional temporary piezometer at each of the remaining three bank storage wells
- Construct permanent monitoring wells with 2-inch PVC, a steel protective casing at the surface with bumper posts and a 3-foot diameter concrete pad
- Construct temporary piezometers with 2-inch protective casing

- Abandon temporary piezometers according to state and GMD2 regulations after the aquifer and acceptance tests

02560 SITE UTILITIES

- Potable water is excluded.
- Power- Primary power will be provided by the power utility to the existing transformer station. Pole mounted transformers will be provided by the power utility. The existing control station structure will be reused. Design Builder will furnish and install secondary power from the existing control station to the well sites. Any cost associated with upgrades to the utility's distribution system to deliver power to the existing control station are excluded.

02625 PAVING

- Existing roads will be restored to original condition then topped with 2 inches of course sand. New roads will be constructed as indicated.

02820 FENCING

- Existing barbed wire fence will be repaired where breached. No new fencing is included.

03100 FORMWORK

- Exterior Form work
- Fill any repairable honeycomb; patch all tie holes.
- No architectural rubbed or grouted finish is included.
- No paint provided on finished concrete surfaces.
- Joint may be noticeable, but not protruding.
- 10-foot by 10-foot concrete pads will be provided at each well head
- 36-inch diameter concrete pad will be provided at each permanent monitoring well site.

03200 REINFORCING

- ASTM A615 Grade 60 – No epoxy coating provided.

03300 CONCRETE

- All concrete for this project shall have a minimum compressive strength of 4,500 psi at 28 days and meet the latest ACI code and the requirements of ASTM C94.
- Bonding agent shall be moisture-insensitive, epoxy-resin bonding agent conforming to ASTM C881.
- Neat cement for well abandonment will be a 21 sack mix.

03350 CONCRETE FINISH

- Broom finish for all exterior slabs.

05500 MISCELLANEOUS METALS

- Retractable / lockable ladder at transformer station.
- Lockable manhole covers at valve and meter vaults.
- Aluminum surfaces in contact with concrete shall have bituminous coating.

09900 FINISHES

- Exposed piping and valves, 2 coats high solids amine or polyamidoamine epoxy coating.
- Bituminous damp proofing for valve and meter vaults.

11313 SUBMERSIBLE WELL PUMPS

- Six (6) pumps, 1600 gpm @ 140ft TDH / 75 HP max .
- Pressure gauges with stopcocks installed on discharge lines at valve vault.

15110 PIPE SUPPORTS

- Hangers and pedestals as required for adequate support per standard practice.

16010 GENERAL ELECTRICAL REQUIREMENTS

- All work to be completed per the National Electric Code.
- Electrical distribution equipment is based on one-line diagram Figure 3.
- Power will be distributed from the existing control station. Motor starters and associated controls will be installed at this structure. Motor feeders for the wells will be routed from this structure to each will site. Well sites will have a junction box for splicing to submersible motor cable. Splices will be made water-proof.
- All existing electrical equipment will be removed from the existing control station.
- Coordinate replacement of utility transformer(s) with Westar.

16111 CONDUIT, FITTINGS, AND ACCESSORIES

- Work includes trench, excavation and backfill for conduit.
- Below grade conduit will be direct buried PVC Schedule 40.
- In ground polymer concrete hand holes provided as required to install cable.
- Exposed conduit will be aluminum.

16120 WIRE, CABLE, AND ACCESSORIES

- Ground cable shall be annealed, bare copper.
- Power and control wire shall be THHN/THWN.

- Instrument cable shall be shielded twisted pair with PVC insulation and jacket.

16450 GROUNDING

- New ground system will be installed at the existing control station.

16480 MOTOR CONTROL CENTER

- 480Y/277 volt, 3-phase, 4-wire.
- NEMA 3R non walk-in enclosure.
- Autotransformer type reduced voltage motor starters for well motors.
- 120/240 volt lighting panel mounted in the motor control center.
- Transitent voltage surge suppression provided.
- Door status contacts provided.
- 3-phase voltage monitor provided.

16500 LIGHTING DEVICES, SWITCHES, AND RECEPTACLES

- All lighting, switches and receptacles shall be replaced at the control station.
- Control station lighting shall be quartz flood light controlled by a light switch.
- Lights and receptacles installed at the well heads are not included.

16750 RADIO SCADA SYSTEM AND EQUIPMENT

- Licensed MDS 9710A radio provided for communication with the City's existing SCADA system.
- Forty foot radio tower with yagi antenna to communicate with master radio at City Hall.
- Radio shall be installed in PLC Control Panel.
- Antenna and associated cable for USGS remote terminal unit.
- USGS remote terminal unit is not included in scope. Required wiring for power, control and communication to this panel is included.

16901 CONTROL PANELS

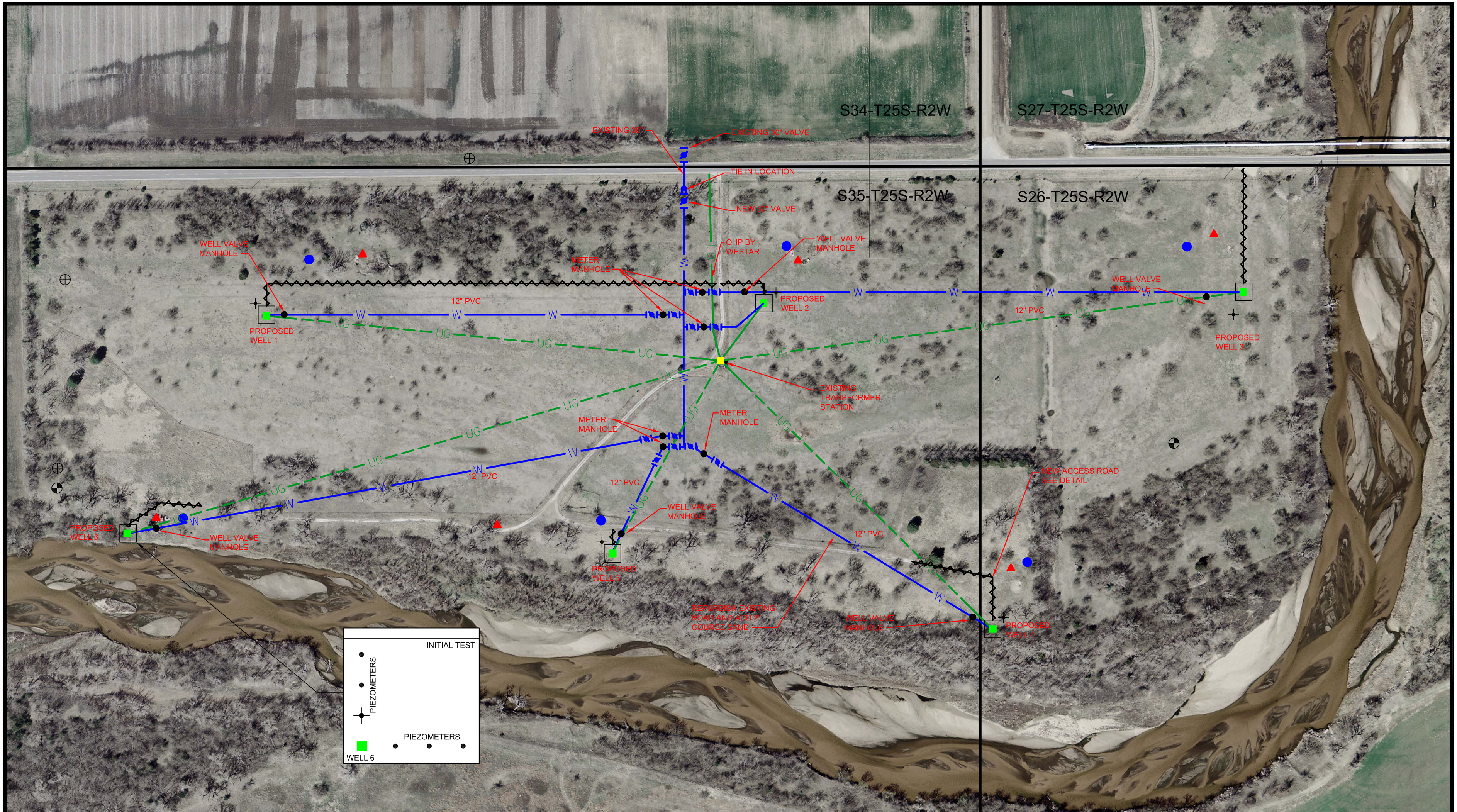
- NEMA 4 painted steel, lockable control panel.
- Automation Direct PLC provided for well field control and status monitoring.
- DC UPS provided for PLC Control Panel.
- Door status switch provide for panel.

16902 MEASURING AND CONTROLLING INSTRUMENTS AND LOOPS

- Includes installation of all instruments.
- 8-inch magnetic flow meter provided for each well.
- Submergence rated flow tube.
- Kansas Division of Water Resources approved flow meter.
- Flow transmitters mounted in PLC Control Panel.
- Alternate provided for submersible pressure transducer to monitor well level. Alternate includes digital displays mounted in face of PLC control Panel.

16904 CONTROL DESCRIPTIONS AND SYSTEM PROGRAMMING

- PLC programmed to control and monitor status of each well. Points to be monitored and controlled:
    - Start/Stop.(each well)
    - Remote Status (each well)
    - Run Status (each well)
    - Pump Fail.(each well)
    - Flow Rate (each well)
    - Well Level (each well) Included in Alternate
    - Utility Power Failure
    - PLC Panel Power Failure
    - DC UPS Failure
    - Motor Control Center Door Open
    - PLC Control Panel Door Open
    - USGS River Level/Flow Rate
- HMI screen developed and installed on City's Wonderware Archestra system to provide control and indicate status of wells.
- Flow rates, flow totals and run times from each well and from the well field will be displayed on the HMI screen and recorded to the historical database.
- Interface with USGS radio included.
- Programming for USGS level to flow rate conversion included.
- Report generation is not included in scope.



LEGEND

- WATERLINE
- POWERLINE
- SITE ACESS - SEE DETAIL
- SECTION LINE
- PROPOSED WELLS (RFP LOCATION)
- ABANDONDED WELL
- PERMITTED WELL LOCATION
- DWR MONITORING WELL
- DEEP MONITORING WELL
- PERMANENT PIEZOMETER
- TEMPORARY PIEZOMETER

BENTLEY WELL FIELD

0 100' 200'
SCALE IN FEET

NORTH

NOTE
1. WELL 6 CONSTRCTED FIRST AND TESTED FOR 7 DAYS.
2. BANK STORAGE WELLS NO. 3, NO.4 AND NO. 5 SCHEDULED FOR 3 DAY PUMPS TESTS.

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FIGURE 1
BENTLEY WELL FIELD
SITE LAYOUT

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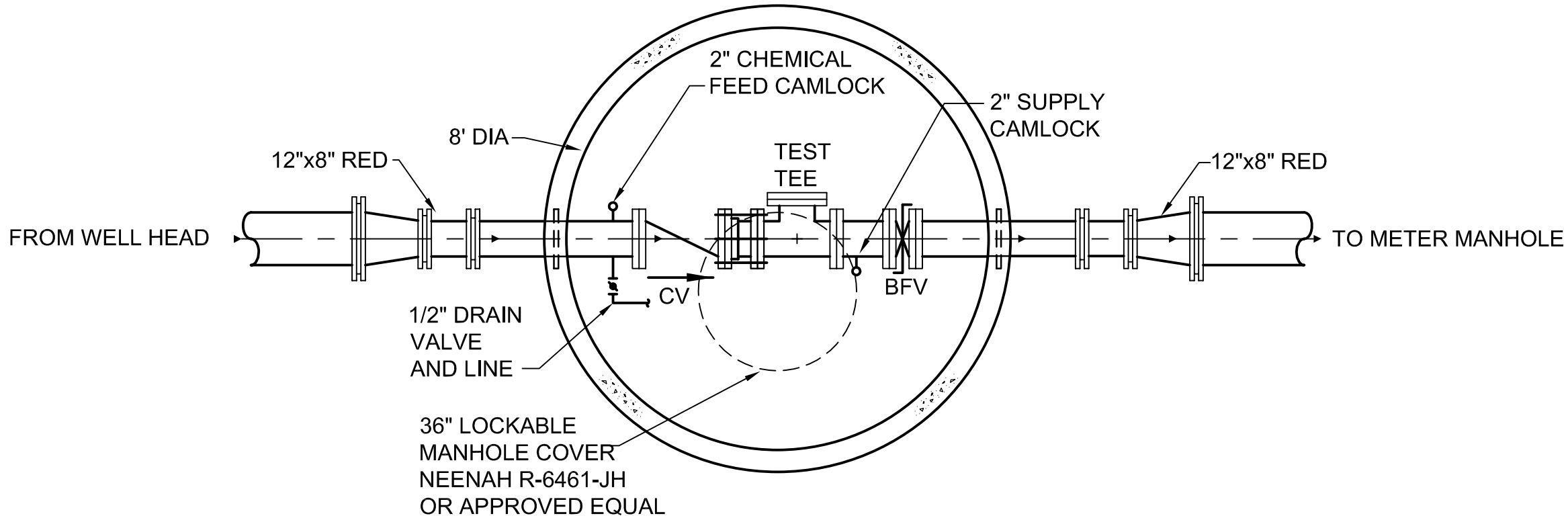
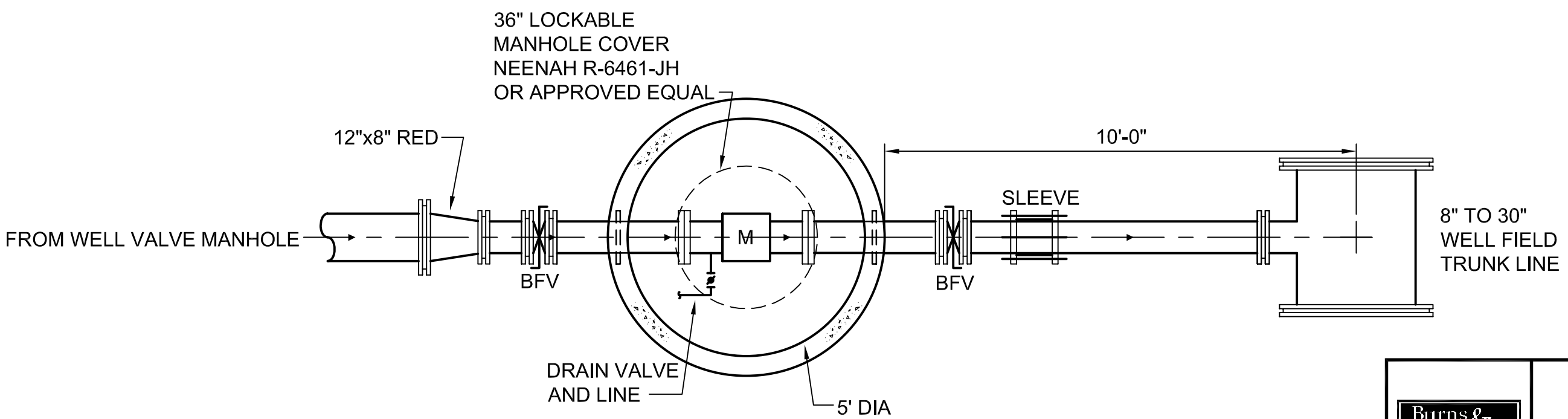


WELL VALVE MANHOLE PLAN

(TYP OF 6 REQUIRED)



METER MANHOLE PLAN

(TYP OF 6 REQUIRED)

Figure_2

BENTLEY WELLFIELD
MANHOLE DETAILS

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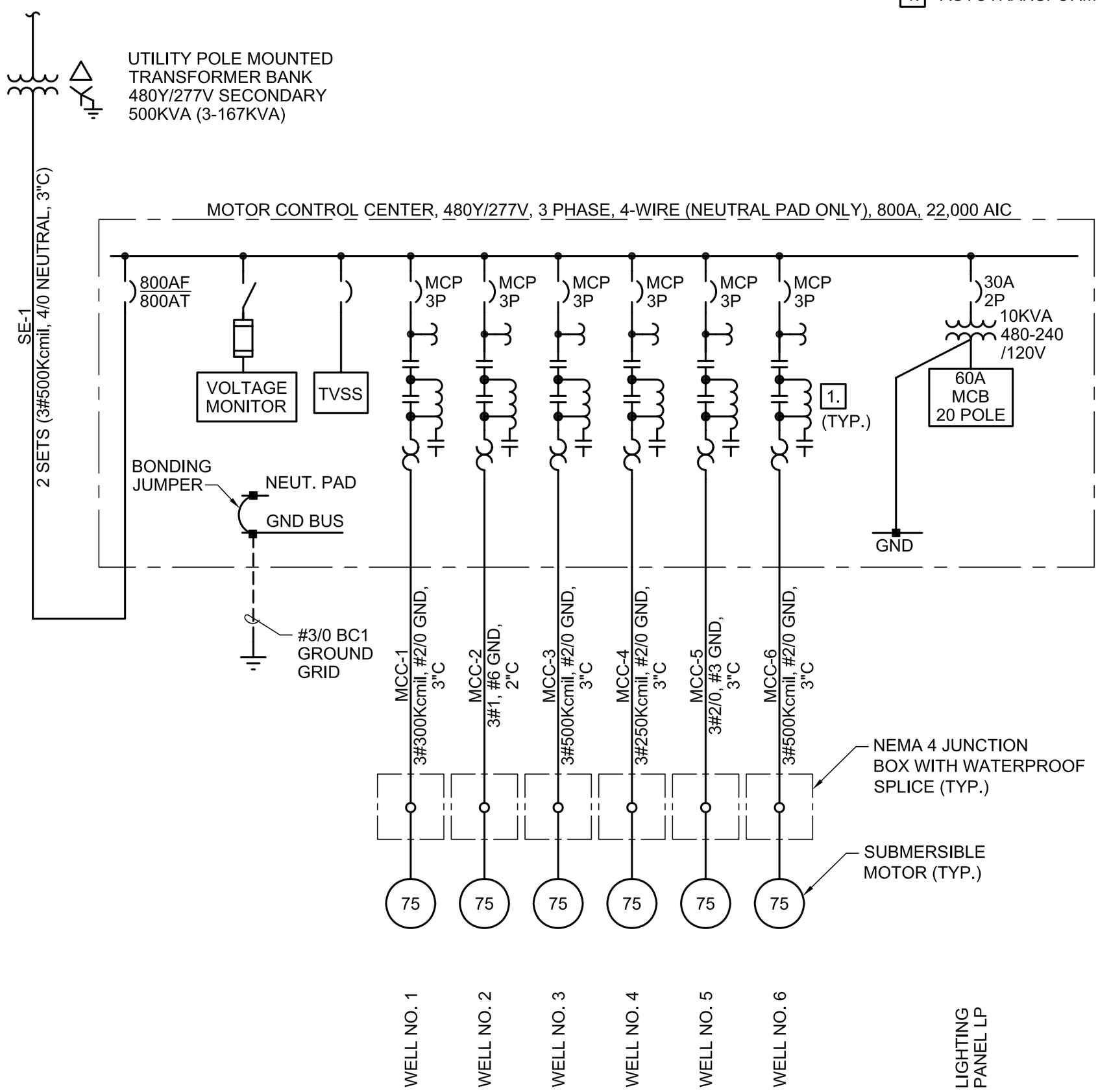
J:\WICHITA\49386\FIGURE2.DWG 06-06-2008 9:45 DPCOX

300

NOTES:

1. AUTOTRANSFORMER TYPE MOTOR STARTER.



ONE-LINE DIAGRAM

PRELIMINARY - NOT FOR CONSTRUCTION

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Figure 3

BENTLEY WELLFIELD
ONE-LINE DIAGRAM

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Second Reading Ordinances for September 23, 2008: (First Read September 16, 2008)

Forgivable Loan Agreement and City-County Economic Development Agreement, Cessna Columbus Project. (Districts III and IV)

ORDINANCE NO. 47-996

An ordinance of the city of Wichita, Kansas authorizing the issuance of its general obligation bonds to pay certain costs incurred in connection with Cessna Columbus project; and authorizing, prescribing the form and authorizing the execution of a forgivable loan agreement and promissory note by and between Cessna Aircraft Company and the city of Wichita, Kansas.

City of Wichita Taxable Industrial Revenue Bonds, Amendment to Bond Purchase Agreement, BeautyFirst, Inc. Project. (District II)

ORDINANCE NO. 47-997

An Ordinance authorizing execution and delivery of first amendment to bond purchase agreement.