

## Table of Contents

Agenda . . . . .	4
IV-2. Petition to Approve a Community Improvement District for Kellogg and Ridge. (District IV)	
Agenda Report No IV-2 . . . . .	12
CID Petition . . . . .	14
Resolution No. 15-161 . . . . .	21
IV-3. Adoption of the 2012 International Residential Code.	
Agenda Report No. IV-3. . . . .	26
Ordinance No. 50-023. . . . .	28
Delineated Ordinance. . . . .	39
Attachment A 2012 Intl Code Adoption . . . . .	54
IV-4. Repair or Removal of Dangerous and Unsafe Structures.(Districts I, III, and IV)	
Agenda Report No. IV-4. . . . .	57
MABCD Supporting Document Writeups Condemnations . . . . .	59
MABCD Supporting Document Summary Table Spreadsheet Condemnations . . . . .	70
II-1. Report of Board of Bids and Contracts dated June 8, 2015.	
Agenda Report No. II-1 . . . . .	71
II-3. Preliminary Estimates.	
Agenda Report No. II-3 . . . . .	80
II-4a. Kellogg, Cypress to Wiedemann, Kellogg and Webb Interchange – Westar Relocation Agreement No. 2. (District II)	
Agenda Report No. II-4a . . . . .	82
Supporting Documents . . . . .	83
II-5a. Supplemental Design Agreement No. 2 for Improvements to Tyler Road, 29th to 37th Streets North. (District V)	
Agenda Report No. II-5a . . . . .	84
Supporting Documents . . . . .	85
II-5b. Supplemental Design Agreement for the Emporia and St. Francis Relief Sewer Project. (District VI)	
Agenda Report No. II-5b . . . . .	88
Supporting Documents . . . . .	89
II-6a. Change Order No. 4 for Redbud Multi-Use Path. (District I)	
Agenda Report No. II-6a . . . . .	96
Supporting Documents . . . . .	98
II-6b. Change Order No. 5 for Improvements to William, Main to Emporia. (District I)	
Agenda Report No. II-6b . . . . .	100
Supporting Documents . . . . .	102
II-8. Contracts and Agreements for May 2015.	
Agenda Report No. II-8 . . . . .	103
II-9. Senior Management Expense Report for the Quarter Ended March 31, 2015.	

Agenda Report No. II-9 . . . . .	105
II-10. Correcting Resolution for Water Distribution System in Krug South Addition. (District II)	
Agenda Report No. II-10 . . . . .	106
Resolution No. 15-166 . . . . .	107
II-11. Construction Funding for the 17th Street and Oliver Avenue Waterline Installation and Replacement, Wichita State University Innovation Campus. (District I)	
Agenda Report No. II-11 . . . . .	110
MAP . . . . .	111
Resolution No. 15-167 . . . . .	112
NOI 2015 W-55 . . . . .	114
II-12. Funding for Waterline Relocation for Kellogg and I-235 Interchange Improvements. (District IV)	
Agenda Report No. II-12 . . . . .	115
Supporting Documents . . . . .	116
Resolution No. 15-168 . . . . .	118
NOI 2015 W-56 . . . . .	120
II-13. Nuisance Abatement Assessments, Lot Clean Up. (Districts I, III, IV and VI)	
Agenda Report No. II-13, Property List and Ordinance 50-024. . . . .	121
II-14. Novation of Contract.	
Agenda Report No. II-14 . . . . .	125
Contract Amendment . . . . .	126
II-15. Partial Loan Forgiveness Request, Home Repair Program.	
Agenda Report No. II-15 . . . . .	127
II-16. Partial Loan Forgiveness Request, Historic Revolving Loan Program.	
Agenda Report No. II-16 . . . . .	129
II-17. Purchase of Paratransit Vans.	
Agenda Report No. II-17 . . . . .	131
Paratransit Van Contract . . . . .	132
II-18. Assignment of Lease and Documents Related to Sale of Old Town Marriott Courtyard Hotel. (District VI)	
Agenda Report No. II-18 . . . . .	139
Final Resolution No. 15-169 . . . . .	141
Final Assignment-Old Town Marriott . . . . .	145
Final Second Amend to Lease - Old Town Lodging . . . . .	156
II-19. Second Reading Ordinances.	
II-19 Agenda Report No. II-19. . . . .	231
II-20. *PUD2015-00003 – Zone Change From TF-3 Two-Family Residential, B Multi-Family Residential, GO General Office and GC General Commercial to the Planned Unit Development (PUD#45) District on Property Located East of South Clifton Avenue and South of East Morris (Lincoln) Street, 3700 East Lincoln. (District III)	
Agenda Report No. II-20 . . . . .	232

Ordinance No. 50-025 . . . . .	235
DAB Report PUD2015-03. . . . .	237
PUD2015-00003 5-7-15 MAPC MIN EXCERPT. . . . .	238
II-21. *Multi Business Services, Corp. - Specialty Customer Services Concessions Agreement - Wichita Dwight D. Eisenhower National Airport.	
Agenda Report No. II-21 . . . . .	246
MBS FINAL optimized_Part2 . . . . .	247
II-22. *WAA Report of Board of Bids and Contracts dated June 8, 2015.	
Agenda Report No. II-22 . . . . .	289

**FINAL**  
**CITY COUNCIL**  
**CITY OF WICHITA**  
**KANSAS**

City Council Meeting  
09:00 a.m. June 9, 2015

City Council Chambers  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on June 2, 2015

---

**AWARDS AND PROCLAMATIONS**

- Proclamations:  
Beta Kappa Omega 80th Anniversary  
Dr. John H. Wilson Day
- Service Award for former Park Board Members:  
Bryan Frye and Tom Roth

**I. PUBLIC AGENDA**

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city clerk prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

None

---

**II. CONSENT AGENDAS ITEMS 1 THROUGH 22**

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)*

**\*\*\*WORKSHOP TO FOLLOW\*\*\***

**COUNCIL BUSINESS**

**III. UNFINISHED COUNCIL BUSINESS**

None

**IV. NEW COUNCIL BUSINESS**

**1. Petition to Approve a Community Improvement District for Kellogg and West. (District IV)**

**(PULLED PER PETITIONER)**

**2. Petition to Approve a Community Improvement District for Kellogg and Ridge. (District IV)**

RECOMMENDED ACTION: Accept the petition and adopt the resolution setting a public hearing on July 7, 2015 for consideration of the establishment of a Community Improvement District.

**3. Adoption of the 2012 International Residential Code.**

RECOMMENDED ACTION: Place on first reading the ordinance amending Article 2 of the Unified Building and Trade Code (UBTC) with the adoption of the 2012 Edition of the International Residential Code and authorize the necessary signatures.

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

**4. Repair or Removal of Dangerous and Unsafe Structures. (Districts I, III, and IV)**

<u>Property Address</u>	<u>Council District</u>
a. 1639 S. Lulu	I
b. 2011 N. Kansas	I
c. 6048 S. Hydraulic	III
d. 6109 S. Osage	IV

RECOMMENDED ACTION: Close the public hearing, adopt the resolutions declaring the building a dangerous and unsafe structure, and accept the BCSA recommended action to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structure. Any extensions of time granted to repair the structure would be contingent on the following: (1) All taxes have been paid to date, as of June 9, 2015; (2) the structure has been secured as of June 9, 2015 and will continue to be kept secured; and (3) the premises are mowed and free of debris as of June 9, 2015, as will be so maintained during renovation.

---

**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. NON-CONSENT PLANNING AGENDA**

None

**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. **Carole Trapp Housing Member is also seated with the City Council.**

**VI. NON-CONSENT HOUSING AGENDA**

None

**AIRPORT AGENDA**

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

**VII. NON-CONSENT AIRPORT AGENDA**

None

---

**COUNCIL AGENDA**

**VIII. COUNCIL MEMBER AGENDA**

None

**IX. COUNCIL MEMBER APPOINTMENTS AND COMMENTS**

1. Board Appointments.

RECOMMENDED ACTION: Approve the appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 22)

**II. CITY COUNCIL CONSENT AGENDA ITEMS**

1. Report of Board of Bids and Contracts dated June 8, 2015.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2015</u>	<u>(Consumption on Premises)</u>
Eduardo C Sebastain	La Chinita Mexican Restaurant**	1451 North Broadway
Roberto Beltran	Tacos Mexican Food**	1533 South Seneca
Juan Alejandro	Poblano's**	343 South Greenwich Road #101
<u>Renewal</u>	<u>2015</u>	<u>(Consumption off Premises)</u>
Thanh Kim Do	KC Gas and Grocery***	1102 West Maple
Chaomin Hsu	Banana Bakery***	2290 South Oliver
Kevin Schemm	Dillons #272***	10304 West 13th
Mandeep Sira	Flying Eagle***	3405 South West Street
Dalsukh M Parmar	Friend's Corner***	1131 East 47th South
Harinderpal Sira	Flying Eagle 1***	277 South Ridge Road
Kevin Hess	Kwik Shop #790***	3750 North Maize Road
Terry Williams	Quik Trip #356R***	1623 East 47th

\*\*General/Restaurant (need 50% or more gross revenue from sale of food)

\*\*\*Retailer (Grocery stores, convenience stores, etc.)

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

3. Preliminary Estimates:

- a. List of Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.

4. Agreements/Contract:

- a. Kellogg, Cypress to Wiedemann, Kellogg and Webb Interchange – Westar Relocation Agreement No. 2. (District II)

RECOMMENDED ACTION: Approve the agreements/contracts and authorize the necessary signatures.

5. Design Services Agreements:

- a. Supplemental Design Agreement No. 2 for Improvements to Tyler Road, 29th to 37th Streets North. (District V)
- b. Supplemental Design Agreement for the Emporia and St. Francis Relief Sewer Project. (District VI)

RECOMMENDED ACTION: Approve agreements/contracts, adopt the resolution and authorize the necessary signatures.

6. Change Orders:

- a. Change Order No. 4 for Redbud Multi-Use Path. (District I)
- b. Change Order No. 5 for Improvements to William, Main to Emporia. (District I)

RECOMMENDED ACTION: Approve the change orders and authorize the necessary signatures.

7. Minutes of Advisory Boards/Commissions

Bicycle and Pedestrian Advisory Board, April 13, 2015  
Deferred Compensation Board, February 19, 2015  
Wichita Employees' Retirement System, April 15, 2015  
Police and Fire Retirement System, April 15, 2015

RECOMMENDED ACTION: Receive and file.

8. Contracts and Agreements for May 2015.

RECOMMENDED ACTION: Receive and file.

9. Senior Management Expense Report for the Quarter Ended March 31, 2015.

RECOMMENDED ACTION: Receive and file.

10. Correcting Resolution for Water Distribution System in Krug South Addition. (District II)

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

11. Construction Funding for the 17th Street and Oliver Avenue Waterline Installation and Replacement, Wichita State University Innovation Campus. (District I)

RECOMMENDED ACTION: Approve the project and budget, adopt the resolution, and authorize all necessary signatures, including those for the acquisition or granting of easements, required permits, and all related agreements.

12. Funding for Waterline Relocation for Kellogg and I-235 Interchange Improvements. (District IV)

RECOMMENDED ACTION: Approve the revised budget, adopt the resolution, and authorize all necessary signatures, including those for the acquisition or granting of easements, and all required permits and agreements.

13. Nuisance Abatement Assessments, Lot Clean Up. (Districts I, III, IV and VI)

RECOMMENDED ACTION: Approve the proposed assessments and place the ordinance on first reading.

14. Novation of Contract.

RECOMMENDED ACTION: Approve the Contract Amendment accepting a novation due to a merger.

15. Partial Loan Forgiveness Request, Home Repair Program.

RECOMMENDED ACTION: Approve the partial loan forgiveness request, with all net proceeds from the approved sale to be paid to the City, and authorize the necessary signatures.

16. Partial Loan Forgiveness Request, Historic Revolving Loan Program.

RECOMMENDED ACTION: Approve the partial loan forgiveness request, with all proceeds from the approved sale to be paid to the City, and authorize the necessary signatures.

17. Purchase of Paratransit Vans.

RECOMMENDED ACTION: Approve the selection of Kansas Truck and Equipment Co., Inc. for the purchase of up to 50 paratransit vans over the next five years and approve the order of nine paratransit vans in 2015.

18. Assignment of Lease and Documents Related to Sale of Old Town Marriott Courtyard Hotel. (District VI)

RECOMMENDED ACTION: Adopt the resolution authorizing the City of Wichita to 1) consent to the assignment of a lease and related documents by Old Town Lodging, LLC (the "Tenant") to Ashford Wichita LP, 2) consent to the execution of an operating sublease and management agreement, 3) execute an amendment to the Industrial Revenue Bond (IRB) lease, and 4) consent to the transfer of a bond by Wells Fargo Bank to Ashford Wichita LP and the pledge of such bond to Morgan Stanley Bank N.A. and authorize necessary signatures.

19. Second Reading Ordinances: (First Read June 2, 2015)

- a. List of Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

## **II. CONSENT PLANNING AGENDA ITEMS**

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.

20. **\*PUD2015-00003 – Zone Change From TF-3 Two-Family Residential, B Multi-Family Residential, GO General Office and GC General Commercial to the Planned Unit Development (PUD#45) District on Property Located East of South Clifton Avenue and South of East Morris (Lincoln) Street, 3700 East Lincoln. (District III)**

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the requested Planned Unit Development, PUD#45, subject to the recommended conditions of approval (simple majority vote required), and place the ordinance on first reading.

## **II. CONSENT HOUSING AGENDA ITEMS**

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.

**Carole Trapp, Housing Member is also seated with the City Council.**

None

## **II. CONSENT AIRPORT AGENDA ITEMS**

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

21. **\*Multi Business Services, Corp. - Specialty Customer Services Concessions Agreement - Wichita Dwight D. Eisenhower National Airport.**

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

22. **\*WAA Report of Board of Bids and Contracts dated June 8, 2015.**

RECOMMENDED ACTION: Receive and file report, approve the contracts, and authorize the necessary signatures.

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Petition to approve a Community Improvement District for Kellogg and Ridge (District IV)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

---

**Recommendation:** Accept the petition and adopt the resolution setting a public hearing for consideration of the establishment of a Community Improvement District.

**Background:** In 2009, the Kansas Legislature enacted, and the Governor signed into law, the Community Improvement District (CID) Act, which allows property owners to petition cities or counties to create districts in which special taxes are imposed and the resulting revenue used to fund public and private improvements and the payment of ongoing operating costs, within the districts. In April 2010 the City Council adopted a policy which addresses how the City will utilize the tool and outlined the approval process. In December 2010, the City Council amended the CID Policy to require a public purpose statement in a CID petition, limit the maximum eligible reimbursement amount to 125% of the projected CID revenue, require that notice of public hearing be provided to any existing occupants within the district, and require signs to be posted next to store entrances.

Natman Real Estate, LLC has submitted a petition for creation of the Kellogg and Ridge Community Improvement District for the land at 600 S. Holland. The petition is signed by 100% of the land owners comprising the district.

**Analysis:** The owner controls the land within the proposed CID. The project will allow for the demolition of a dilapidated and blighted hotel with multiple code violations. The owner, along with a hotel developer, will remove the existing structures and construct a new hotel on the property. Additional retail will be developed along the frontage. The estimated total cost of the project is \$16,800,000, a portion of which will be paid by CID. The maximum eligible amount for reimbursement by CID identified in the petition is \$8,847,000 based on 125% of the projected tax revenue. The proposed amount of Community Improvement District sales tax for the district is 2% which will be distributed on a pay-as-you-go basis for up to 22 years.

**Public Purpose Statement:** The public purpose of the project is to provide new economic activity in the City through removal of dilapidated and blighted property and development of new hotel and retail on the west side of Wichita, near the Wichita Dwight D. Eisenhower National Airport.

The Office of Urban Development is conducting a background check on the developer and will report any significant negative findings at the public hearing on July 7, 2015.

To establish a CID, the City Council must first adopt a resolution which states that the Council is considering the establishment of the CID and sets a date for a public hearing on the matter. The resolution must then be published at least once each week for two consecutive weeks and be sent by certified mail to all owners and by regular mail to all occupants of property within the proposed CID. Given this process, the earliest date a public hearing may be held for this project would be July 7, 2015.

After closing the public hearing, the City Council may adopt an ordinance establishing the district.

**Financial Considerations:** The cost of mailing the Resolution to all owners and occupants of property located within the proposed district will be charged to the Economic Development Fund and will be repaid with administrative fees collected from the district.

The developer has requested pay-as-you-go financing. The City will not issue debt for this project. Proceeds will be held by the City and disbursed pursuant to a development agreement. The City will withhold 5% of the CID revenues distributed by the State, after giving credit for the \$5,000 application fee, and disperse the balance of the CID proceeds to the developer until the maximum amount identified in the petition (\$8,847,000) has been reimbursed or the 22-year term has expired, whichever is earlier.

**Legal Considerations:** State Law allows Community Improvement Districts to be established by Ordinance following a public hearing. The petition and resolution has been approved by the Law Department as to form.

**Recommendation/Action:** It is recommended that the City Council accept the petition and adopt the resolution setting a public hearing on July 7, 2015 for consideration of the establishment of a Community Improvement District.

**Attachments:** Resolution and Petition

JUN - 4 '15

COMMUNITY IMPROVEMENT DISTRICT PETITION

CITY CLERK OFFICE

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

- 1) We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows/ provided in **Exhibits A1** and **A2**:

IMPROVEMENT DISTRICT

do hereby petition pursuant to the provisions of K.S.A. 12-6a26 et seq., as amended (the "Act"):

- (a) **General Nature:** That the general nature of the proposed community improvement district ("CID") project, the Kellogg and Ridge CID ("**Project**"), is to finance the construction, maintenance, and procurement of certain improvements, costs, and services within the district, including, but not limited to: land acquisition, demolition of existing structures, infrastructure related items, streets, sidewalks, parking lots and facilities, buildings, facilities, water management and drainage related items, landscaping, lighting, art, water features and other cultural amenities, ongoing maintenance of the district, marketing, advertisement and economic development, cleaning and maintenance, special assessments for certain improvements, and the City's and the developer's financing costs (if any) as well as the City's and the developer's administrative and operating costs in establishing and maintaining the District and any other items permitted to be financed within the district under the Act. The undersigned request the City of Wichita to assist the Project by providing community improvement financing in accordance with City of Wichita policy and the Act to finance the above-listed items.
- (b) **Public Purpose:** The public purpose of the Project is to encourage significant economic activity in the City of Wichita by tearing down an old and abandoned property and facilitating a new location for a major national hotel chain and two to three retail outlets not already located in the market. The result will be a substantial increase in commercial sales, jobs, tax revenues for the local taxing jurisdictions, new dining and shopping opportunities for the citizens of the City of Wichita, and tourism from regional consumers.
- (c) **Estimated Cost:** That the estimated cost of the Project is Nine Million Dollars (**\$9,000,000**) in Phase I and Seven Million Eight Hundred Thousand Dollars **\$7,800,000** in Phase II for a total of Sixteen Million Dollars (**\$16,800,000**) of which the maximum amount eligible for reimbursement is **Eight Million Eight Hundred, Forty Seven Thousand Dollars (\$8,847,000)**, exclusive of the cost of interest on borrowed money. See attached "**Exhibit A3**" for a detailed budget.

- (d) **Proposed Method of Financing:** That the proposed Projects be financed through the use of a special sales tax on a Pay-as-you-go basis as defined in the Act.
- (e) **Proposed Amount of Sales Tax:** That the proposed amount of Community Improvement District sales tax, if any, shall be two percent (**2%**) for 22 years, or such lesser number of years as may be required to produce revenues sufficient for the payment of the maximum CID eligible cost identified in (c), above.
- (f) **Proposed Method and Amount of Assessment if any:** No assessments are proposed hereunder.
- (g) That a legal description and map of the proposed CID are attached hereto as **Exhibits A1 and A2.**
- 2) It is requested that the improvement hereby petitioned be made with notice and public hearing, pursuant to City policy.
- 3) That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first, and that the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project.
- 4) That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by the owners of 100% of the land area within the proposed district. The Governing Body is requested to proceed in the manner provided by statute and City policy.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

---

[SIGNATURES FOLLOW ON PAGES BELOW]



**Exhibit A-1**  
**Legal Description of District**

Lot 8 Block B Ridge Plaza 8 Addition to Wichita, Sedgwick County, Kansas

**Exhibit A-2**  
**Map of District**

[District boundaries show in bold outline.]



Exhibit A-3  
Project Budget

<u>Description</u>	<u>Cost</u>
Land Acquisition	\$ 1,000,000
Demolition	\$ 250,000
Site Improvements	\$ 750,000
Phase I Construction	\$ 6,000,000
Construction Phase II	\$ 6,000,000
Subtotal:	\$ 14,000,000
20% Contingency:	\$ 2,800,000
<b>Total:</b>	<b>\$ 16,800,000</b>

**RESOLUTION NO. 15-161**

**A RESOLUTION OF THE CITY OF WICHITA, KANSAS, PROVIDING FOR NOTICE OF A PUBLIC HEARING CONCERNING ADVISABILITY OF THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT WITHIN THE CITY AND THE PROPOSED LEVY OF A COMMUNITY IMPROVEMENT DISTRICT SALES TAX PURSUANT TO K.S.A. 12-6a26 ET SEQ., AS MAY BE AMENDED.**

**WHEREAS**, pursuant to K.S.A. 12-6a26 *et seq.*, as amended (the "Act"), the City of Wichita, Kansas (the "City"), is authorized to create a community improvement district as provided in the Act to provide for the acquisition, improvement, construction, demolition, removal, renovation, reconstruction, restoration, replacement, repair, furnishing and equipping of buildings, structures, facilities, sidewalks, roads, parking lots, traffic signs and signals, utilities, pedestrian amenities, drainage, water, storm and sewer systems, underground gas, heating and electrical services and extensions, water mains and extensions, site improvements, street lights, lighting, street light fixtures, benches, awnings, canopies, walls, trees, landscapes and other cultural amenities (collectively, the "CID Projects" or each a "CID Project"); and

**WHEREAS**, upon proper petition, the Act further authorizes the City, in order to pay the costs of any project which is a CID Project, to impose a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing of taxable services within a community improvement district in any increment of .10% or .25% not to exceed 2% (a "CID Sales Tax") and to reimburse the costs of the such project pursuant to pay-as-you-go financing and/or the issuance of special obligation notes and bonds payable from such community improvement district sales tax; and

**WHEREAS**, a petition (the "Petition") has been filed with the City Clerk of the City proposing the creation of a community improvement district pursuant to the Act (the Kellogg and Ridge CID"), the completion of a project relating thereto as more particularly described on **Exhibit A** attached hereto (the "Project"), and the imposition of a CID Sales Tax in order to pay the costs of the Project; and

**WHEREAS**, the Petition was signed by the owners of all of the land area within the proposed Kellogg and Ridge CID; and

**WHEREAS**, the proposed Kellogg and Ridge CID is located on the east side of Holland north of Kellogg Avenue within the City; and

**WHEREAS**, the petition proposes that the City impose a two percent (2%) CID Sales Tax within the Kellogg and Ridge CID which may be levied by ordinance following the hearing; and

**WHEREAS**, the Act provides that prior to creating any community improvement district, the City shall, by resolution, direct and order a public hearing on the advisability of creating such community improvement district and authorizing a CID Project therein and the proposed CID Sales Tax within such district which may be levied by ordinance and shall give notice of said public hearing in accordance with the Act;

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

1. Notice is hereby given that a public hearing to consider the advisability of the creation by the City of the Kellogg and Ridge CID and the imposition by the City of a two percent (2%) CID Sales Tax within the Kellogg and Ridge CID shall be held on July 7, 2015, beginning at 9:00 a.m. or as soon thereafter as possible, in the City Council Chambers, City Hall, 455 North Main Street, Wichita, Kansas.

2. The general nature of the proposed Project to be constructed within the proposed Kellogg and Ridge CID is set forth on **Exhibit A** attached hereto and incorporated by reference herein.

3. The estimated cost of the Project within the proposed Kellogg and Ridge CID is \$16,800,000.

4. The Project within the proposed Kellogg and Ridge CID will be financed on a pay-as-you-go basis from revenues received from the imposition of a two percent (2%) CID Sales Tax up to a maximum amount of \$8,847,000 within the proposed Kellogg and Ridge CID.

5. A legal description of the proposed Kellogg and Ridge CID is set forth in **Exhibit B** attached hereto and incorporated herein by reference. A map generally outlining the boundaries of the proposed Kellogg and Ridge CID is attached hereto as **Exhibit C** and incorporated herein by reference.

6. The City Clerk shall give notice of the public hearing in accordance with the provisions of the Act by publishing this resolution at least once each week for two consecutive weeks in the newspaper and sending this resolution by certified mail to all owners. The second publication of this resolution shall occur at least seven days prior to the date of hearing and the certified mailed notice shall be sent at least ten days prior to the date of hearing.

**ADOPTED** by the Governing Body this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**APPROVED** and **SIGNED** by the Mayor the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF WICHITA, KANSAS**

By: \_\_\_\_\_  
Jeff Longwell, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer Magaña, City Attorney and Director of Law

## **EXHIBIT A**

### **PROJECT**

**General Nature:** That the general nature of the proposed community improvement district (“CID”) project, the Kellogg and Ridge CID (“**Project**”), is to finance the construction, maintenance, and procurement of certain improvements, costs, and services within the district, including, but not limited to: land acquisition, demolition of existing structures, infrastructure related items, streets, sidewalks, parking lots and facilities, buildings, facilities, water management and drainage related items, landscaping, lighting, art, water features and other cultural amenities, ongoing maintenance of the district, marketing, advertisement and economic development, cleaning and maintenance, special assessments for certain improvements, and the City’s and the developer’s financing costs (if any) as well as the City’s and the developer’s administrative and operating costs in establishing and maintaining the District and any other items permitted to be financed within the district under the Act.

**EXHIBIT B**

LEGAL DESCRIPTION

**Lot 8 Block B Ridge Plaza 8 Addition to Wichita, Sedgwick County, Kansas**

**EXHIBIT C  
MAP OF DISTRICT**



City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Adoption of the 2012 International Residential Code (All Districts)

**INITIATED BY:** Metropolitan Area Building and Construction Department

**AGENDA:** New Business

---

**Recommendation:** Place the ordinance on first reading and authorize the necessary signatures.

**Background:** The Metropolitan Area Building and Construction Department (MABCD) enforces several sets of standardized codes within the Wichita/Sedgwick County jurisdiction. The codes followed generally emanate from the International Code Council (ICC) which are viewed as best practice building and trade codes at a national level. ICC generates code updates on a three-year cycle. Currently the Wichita/Sedgwick County jurisdiction adheres to the 2006 International Residential Code (IRC) along with local amendments under the Unified Building and Trade Code (UBTC), which apply specifically to this jurisdiction. MABCD and local builders have worked together reviewing the 2012 IRC and are now ready for adoption of this code to take the place of the 2006 version.

**Analysis:** It is proper for government jurisdictions to adopt new building code for several reasons. First, the building and construction industry is constantly evolving in regards to the use of new materials and changing methods of construction which enhance public safety and improve building standards. Second, uniform code allows building professionals and developers to cross jurisdiction lines without having to obtain or learn new codes. Finally, building professionals all require some level of certification, testing, and continuing education. Training and certification study is based on the newest code cycle – in this case the 2012 IRC, which home builders and trade groups follow.

Additionally, it is important that local jurisdictions have the ability to adopt local amendments which make sense for the Wichita/Sedgwick County jurisdiction. The MABCD has worked with the Wichita Area Builders Association and the Board of Code Standards and Appeals for the past 18 months to review significant changes to the 2012 code when compared to the 2006 version and have developed a list of amendments specific to this jurisdiction which will be included in the UBTC after adoption. These proposed amendments are covered in the attached ordinance.

The Board of Commissioners of Sedgwick County approved the adoption of the 2012 Edition of the IRC, along with local amendments at its May 20, 2015 meeting.

**Financial Considerations:** There is no financial impact.

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

**Recommendations/Actions:** It is recommended that the City Council place on first reading the ordinance amending Article 2 of the Unified Building and Trade Code (UBTC) with the adoption of the 2012 Edition of the International Residential Code and authorize the necessary signatures.

**Attachments:** Clean and delineated ordinances plus attachment A.

First Published in The Wichita Eagle on June 19, 2015

CLEAN COPY

DATE

ORDINANCE NO. 50-023

AN ORDINANCE ADOPTING THE INTERNATIONAL RESIDENTIAL CODE, PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC., 2012 EDITION, AND AMENDING, ADDING AND DELETING VARIOUS SECTIONS OF ARTICLE 2 OF THE WICHITA/SEDGWICK COUNTY UNIFIED BUILDING AND TRADE CODE.

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

**Section 1.** Section 2.4.010 of the Wichita/Sedgwick County Unified Building and Trade Code (the “UBTC”), is hereby amended to read as follows:

**Section 2.4.010. – Adoption of the International Residential Code.** The International Residential Code, as published by International Codes Council, Inc., 2012 Edition, is hereby adopted, subject to such amendments as set forth hereinafter.

**Section 2.** Section 2.4.020 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.020. – Permit Required.**

Section R105.1 of the International Residential Code is amended to read as follows:

*R105.1 Required.* Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

**Wichita Jurisdiction Only**

Whenever any work for which a permit is required by this Code has commenced without first obtaining said permit, a civil penalty fee equal to the amount of the permit fee, as determined by the Code Official, shall be collected in addition to the permit fee.

**Section 3.** Section 2.4.035 of the UBTC is hereby added to read as follows:

**Sec. 2.4.035 – Exclusion of “hoop houses” from building code requirements.**

A “hoop house” is defined as the following: A poly-tunnel (also known as a poly-house, hoop greenhouse or hoop house, or high tunnel) made of polyethylene usually semi-circular, square or elongated in shape. The interior heats up due to solar radiation from the sun, thus warming plants, soil, and other things inside the building faster than heat can escape the structure. Air warmed by the heat from hot interior surfaces is retained in the building by the roof and wall. Hoop houses, within this definition, are for residential use only.

Structures that meet the definition of “hoop houses” are exempted from building permit requirements or engineering specifications within this jurisdiction.

**Section 4.** Section 2.4.130 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.130. – Exterior Walls** is deleted.

**Section 5.** Section 2.4.135 of the UBTC is hereby added to read as follows:

**Sec. 2.4.135. – Three- and Four-family Dwellings.**

Sec. R302.3.2 of the International Residential Code is hereby added to read as follows:

Dwelling units in three- and four-family dwellings shall be separated from each other by a wall having not less than a two-hour fire-resistance rating. Fire-resistance-rated floor/ceiling and wall assemblies shall extend to and be tight against an exterior wall, and wall assemblies shall extend from the foundation to the underside of the roof sheathing.

The roof shall be a minimum of class C roof covering, and the roof decking or sheathing is of non-combustible materials or approved fire-retardant-treated wood for a minimum distance of two feet from the center of the wall. There shall be no penetrations through this area of the roof deck or sheathing.

**Exception:** Where buildings, or portions thereof, are arranged above or below adjacent units, an automatic sprinkler system shall be provided throughout all units.

**Section 6.** Section 2.4.138 of the UBTC is hereby added to read as follows:

**Sec. 2.4.138. – Opening Protection.**

Section R302.5.1 of the International Residential Code is amended to read as follows:

*R302.5.1 Opening protection.* Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1 3/8 inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 1 3/8 inches (35 mm) thick, or 20-minute fire-rated doors.

**Section 7.** Section 2.4.160 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.160. – Stairway illumination.**

Section R303.7 of the International Residential Code is amended to read as follows:

*R303.7 Stairway Illumination:* All interior and exterior stairways shall be provided with means to illuminate the stairway.

**Section 8.** Section 2.4.170 – Hazardous locations (former title) of the UBTC is hereby amended to read as follows:

**Sec. 2.4.170. – Reserved.**

**Section 9.** Section 2.4.225 of the UBTC is hereby added to read as follows:

**Sec. 2.4.225. – Drainage.**

Section R310.2.2 of the International Residential Code is amended to read as follows:

*R310.2.2 Drainage.* Window wells shall be designed for proper drainage by connecting to the existing foundation drainage system required by Section R405.1 or by an approved alternative method. If no existing foundation drainage system has been installed, the entire window well area shall have a minimum depth of 12” of washed gravel or crushed rock below the floor level.

**Exception:** A drainage system for window wells is not required when the foundation is on well-drained soil or sand-gravel mixture soils according to the U.S. Soil Classification System, Group I Soils, as detailed in Table 405.1.

**Section 10.** Section 2.4.230 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.230. – Landings at doors.**

Section R311.3.1 of the International Residential Code is amended to read as follows:

*R311.3.1 Floor elevations at the required egress doors.* The floor or landing at the

exterior door shall not be more than 1.5 inches (38 mm) lower than the top of the threshold. The landing shall be permitted to have a slope not to exceed 0.25 unit vertical in 12 units horizontal (2-percent).

**Exceptions:**

The exterior landing at an exterior doorway shall not be more than 8 (203 mm) inches below the top of the threshold, provided that the door, other than an exterior storm or screen door, does not swing over the landing.

**Section 11.** Section 2.4.235 of the UBTC is hereby added to read as follows:

**Sec. 2.4.235. – Floor elevations for other exterior doors.**

Section R311.3.2 of the International Residential Code is amended to read as follows:

*R311.3.2 Floor elevations for other exterior doors.* Doors other than the required egress door shall be provided with landings or floors not more than 8 inches below the top of the threshold.

**Exception:**

A landing is not required where a stairway of four or fewer risers is located on the the door, provided the door does not swing over the stairway.

**Section 12.** Section 2.4.240 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.240. – Riser height.**

Section R311.7.5.1 of the International Residential Code is amended to read as follows:

*Riser height:* The maximum riser height shall be 8 (203 mm) inches. The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

**Section 13.** Section 2.4.250 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.250. – Tread depth.**

Sections R311.7.5.2 and R3.11.7.5.2.1 of the International Residential Code are amended to read as follows:

*R311.7.5.2 Tread depth.* The minimum tread depth shall be 9 inches (228.6 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest

tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

*R311.7.5.2.1 Winder and circular treads.* Winder and circular treads shall have a minimum tread depth of 9 inches (228.6 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder and circular treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the largest winder or circular tread depth at the 12-inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

**Section 14.** Section 2.4.270 – Landings for stairways (former title) of the UBTC is

hereby amended to read as follows:

**Sec. 2.4.270. – Reserved.**

**Section 15.** Section 2.4.280 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.280. – Handrails.**

Section R311.7.8.1 of the International Residential Code is amended to read as follows:

*R311.7.8.1 Height.* Handrail height, measured vertically from the sloped plane adjoining the tread nosing, or finished surface of ramp slope, shall be not less than 32 inches (864 mm) and not more than 38 inches (965 mm).

**Exceptions:**

1. The use of a volute, turnout or starting easing shall be allowed over the lowest tread.
2. When handrail fittings or bendings are used to provide continuous transition between flights, transitions at winder treads, the transition from handrail to guardrail, or used at the start of a flight, the handrail height at the fittings or bendings shall be permitted to exceed the maximum height.

**Section 16.** Section 2.4.290 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.290. – Handrails continuity.**

Section R311.7.8.2 of the International Residential Code is amended to read as follows:

*R311.7.8.2 Continuity.* Handrails for stairways shall be continuous for the full length of the flight, from a point directly above the top riser of the flight to a point directly above

the lowest riser of the flight. Handrail ends shall be returned to the wall or shall terminate in newel posts or safety terminals at the top of each flight of stairs. Handrails adjacent to a wall shall have a space of not less than 1.25 (32.5mm) inches between the wall and the handrails.

Graspable portions of the handrail may not end up completely continuous from the top riser to the bottom riser. The rail shall return to the wall.

**Exceptions:**

- (1) Handrails shall be permitted to be interrupted by a newel post at the turn.
- (2) The use of a volute, turnout or starting easing, or starting newel shall be allowed over the lowest tread.

**Section 17.** Section 2.4.300 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.300. – Handrail grip size.**

Section R311.7.8.3 of the International Residential Code is amended to read as follows:

*R311.7.8.3 Handrail grip size.* All required handrails shall be of one of the following types or provide equivalent graspability.

1. Type I. Handrails with a circular cross section shall have an outside diameter of at least 1¼ inches (32 mm) and not greater than 2 inches (51 mm). If the handrail is not circular it shall have a perimeter dimension of at least 4 inches (102 mm) and not greater than 6¼ inches (160 mm) with a maximum cross section of dimension of 2¼ inches (57 mm).
2. Type II. Handrails with a perimeter greater than 6¼ inches (160 mm) shall provide a graspable finger recess area on the outboard side of the profile. The finger recess shall begin within a distance of ¾ inch (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8 mm) within 7/8 inch (22 mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (9.5 mm) to a level that is not less than 1¾ inches (45 mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1¼ inches (32 mm) to a maximum of 2¾ inches (70 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).

**Section 18.** Section 2.4.310 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.310. – Guard opening limitations.**

Section R312.1.3 of the International Residential Code is amended to read as follows:

*R312.1.3 Guard opening limitations.* Required guards on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which do not allow passage of a sphere 4 ½ inches (114.3 mm) or more in diameter. Required guards shall not be constructed with horizontal rails or other ornamental pattern that results in a ladder effect.

**Exceptions:**

1. The triangular openings formed by the riser, tread and bottom rail of a guard at the open side of a stairway are permitted to be of such a size that a sphere 6 inches (152 mm) cannot pass through.
2. Openings for required guards on the sides of stair treads shall not allow sphere 4 ½ inches (114.3 mm) to pass through.

**Section 19.** Section 2.4.315 of the UBTC is hereby created to read as follows:

**Sec. 2.4.315. – Sec. R312.2 deleted.**

Section R312.2 Window fall protection of the International Residential Code is hereby deleted in its entirety.

**Section 20.** Section 2.4.318 of the UBTC is hereby created to read as follows:

**Sec. 2.4.318. – Sec. R313 deleted.**

Section R313 Automatic fire sprinkler systems of the International Residential Code is hereby deleted in its entirety.

**Section 21.** Section 2.4.320 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.320. – Single- and multiple-station smoke alarms.**

Section R314.3 of the International Residential Code is amended to read as follows:

*R314.3 Location.* Single and multiple-station smoke alarms shall be installed in the following locations:

1. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.
2. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split

levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

**Section 22.** Section 2.4.325 of the UBTC is hereby added to read as follows:

**Sec. 2.4.325. – Interconnection.**

*R314.5 Interconnection.* Where more than one smoke alarm is required to be installed within an individual dwelling unit in accordance with Section R314.3, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. Physical interconnection of smoke alarms shall not be required where wireless alarms are installed & all alarms sound on activation of one alarm. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

**Section 23.** Section 2.4.332 of the UBTC is hereby added to read as follows:

**Sec. 2.4.332. – Carbon monoxide alarms.**

R315.1 Carbon monoxide alarms of the International Residential Code is amended to read as follows:

*R315.1 Carbon monoxide alarms.* For new construction, an approved carbon monoxide alarm shall be installed in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages in the following locations:

1. Outside each sleeping room in the immediate vicinity of the bedrooms.
2. On each additional story of the dwelling, including basements in the immediate vicinity of the bedrooms or mechanical room.

**Section 24.** Section 2.4.335 of the UBTC is hereby added to read as follows:

**Sec. 2.4.335. – Section R315.3 deleted.**

Section R315.3 of the International Residential Code is hereby deleted in its entirety. Carbon monoxide detectors are not required in existing homes.

**Section 25.** Section 2.4.350 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.350. – Protection against decay.**

Section R317.1 of the International Residential Code is amended to read as follows:

*R317.1 Location required.* Protection from decay shall be provided in the following locations by the use of naturally durable wood or wood that is preservative treated in accordance with AWP A U1 for the species, product, preservative and end use. Preservatives shall be listed in Section 4 of AWP A U1.

1. Wood joists or the bottom of a wood structural floor when closer than 18 inches (457 mm) or wood girders when closer than 12 inches (305 mm) to the exposed ground in crawl spaces or unexcavated area located within the periphery of the building foundation.
2. All wood framing members that rest on concrete or masonry exterior foundation walls and are less than 6 inches (152 mm) from the exposed ground.
3. Sills and sleepers on a concrete or masonry slab that is in direct contact with the ground unless separated from such slab by an impervious moisture barrier.
4. The ends of wood girders entering exterior masonry or concrete walls having clearances of less than 0.5 inch (12.7 mm) on tops, sides and ends.
5. Wood siding, sheathing and wall framing on the exterior of a building having a clearance of less than 6 inches (152 mm) from the ground.
6. Wood structural members supporting moisture-permeable floors or roofs that are exposed to the weather, such as concrete or masonry slabs, unless separated from such floors or roofs by an impervious moisture barrier.

**Section 26.** Section 2.4.360 – Section R319.1.1 deleted (former title) of the UBTC is hereby amended to read as follows:

**Sec. 2.4.360. – Section R318.1.1 deleted.**

Section R318.1.1 of the International Residential Code is hereby deleted.

**Section 27.** Section 2.4.370 – Section R320.1.2 deleted (former title) of the UBTC is hereby amended to read as follows:

**Sec. 2.4.370. – Section R318.1.2 deleted.**

Section R318.1.2 of the International Residential Code is hereby deleted.

**Section 28.** Section 2.4.380 – Section R324 deleted (former title) of the UBTC is hereby

amended to read as follows:

**Sec. 2.4.380. – Section R322 deleted.**

Section R322 of the International Residential Code is hereby deleted.

**Section 29.** Section 2.4.455 of the UBTC is hereby added to read as follows:

**Sec. 2.4.455. – Section R405.1 deleted.**

Section R405.1 of the International Residential Code is hereby deleted.

**Section 30.** Section 2.4.480 – Section R502.2.2 created (former title) of the UBTC is

hereby amended to read as follows:

**Sec. 2.4.480. – Decks.**

Section R507 of the International Residential Code is amended to read as follows:

*R507 Decks.* The "City of Wichita Standard for Residential Wood Framed Decks" may be used to design and construct decks to comply with the requirements of this section. Decks which fall outside of the scope of the standard will require design by a Kansas licensed architect or engineer. Where supported by attachment to an exterior wall, decks shall be positively anchored to the primary structure and designed for both vertical and lateral loads as applicable. Such attachment shall not be accomplished by the use of toenails or nails subject to withdrawal. Where positive connection to the primary building structure cannot be verified during inspection, decks shall be self-supporting. For decks with cantilevered framing members, connections to exterior walls or other framing members, shall be designed and constructed to resist uplift resulting from the full live load specified in Table R301.5 acting on the cantilevered portion of the deck.

**Section 31.** Section 2.4.490 – Section R506.2.3 deleted (former title) of the UBTC is

hereby amended to read as follows:

**Sec. 2.4.490. – Section R506.2.2 deleted.**

Section R506.2.2 of the International Residential Code is hereby deleted.

**Section 32.** Section 2.4.510 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.510. – Cement, fiber-cement and glass mat gypsum backers.**

Section R702.4.2 of the International Residential Code is amended to read as follows:

R702.4.2 Cement, fiber-cement or glass mat gypsum backers in compliance with ASTM C 1288, C 1325 or C 1178 and installed in accordance with manufacturers' recommendations shall be used as backers for wall tile in shower areas and wall panels in shower areas.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper, but no sooner than July 1, 2015.

PASSED by the governing body , this 16<sup>th</sup> day of June, 2015.

---

Jeff Longwell, Mayor

ATTEST:

---

Karen Sublett, City Clerk

Approved as to Form:

---

Jennifer Magaña,  
City Attorney and Director of Law

First Published in The Wichita Eagle on \_\_\_\_\_

DELINEATED COPY

DATE

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ADOPTING THE INTERNATIONAL RESIDENTIAL CODE, PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC., 2012 EDITION, AND AMENDING, ADDING AND DELETING VARIOUS SECTIONS OF ARTICLE 2 OF THE WICHITA/SEDGWICK COUNTY UNIFIED BUILDING AND TRADE CODE.

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

**Section 1.** Section 2.4.010 of the Wichita/Sedgwick County Unified Building and Trade Code (the “UBTC”), is hereby amended to read as follows:

**Section 2.4.010. – Adoption of the International Residential Code.** The International Residential Code, as published by International Codes Council, Inc., 2006/2012 Edition, is hereby adopted, subject to such amendments as set forth hereinafter.

**Section 2.** Section 2.4.020 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.020. – Permit Required.**

Section R105.1 of the International Residential Code is amended to read as follows:

*R105.1 Required.* Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

***Wichita Jurisdiction Only***

Whenever any work for which a permit is required by this Code has commenced without first obtaining said permit, a ~~special investigation~~ *civil penalty* fee equal to the amount of the permit fee, *as determined by the Code Official*, shall be collected in addition to the permit fee.

**Section 3.** Section 2.4.035 of the UBTC is hereby added to read as follows:

***Sec. 2.4.035 – Exclusion of “hoop houses” from building code requirements.***

*A “hoop house” is defined as the following: A poly-tunnel (also known as a poly-house, hoop greenhouse or hoop house, or high tunnel) made of polyethylene usually semi-circular, square or elongated in shape. The interior heats up due to solar radiation from the sun, thus warming plants, soil, and other things inside the building faster than heat can escape the structure. Air warmed by the heat from hot interior surfaces is retained in the building by the roof and wall. Hoop houses, within this definition, are for residential use only.*

*Structures that meet the definition of “hoop houses” are exempted from building permit requirements or engineering specifications within this jurisdiction.*

**Section 4.** Section 2.4.130 of the UBTC is hereby amended to read as follows:

***Sec. 2.4.130. – Exterior Walls is deleted.***

~~Section R302.1 of the International Residential Code is amended to read as follows:~~

~~R302.1. Exterior Walls. Exterior Walls of buildings constructed adjacent to a zero lot line (as defined in the zoning ordinance) may be of non-rated construction, provided: The wall contains no openings unless the sill height is located a minimum of 6 feet (1829 mm) above both the finished floor elevation and exterior grade or is constructed of translucent materials so as to not allow visibility into the adjacent property.~~

~~**Exception:** Foundation vents installed in compliance with this Code are permitted.~~

**Section 5.** Section 2.4.135 of the UBTC is hereby added to read as follows:

***Sec. 2.4.135. – Three- and Four-family Dwellings.***

*Sec. R302.3.2 of the International Residential Code is hereby added to read as follows:*

*Dwelling units in three- and four-family dwellings shall be separated from each other by a wall having not less than a two-hour fire-resistance rating. Fire-resistance-rated floor/ceiling and wall assemblies shall extend to and be tight against an exterior wall, and wall assemblies shall extend from the foundation to the underside of the roof sheathing.*

*The roof shall be a minimum of class C roof covering, and the roof decking or sheathing is of non-combustible materials or approved fire-retardant-treated wood for a minimum distance of two feet from the center of the wall. There shall be no penetrations through this area of the roof deck or sheathing.*

**Exception:** *Where buildings, or portions thereof, are arranged above or below adjacent units, an automatic sprinkler system shall be provided throughout all units.*

**Section 6.** Section 2.4.138 of the UBTC is hereby added to read as follows:

**Sec. 2.4.138. – Opening Protection.**

*Section R302.5.1 of the International Residential Code is amended to read as follows:*

*R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1 3/8 inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 1 3/8 inches (35 mm) thick, or 20-minute fire-rated doors.*

**Section 7.** Section 2.4.160 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.160. – Stairway illumination.**

Section R303.67 of the International Residential Code is amended to read as follows:

*R303.67 Stairway Illumination: All interior and exterior stairways shall be provided with means to illuminate the stairway.*

**Section 8.** Section 2.4.170 – Hazardous locations (former title) of the UBTC is hereby amended to read as follows:

**Sec. 2.4.170. – Reserved.**

**Sec. 2.4.170. – Hazardous locations.**

~~Section R308.4 of the International Residential Code, is amended to read as follows:~~

~~R308.4 Hazardous locations. The following shall be considered specific hazardous locations for the purpose of glazing:~~

- ~~1. Glazing in swinging doors except jalousies.~~

~~2.— Glazing in fixed and sliding panels of sliding door assemblies and panels in sliding and bi-fold closet door assemblies.~~

~~3.— Glazing in storm doors.~~

~~4.— Glazing in all unframed swinging doors.~~

~~5.— Glazing in doors and enclosures for hot tubs, whirlpools, saunas, steam rooms, bathtubs and showers where the bottom exposed edge of the glazing is less than 60 inches (1524 mm) measured vertically above any standing or walking surface.~~

~~**Exception:** Glazing that is 18 inches (1524 mm) or more, measured horizontally and in a straight line, from the water's edge of a hot tub, whirlpool or bathtub.~~

~~6.— Glazing, in an individual fixed or operable panel adjacent to a door where the nearest vertical edge is within a 12 inch (305 mm) are of the door in a closed position and whose bottom edge is less than 60 inches (1524 mm) above the floor or walking surface.~~

~~7.— Glazing in an individual fixed or operable panel, other than those locations described in items 5 and 6 above, that meets all of the following conditions:~~

~~7.1. Exposed area of an individual pane larger than 9 square feet (0.836 m<sup>2</sup>).~~

~~7.2. Bottom edge less than 10 inches (254 mm) above the floor.~~

~~7.3. Top edge more than 36 inches (914 mm) above the floor.~~

~~7.4. One or more walking surfaces within 36 inches (914 mm) horizontally of the glazing.~~

~~8.— All glazing in railings regardless of an area or height above a walking surface. Included are structural baluster panels and nonstructural in fill panels.~~

~~9.— Glazing in walls and fences enclosing indoor and outdoor swimming pools, hot tubs and spas where the bottom edge of the glazing is less than 60 inches (1524 mm) above a walking surface and within 60 inches (1524 mm) horizontally of the water's edge. This shall apply to single glazing and all panes in multiple glazing.~~

~~10.— Glazing adjacent to stairways, landings and ramps within 36 inches (914 mm) horizontally of a walking surface when the exposed surface of the glass is less than 60 inches (1524 mm) above the plane of the adjacent walking surface.~~

~~11.— Glazing in walls enclosing stairway landings or within 60 inches (1524 mm) of the top and bottom of stairways where the bottom edge of the glass is less than 60 inches (1524 mm) above the walking surface.~~

~~**Exception:** The following products, materials and uses are exempt from the~~

above hazardous locations:

- ~~1.— Openings in doors through which a 3 inch (76 mm) sphere is unable to pass.~~
- ~~2.— Decorative glass in Items 1, 6 or 7.~~
- ~~3.— Glazing in Section R 308.4, Item 6, when there is an intervening wall or other permanent barrier between the door and the glazing.~~
- ~~4.— Glazing in Section R 308.4, Item 6, in walls perpendicular to the plane of the door in a closed position, other than the wall toward which the door swings when opened, or where access through the door is to a closet or storage area 3 feet (914 mm) or less in depth. Glazing in these applications shall comply with Section R 308.4, Item 7.~~
- ~~5.— Glazing in Section R308.4, Items 7 and 10, when a protective bar is installed on the accessible side(s) of the glazing 36 inches  $\pm$  2 inches (914 mm  $\pm$  51 mm) above the floor. The bar shall be capable of withstanding a horizontal load of 50 pounds per linear foot (730 N/m) without contacting the glass and be a minimum of 1.5 inches (38 mm) in height.~~
- ~~6.— Outboard panes in insulating glass units and other multiple glazed panels in Section R 308.4, Item 7, when the bottom edge of the glass is 25 feet (7620 mm) or more above grade, a roof, walking surfaces, or other horizontal [within 45 degrees (0.79 rad) of horizontal] surface adjacent to the glass exterior.~~
- ~~7.— Louvered windows and jalousies complying with the requirements of Section R 308.2.~~
- ~~8.— Mirrors and other glass panels mounted or hung on a surface that provides a continuous backing support.~~
- ~~9.— Safety glazing in Section R 308.4, Items 10 and 11, is not required where:
  - ~~9.1. The side of a stairway, landing or ramp has a guardrail or handrail, including balusters or in-fill panels, complying with provisions of Sections 1013 and 1607.7 of the International Building Code; and~~
  - ~~9.2. The plane of the glass is more than 18 inches (457 mm) from the railing; or~~
  - ~~9.3. When a solid wall or panel extends from the plane of the adjacent walking surface to 34 inches (863 mm) to 36 inches (914 mm) above~~~~

~~the floor and the construction at the top of that wall or panel is capable of withstanding the same horizontal load as the protective bar.~~

~~10. Glass block panels complying with Section R 610.~~

~~11. All windows in walls may be protected by an approved safety film installed by certified installers in accordance with the manufacture's specifications.~~

**Section 9.** Section 2.4.225 of the UBTC is hereby added to read as follows:

***Sec. 2.4.225. – Drainage.***

*Section R310.2.2 of the International Residential Code is amended to read as follows:*

*R310.2.2 Drainage. Window wells shall be designed for proper drainage by connecting to the existing foundation drainage system required by Section R405.1 or by an approved alternative method. If no existing foundation drainage system has been installed, the entire window well area shall have a minimum depth of 12” of washed gravel or crushed rock below the floor level.*

***Exception:*** *A drainage system for window wells is not required when the foundation is on well-drained soil or sand-gravel mixture soils according to the U.S. Soil Classification System, Group I Soils, as detailed in Table 405.1.*

**Section 10.** Section 2.4.230 of the UBTC is hereby amended to read as follows:

***Sec. 2.4.230. – Landings at doors.***

Section R311.4.33.1 of the International Residential Code is amended to read as follows:

~~*R311.4.3 Landings at doors. There shall be a floor or landing on each side of each exterior door. The floor or landing at the exterior door shall not be more than 1.5 inches (38 mm) lower than the top of the threshold. The landing shall be permitted to have a slope not to exceed 0.25 unit vertical in 12 units horizontal (2 percent).*~~

**Exceptions:**

~~1. Where a stairway of four or fewer risers is located on the exterior side of a door, other than the required exit door, a landing is not required for the exterior side of the door provided the door, other than an exterior storm or screen door does not swing over the stairway.~~

~~2. The exterior landing at an exterior doorway shall not be more than 8 (203 mm) inches~~

~~below the top of the threshold, provided that the door, other than an exterior storm or screen door, does not swing over the landing.~~

~~3. The height of floors at exterior doors other than the exit door required by Section R311.4.1 shall not be more than 8 (203 mm) inches lower than the top of the threshold.~~

~~The width of each landing shall not be less than the door served. Every landing shall have a minimum dimension of 36 inches (914 mm) measured in the direction of travel.~~

*R311.3.1 Floor elevations at the required egress doors.* The floor or landing at the exterior door shall not be more than 1.5 inches (38 mm) lower than the top of the threshold. The landing shall be permitted to have a slope not to exceed 0.25 unit vertical in 12 units horizontal (2-percent).

**Exceptions:**

The exterior landing at an exterior doorway shall not be more than 8 (203 mm) inches below the top of the threshold, provided that the door, other than an exterior storm or screen door, does not swing over the landing.

**Section 11.** Section 2.4.235 of the UBTC is hereby added to read as follows:

***Sec. 2.4.235. – Floor elevations for other exterior doors.***

*Section R311.3.2 of the International Residential Code is amended to read as follows:*

*R311.3.2 Floor elevations for other exterior doors. Doors other than the required egress door shall be provided with landings or floors not more than 8 inches below the top of the threshold.*

***Exception:***

*A landing is not required where a stairway of four or fewer risers is located on the the door, provided the door does not swing over the stairway.*

**Section 12.** Section 2.4.240 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.240. – Riser height.**

Section R311.5.3.1-7.5.1 of the International Residential Code is amended to read as follows:

*Riser height:* The maximum riser height shall be 8 (203 mm) inches. The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

**Section 13.** Section 2.4.250 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.250. – Tread depth.**

Section R311.5.3.2 of the International Residential Code is amended to read as follows:

~~*R311.5.3.2 Tread depth.* The minimum tread depth shall be 9 inches (228.6 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder and circular treads shall have a minimum tread depth of 9 inches (228.6 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder and circular treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the largest winder or circular tread depth at the 12-inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).~~

~~*Sections R311.7.5.2 and R3.11.7.5.2.1 of the International Residential Code are amended to read as follows:*~~

~~*R311.7.5.2 Tread depth.* The minimum tread depth shall be 9 inches (228.6 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).~~

~~*R311.7.5.2.1 Winder and circular treads.* Winder and circular treads shall have a minimum tread depth of 9 inches (228.6 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder and circular treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the largest winder or circular tread depth at the 12-inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).~~

**Section 14.** Section 2.4.270 – Landings for stairways (former title) of the UBTC is hereby amended to read as follows:

***Sec. 2.4.270. – Reserved.***

~~*Sec. 2.4.270. – Landings for stairways.*~~

Section R311.5.4 of the International Residential Code is amended to read as follows:

~~*R311.5.4 Landings for stairways.* There shall be a floor or landing at the top and bottom~~

of each stairway.

**Exception:** A floor or landing is not required at the top of an interior flight of stairs, provided a door does not swing over the stairs.

A flight of stairs shall not have a vertical rise larger than 12 feet (3658 mm) between floor levels or landings.

The width of each landing shall not be less than the width of the stairway served. Every landing shall have a minimum dimension of 36 inches (914 mm) measured in the direction of travel.

**Section 15.** Section 2.4.280 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.280. – Handrails.**

Section R311.5-6.7.8.1 of the International Residential Code is amended to read as follows:

*R311.5-6.7.8.1 Height.* Handrail height, measured vertically from the sloped plane adjoining the tread nosing, or finished surface of ramp slope, shall be not less than 32 inches (813864 mm) and not more than 38 inches (965 mm).

**Exceptions:**

1. *The use of a volute, turnout or starting easing shall be allowed over the lowest tread.*
2. *When handrail fittings or bendings are used to provide continuous transition between flights, transitions at winder treads, the transition from handrail to guardrail, or used at the start of a flight, the handrail height at the fittings or bendings shall be permitted to exceed the maximum height.*

**Section 16.** Section 2.4.290 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.290. – Handrails continuity.**

Section R311.5-6.7.8.2 of the International Residential Code is amended to read as follows:

*R311.5-6.7.8.2 Continuity.* Handrails for stairways shall be continuous for the full length of the flight, from a point directly above the top riser of the flight to a point directly above the lowest riser of the flight. Handrail ends shall be returned to the wall or shall terminate in newel posts or safety terminals at the top of each flight of stairs. Handrails adjacent to

a wall shall have a space of not less than 1.25 (32.5mm) inches between the wall and the handrails.

Graspable portions of the handrail may not end up completely continuous from the top riser to the bottom riser. The rail shall return to the wall.

**Exceptions:**

- (1) Handrails shall be permitted to be interrupted by a newel post at the turn.
- (2) The use of a volute, turnout or starting easing, or starting newel shall be allowed over the lowest tread.

**Section 17.** Section 2.4.300 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.300. – Handrail grip size.**

Section R311.5-67.8.3 of the International Residential Code is amended to read as follows:

*R311.5-67.8.3 Handrail grip size.* All required handrails shall be of one of the following types or provide equivalent graspability.

1. Type I. Handrails with a circular cross section shall have an outside diameter of at least 1¼ inches (32 mm) and not greater than 2 inches (51 mm). If the handrail is not circular it shall have a perimeter dimension of at least 4 inches (102 mm) and not greater than 6¼ inches (160 mm) with a maximum cross section of dimension of 2¼ inches (57 mm).
2. Type II. Handrails with a perimeter greater than 6¼ inches (160 mm) shall provide a graspable finger recess area on the outboard side of the profile. The finger recess shall begin within a distance of ¾ inch (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8 mm) within 7/8 inch (22 mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (9.5 mm) to a level that is not less than 1¾ inches (45 mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1¼ inches (32 mm) to a maximum of 2¾ inches (70 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).

**Section 18.** Section 2.4.310 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.310. – Guard opening limitations.**

Section R312.21.3 of the International Residential Code is amended to read as follows:

*R312.21.3 Guard opening limitations.* Required guards on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which do not allow passage of a sphere 4 ½ inches (114.3 mm) or more in diameter. Required guards shall not be constructed with horizontal rails or other ornamental pattern that results in a ladder effect.

**Exceptions:**

1. The triangular openings formed by the riser, tread and bottom rail of a guard at the open side of a stairway are permitted to be of such a size that a sphere 6 inches (152 mm) cannot pass through.
2. Openings for required guards on the sides of stair treads shall not allow sphere 4 ½ inches (114.3 mm) to pass through.

**Section 19.** Section 2.4.315 of the UBTC is hereby created to read as follows:

*Sec. 2.4.315. – Sec. R312.2 deleted.*

*Section R312.2 Window fall protection of the International Residential Code is hereby deleted in its entirety.*

**Section 20.** Section 2.4.318 of the UBTC is hereby created to read as follows:

*Sec. 2.4.318. – Sec. R313 deleted.*

*Section R313 Automatic fire sprinkler systems of the International Residential Code is hereby deleted in its entirety.*

**Section 21.** Section 2.4.320 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.320. – Single- and multiple-station smoke alarms.**

Section ~~R313.24.3~~ of the International Residential Code is amended to read as follows:

*R313.24.3 Location.* Single and multiple-station smoke alarms shall be installed in the following locations:

1. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.
2. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm

installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

~~When more than one smoke alarm is required to be installed within an individual dwelling unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.~~

**Section 22.** Section 2.4.325 of the UBTC is hereby added to read as follows:

***Sec. 2.4.325. – Interconnection.***

*R314.5 Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling unit in accordance with Section R314.3, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. Physical interconnection of smoke alarms shall not be required where wireless alarms are installed & all alarms sound on activation of one alarm. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.*

**Section 23.** Section 2.4.332 of the UBTC is hereby added to read as follows:

***Sec. 2.4.332. – Carbon monoxide alarms.***

*R315.1 Carbon monoxide alarms of the International Residential Code is amended to read as follows:*

*R315.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages in the following locations:*

- 1. Outside each sleeping room in the immediate vicinity of the bedrooms.*
- 2. On each additional story of the dwelling, including basements in the immediate vicinity of the bedrooms or mechanical room.*

**Section 24.** Section 2.4.335 of the UBTC is hereby added to read as follows:

***Sec. 2.4.335. – Section R315.3 deleted.***

*Section R315.3 of the International Residential Code is hereby deleted in its entirety. Carbon monoxide detectors are not required in existing homes.*

~~R315.3 Where required in existing dwellings. Where roofing, siding, water heater or furnace change-out work requiring a permit occurs in existing dwellings that have attached garages or in existing dwellings within which fuel-fired appliances exist, carbon monoxide alarms shall be provided in accordance with Section R315.1.~~

**Section 25.** Section 2.4.350 of the UBTC is hereby amended to read as follows:

**Sec. 2.4.350. – Protection against decay.**

Section R3197.1 of the International Residential Code is amended to read as follows:

*R3197.1 Location required.* Protection from decay shall be provided in the following locations by the use of naturally durable wood or wood that is preservative treated in accordance with AWP A U1 for the species, product, preservative and end use. Preservatives shall be listed in Section 4 of AWP A U1.

1. Wood joists or the bottom of a wood structural floor when closer than 18 inches (457 mm) or wood girders when closer than 12 inches (305 mm) to the exposed ground in crawl spaces or unexcavated area located within the periphery of the building foundation.
2. All wood framing members that rest on concrete or masonry exterior foundation walls and are less than 6 inches (152 mm) from the exposed ground.
3. Sills and sleepers on a concrete or masonry slab that is in direct contact with the ground unless separated from such slab by an impervious moisture barrier.
4. The ends of wood girders entering exterior masonry or concrete walls having clearances of less than 0.5 inch (12.7 mm) on tops, sides and ends.
5. Wood siding, sheathing and wall framing on the exterior of a building having a clearance of less than 6 inches (152 mm) from the ground.
6. Wood structural members supporting moisture-permeable floors or roofs that are exposed to the weather, such as concrete or masonry slabs, unless separated from such floors or roofs by an impervious moisture barrier.

**Section 26.** Section 2.4.360 – Section R319.1.1 deleted (former title) of the UBTC is hereby amended to read as follows:

**Sec. 2.4.360. – Section R3198.1.1 deleted.**

Section R3198.1.1 of the International Residential Code is hereby deleted.

**Section 27.** Section 2.4.370 – Section R320.1.2 deleted (former title) of the UBTC is hereby amended to read as follows:

**Sec. 2.4.370. – Section R320.1.2 deleted.**

Section R320.1.2 of the International Residential Code is hereby deleted.

**Section 28.** Section 2.4.380 – Section R324 deleted (former title) of the UBTC is hereby amended to read as follows:

**Sec. 2.4.380. – Section R324.2.2 deleted.**

Section R324.2.2 of the International Residential Code is hereby deleted.

**Section 29.** Section 2.4.455 of the UBTC is hereby added to read as follows:

**Sec. 2.4.455. – Section R405.1 deleted.**

*Section R405.1 of the International Residential Code is hereby deleted.*

**Section 30.** Section 2.4.480 – Section R502.2.2 created (former title) of the UBTC is hereby amended to read as follows:

**Sec. 2.4.480. – Decks.**

Section R502.2.2 of the International Residential Code is amended to read as follows:

*R502.2.2 Decks.* The "City of Wichita Standard for Residential Wood Framed Decks" may be used to design and construct decks to comply with the requirements of this section. Decks which fall outside of the scope of the standard will require design by a Kansas licensed architect or engineer. Where supported by attachment to an exterior wall, decks shall be positively anchored to the primary structure and designed for both vertical and lateral loads as applicable. Such attachment shall not be accomplished by the use of toenails or nails subject to withdrawal. Where positive connection to the primary building structure cannot be verified during inspection, decks shall be self-supporting. For decks with cantilevered framing members, connections to exterior walls or other framing members, shall be designed and constructed to resist uplift resulting from the full live load specified in Table R301.5 acting on the cantilevered portion of the deck.

**Section 31.** Section 2.4.490 – Section R506.2.3 deleted (former title) of the UBTC is

hereby amended to read as follows:

**Sec. 2.4.490. – Section R506.2.32 deleted.**

Section R506.2.32 of the International Residential Code is hereby deleted.

**Section 32.** Section 2.4.510 of the UBTC is hereby amended to read as follows:

***Sec. 2.4.510. – Cement, fiber-cement and glass mat gypsum backers.***

*Section R702.4.2 of the International Residential Code is amended to read as follows:*

*R702.4.2 Cement, fiber-cement or glass mat gypsum backers in compliance with ASTM C 1288, C 1325 or C 1178 and installed in accordance with manufacturers' recommendations shall be used as backers for wall tile in shower areas and wall panels in shower areas.*

~~Cement, fiber cement or glass mat gypsum backers in compliance with ASTM C 1288, C 1325 or C 1178 and installed in accordance with manufacturers' recommendations shall be used as backers for wall tile in shower areas and wall panels in shower areas~~

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper, but no sooner than July 1, 2015.

PASSED by the governing body , this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Jeff Longwell, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Jennifer Magaña,  
City Attorney and Director of Law

***Attachment A***

**Significant Code Modifications between 2006 and 2012 Residential Codes**

**Prepared for Wichita City Council June 9, 2015**

Below is a listing of significant changes the Wichita/Sedgwick County jurisdiction would adopt if it moves into the 2012 International Residential Code (IRC). Issues are listed as “code topics” followed by a comparison of the 2006 IRC to the 2012 IRC, along with a brief explanation of the proposed change.

Code Topic: Habitable Attics

2006 Code: no definitions or regulation

2012 Code: defines and regulates habitable attics

Explanation: With the advent of truss roof building standards, more people are putting “habitable” rooms (bedrooms, rec rooms, offices) into attic spaces. As such attics of this sort need to be treated as other areas of the home concerning safety, space, and the ability to egress in the event of fire or emergency. The 2012 IRC provides for this safety standard and gives clear guidance to builders, homeowners, and code officials.

Code Topic: Live/Work Units

2006 Code: only addressed the residential portion of the units. “Work” units had to comply with International Building Code.

2012 Code: combines both residential and commercial aspects of code for the live/work unit.

Explanation: Code departments are more frequently seeing what are termed “live/work” units where a person lives in the same structure as their business environment (i.e. – art studio, dentist offices, etc.). The 2012 code has facilitated building or renovating these types of units by combining residential and building codes to provide clear direction for builders and code officials.

Code Topic: Exterior Walls

2006 Code: provided only one table which defined separation space needed between exterior walls of two residential units.

2012 Code: provides two tables – one for residences with sprinkler systems and one for residences without sprinkler systems – with varying distances between the two tables.

Explanation: Homes with sprinkler systems are more resistant to fire damage than those without. As such, exterior wall separation will vary from unit to unit depending on whether sprinkler systems are present or not. The 2012 code gives allowance for this whereas the 2006 code did not.

Code Topic: Carbon Monoxide (CO) Detectors

2006 Code: no regulation

2012 Code: requires CO detectors in all new home and any existing home where any type of permit work is accomplished

Explanation: CO detectors are a valid safety feature, which should be placed into all homes due to the rising number of deaths and CO sickness cases being reported across the country. New homes are especially susceptible due to the enhanced energy efficiency of doors and windows making the homes “tighter.” The 2012 IRC provides for this safety component.

Code Topic: Footings for Precast Concrete Foundations

2006 Code: no allowance unless plans were engineered

2012 Code: prescribes conditions and regulations to allow without engineered plans

Explanation: Precast concrete foundations are used for building homes when time is of the essence and normal foundation installation methods cannot be used. Previously, a builder had to provide engineered plans for such an installation, which added cost to the project. The 2012 code provides specification and guidelines for builders to follow, thus saving \$ by no longer requiring engineered plans.

Code Topic: Asphalt Shingles

2006 Code: Asphalt Shingles allowed

2012 Code: Asphalt Shingles with standards of ASTM D 225 or D3462 now are required.

Explanation: Advanced wind studies show that old style asphalt shingles are failing during high wind periods. Additionally new materials and technology allow for enhanced reliability of the above shingle variety so the 2012 IRC now calls for these types of material in the building of homes or replacement roofs. These types of changes are important due to the changing weather patterns and more extreme conditions, which are occurring during storms. Local distributors are already carrying this variety of shingle for consumers.

Code Topic: Roof Drip Edge Flashing

2006 Code: not required

2012 Code: required

Explanation: Residential roofs without drip edge flashing show shingle material along the edges. Without the drip edging, these roofs fail more frequently and are susceptible to wood rot along the edges. Drip edging will help roofs last longer, thus saving consumers money over time.

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council  
**SUBJECT:** Repair or Removal of Dangerous and Unsafe Structures  
(Districts I, III, and IV)  
**INITIATED BY:** Metropolitan Area Building and Construction Department  
**AGENDA:** New Business

---

**Recommendations:** Adopt the resolutions.

**Background:** On April 28, 2015, a report was submitted with respect to the dangerous and unsafe conditions on the properties listed below. The City Council adopted resolutions providing for a public hearing to be held on the condemnation actions at 9:30 a.m. or soon thereafter, on June 9, 2015.

**Analysis:** On April 6, 2015, the Board of Building Code Standards and Appeals (BBCSA) held a hearing on five properties. Since that time, one property was demolished by the owner. The four remaining properties are listed below:

<u>Property Address</u>	<u>Council District</u>
a. 1639 S. Lulu	I
b. 2011 N. Kansas	I
c. 6048 S. Hydraulic	III
d. 6109 S. Osage	IV

Detailed information/analyses concerning the properties are included in the attachments.

**Financial Considerations:** Structures condemned as dangerous buildings are demolished with funds from the Metropolitan Area Building and Construction Department 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 MABCD expenditures for non-revenue producing condemnation and housing code enforcement activities to twenty percent (20%) of MABCD'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 five hundred dollar (\$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.

**Legal Considerations:** The resolutions and notices of hearing were reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing, adopt the resolutions declaring the buildings to be dangerous and unsafe structures, and accept the BBCSA recommended actions to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair any structures would be contingent on the following: (1) All taxes have been paid to date as of June 9, 2015; (2) the structures have been secured as of June 9, 2015, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of June 9, 2015, and will be so maintained during renovation.

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

**Attachments:** Case summary, CDM summary and follow-up history

**DATE: May 21, 2015**

**CDM SUMMARY**

**COUNCIL DISTRICT # I**

**ADDRESS: 1639 S. LULU**

**LEGAL DESCRIPTION: THE NORTH 10 FEET OF LOT 14, ALL OF LOT 16, AND THE SOUTH 10 FEET OF LOT 18, STRONG'S SUBDIVISION, BLOCK 4 IN SCHWEITER'S SECOND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS**

**DESCRIPTION OF STRUCTURE: A one and one-half story frame dwelling about 30 x 46 feet in size. Vacant for at least 6 years, this structure has shifting basement walls; collapsed south basement wall; badly deteriorated composition roof, with holes; deteriorated and missing stucco siding; deteriorated front and rear porches; rotted rafter tails; anand wood trim; and the 14 x 20 and 4 x 5 foot accessory structures are 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. The building has parts, which are so attached that they may fall and injure other property or the public.**
- E. 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.

---

Director of Metropolitan Area Building and Construction Department  
Enforcing Officer

---

Date

**DATE: May 21, 2015**

**BCSA GROUP # 1**

**ADDRESS: 1639 S. LULU**

**ACTIVE FIELD FILE STARTED: October 3, 2008**

**NOTICE(S) ISSUED: Since October 3, 2008, a notice of improvement and numerous violation notices have been issued.**

**PRE-CONDEMNATION LETTER: September 10, 2014**

**TAX INFORMATION: The 2014 taxes are delinquent in the amount of \$309.85, which includes interest.**

**MABCD COST ASSESSMENTS/DATES: None**

**PREMISE CONDITIONS: Tires, tree waste, bulky waste and tall grass and weeds.**

**VACANT NEGLECTED BUILDING REPORT: None**

**MABCD NUISANCE & ABATEMENT REPORT: In September 2009 and June 2013, neighborhood nuisance cases were initiated resulting in owner compliance.**

**POLICE REPORT: In the past five years there has been one reported police incident of mental cases at this location.**

**FORMAL CONDEMNATION ACTION INITIATED: February 9, 2015**

**RECENT DEVELOPMENTS: No repairs have been made. The main structure is unsecure with a collapsed south side basement wall and accessory structure door is open.**

**HISTORIC PRESERVATION REPORT: No impact**

**OWNER'S PAST CDM HISTORY: None**

**BOARD OF B. C.S. &A. RECOMMENDATION: At the April 6, 2015 BCSA hearing the property owner, Marsha Bryan, was present.**

**This is a one- and one-half story frame dwelling approximately 30 x 46 feet in size. Vacant for at least six years, this structure has shifting basement walls; collapsed south basement wall; badly deteriorated composition roof, with holes; deteriorated and missing stucco siding; deteriorated front and rear porches; rotted rafter tails; anand wood trim; and the 14 x 20 and 4 x 5 foot accessory structures are dilapidated.**

**As recommended by staff, Board Member Harder made a motion to submit the property to the City Council for condemnation, with ten days to begin razing the structure and ten days to complete the removal. Board Member Willenberg seconded the motion. The motion was approved.**

**STAFF RECOMMENDATION/REMARKS: Adopt the recommendation of the Board of Building Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions**

of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

**DATE: May 21, 2015**

**CDM SUMMARY**

**COUNCIL DISTRICT # I**

**ADDRESS: 2011 N. KANSAS**

**LEGAL DESCRIPTION: LOTS 85 AND 87, ON KANSAS AVENUE, PARKVIEW ADDITION TO WICHITA, KANSAS, SEDGWICK COUNTY, KANSAS**

**DESCRIPTION OF STRUCTURE: A one-story frame dwelling about 24 x 28 feet in size. Vacant and open, this structure has a cracking concrete foundation; rotted and missing lap siding; exposed framing members; deteriorated front porch; and rotted and missing fascia and wood trim.**

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.

\_\_\_\_\_  
Director of Metropolitan Area Building and Construction Department  
Enforcing Officer

\_\_\_\_\_  
Date

**DATE: May 21, 2015**

**BCSA GROUP # 1**

**ADDRESS: 2011 N. KANSAS**

**ACTIVE FIELD FILE STARTED: July 8, 1998**

**NOTICE(S) ISSUED: Since July 8, 1998, notice of improvements and numerous violation notices have been issued.**

**PRE-CONDEMNATION LETTER: October 29, 2014**

**TAX INFORMATION: Current**

**MABCD COST ASSESSMENTS/DATES: None**

**PREMISE CONDITIONS: Some miscellaneous debris and tall grass and weeds.**

**VACANT NEGLECTED BUILDING REPORT: None**

**MABCD NUISANCE & ABATEMENT REPORT: In June 2008, a tall grass and weeds case was initiated resulting in City of Wichita contractor abatement in the amount of \$114.99. In September 2009, a neighborhood nuisance case was initiated resulting in owner compliance. In October 2011, a neighborhood nuisance case was initiated resulting in City of Wichita contractor abatement in the amount of \$803.42. In June 2014, a tall grass and weeds case was initiated resulting in owner compliance.**

**POLICE REPORT: In the past five years there has been no reported police incidents at this location.**

**FORMAL CONDEMNATION ACTION INITIATED: February 9, 2015**

**RECENT DEVELOPMENTS: No repairs have been made and the structures are secure.**

**HISTORIC PRESERVATION REPORT: No impact**

**OWNER'S PAST CDM HISTORY: None**

**BOARD OF B. C.S. & A. RECOMMENDATION: At the April 6, 2015 BCSA hearing there was no one present as a representative for this property.**

**Vacant and open, this is a one-story frame dwelling about 24 x 28 feet in size. This structure has a cracking concrete foundation; rotted and missing lap siding; exposed framing members; deteriorated front porch; and rotted and missing fascia and wood trim.**

**In agreement with staff recommendation, Board Member Doeden made a motion to refer the property to the City Council for condemnation, with ten days to start the wrecking process and ten days to finish removing the structure. Board Member Banuelos seconded the motion. The motion carried.**

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

**DATE: May 21, 2015**

**CDM SUMMARY**

**COUNCIL DISTRICT # III**

**ADDRESS: 6048 S. HYDRAULIC**

**LEGAL DESCRIPTION: LOT 5, BLOCK 1, SOUTH HYDRAULIC GARDENS, SEDGWICK COUNTY, KANSAS**

**DESCRIPTION OF STRUCTURE: A two-story frame dwelling about 18 x 24 feet in size. Vacant for at least 4 years, this structure has badly deteriorated and missing hardboard siding; deteriorated front and rear porches; and rotted and missing wood trim.**

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

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

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

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

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

---

Director of Metropolitan Area Building and Construction Department  
Enforcing Officer

---

Date

**DATE: May 21, 2015**

**BCSA GROUP # 1**

**ADDRESS: 6048 S. HYDRAULIC**

**ACTIVE FIELD FILE STARTED: March 15, 2010**

**NOTICE(S) ISSUED:** Since March 2015, 2010, notice of improvements and numerous violation notices have been issued.

**PRE-CONDEMNATION LETTER:** September 10, 2014

**TAX INFORMATION:** The 2012, 2013 and 2014 taxes are delinquent in the amount of \$2,551.40, which includes specials assessments and interest.

**MABCD COST ASSESSMENTS/DATES:** There is a 2015 special assessment for lot cleanup in the amount of \$799.00 and weed cutting in the amount of \$143.86, which includes interest.

**PREMISE CONDITIONS:** Tall grass and weeds.

**VACANT NEGLECTED BUILDING REPORT:** None

**MABCD NUISANCE & ABATEMENT REPORT:** In July 2009, tall grass and weeds case was initiated resulting in City of Wichita contractor abatement in the amount of \$120.24. In March 2010, a neighborhood nuisance case was initiated resulting in City of Wichita contractor abatement in the amount of \$1,082.80. In July 2011, a tall grass and weeds case was initiated resulting in City of Wichita contractor abatement in the amount of \$120.00. In June 2012, a tall grass and weeds case was initiated resulting in City of Wichita contractor abatement in the amount of \$120.00. In June 2014, a tall grass and weeds case was initiated resulting City of Wichita contractor abatement in the amount of \$140.00. In September 2014, a neighborhood nuisance case was initiated resulting in City of Wichita contractor abatement in the amount of \$799.00.

**POLICE REPORT:** In the past five years there has been no reported police incidents at this location.

**FORMAL CONDEMNATION ACTION INITIATED:** February 9, 2015

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

**HISTORIC PRESERVATION REPORT:** No impact

**OWNER'S PAST CDM HISTORY:** None

**BOARD OF B. C.S. &A. RECOMMENDATION:** At the April 6, 2015 BCSA hearing no representative was present on behalf of this property.

About 18 x 24 feet in size, this two-story frame dwelling has been vacant for at least four years. This structure has badly deteriorated and missing hardboard siding; deteriorated front and rear porches; and rotted and missing wood trim.

As recommended by staff, Board Member Willenberg made a motion to refer the property to City Council for condemnation, with ten days to begin demolition and ten days to complete wrecking the structure. Board Member Crofts seconded the motion. The motion carried.

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

proceed to let for bids to demolish the structure.

**DATE: May 21, 2015**

**CDM SUMMARY**

**COUNCIL DISTRICT # IV**

**ADDRESS: 6109 S. OSAGE**

**LEGAL DESCRIPTION: LOT 27, THIRD CLARKDALE SUBDIVISION, SEDGWICK**

**COUNTY, KANSAS**

**DESCRIPTION OF STRUCTURE:** A one-story frame dwelling about 30 x 37 feet in size. Vacant and open, this structure has a sagging and badly deteriorated composition roof, with missing shingles and holes; exposed, framing members; rotted and missing hardboard siding; rotted wood lap siding; dilapidated front porch; dilapidated enclosed rear porch; deteriorated framing members; rotted soffit, fascia and wood trim; and the two accessory structures are 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.

\_\_\_\_\_  
Director of Metropolitan Area Building and Construction Department  
Enforcing Officer

\_\_\_\_\_  
Date

**DATE: May 21, 2015**

**BCSA GROUP # 1**

**ADDRESS: 6109 S. OSAGE**

**ACTIVE FIELD FILE STARTED: December 22, 2009**

**NOTICE(S) ISSUED: Since December 22, 2009, several notice of improvements and violation notices have been issued.**

**PRE-CONDEMNATION LETTER: July 14, 2014**

**TAX INFORMATION:** The 2011, 2012, 2013 and 2014 taxes are delinquent in the amount of \$4,572.24, which includes interest.

**MABCD COST ASSESSMENTS/DATES:** There is a 2015 special assessment for weed cutting in the amount of \$143.86, which includes interest.

**PREMISE CONDITIONS:** Some bulky waste and tall grass and weeds.

**VACANT NEGLECTED BUILDING REPORT:** None

**MABCD NUISANCE & ABATEMENT REPORT:** In August 2010, a tall grass and weeds case was initiated resulting in City of Wichita contractor abatement in the amount of \$123.00. In July 2014, a tall grass and weeds case was initiated resulting in City of Wichita contractor abatement in the amount of \$140.00. In December 2009, a neighborhood nuisance case was started and remains open.

**POLICE REPORT:** In the past five years there has been no reported police incidents at this location.

**FORMAL CONDEMNATION ACTION INITIATED:** February 9, 2015

**RECENT DEVELOPMENTS:** No repairs have been made. The main structure is unsecure with an open window and the accessory structures are open.

**HISTORIC PRESERVATION REPORT:** No impact

**OWNER'S PAST CDM HISTORY:** None

**BOARD OF B. C.S. & A. RECOMMENDATION:** At the April 6, 2015 BCSA hearing there was no representative for this property in attendance.

Vacant and open, this one-story frame dwelling is about 30 x 37 feet in size. This structure has a sagging and badly deteriorated composition roof, with missing shingles and holes; exposed, framing members; rotted and missing hardboard siding; rotted wood lap siding; dilapidated front porch; dilapidated enclosed rear porch; deteriorated framing members; rotted soffit, fascia and wood trim; and the two accessory structures are dilapidated.

As recommended by staff, Board Member Willenberg made a motion to submit the property to the City Council for condemnation, with ten days to initiate demolition and ten days to complete the demolition. Board Member Harder seconded the motion. The motion was approved.

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

**June 9, 2015  
City Council  
Removal of Dangerous Structure Case Summary**

Address	Cncl. Dist.	Hsng. Case Age	Cndm. Init. Date	BCSA Hearing Date & Recommendation	Owner/ Rep. At BCSA ?	Open or Secure	Premise Cond. Status	Property Tax Status	Special Assessments
1639 S. Lulu	I	6 yrs. 8 mos.	02/09/15	04/06/15 - 10/10	Yes	The main structure is unsecure with a collapsed south side basement wall and accessory structure door is open.	Tires, tree waste, bulky waste and tall grass and weeds.	The 2014 taxes are delinquent in the amount of \$309.85, which includes interest.	None
2011 N. Kansas	I	16 yrs. 11 mos.	02/09/15	04/06/15 - 10/10	No	Secure	Some miscellaneous debris and tall grass and weeds.	Current	None
6048 S. Hydraulic	III	5 yrs. 2 mos.	02/09/15	04/06/15 - 10/10	No	Secure	Tall grass and weeds.	The 2012, 2013 and 2014 taxes are delinquent in the amount of \$2,551.40, which includes specials assessments and interest.	There is a 2015 special assessment for lot cleanup in the amount of \$799.00 and weed cutting in the amount of \$143.86, which includes interest.
6109 S. Osage	IV	5 yrs. 5 mos.	02/09/15	04/06/15 - 10/10	No	The main structure is unsecure with an open window and the accessory structures are open.	Some bulky waste and tall grass and weeds.	The 2011, 2012, 2013 and 2014 taxes are delinquent in the amount of \$4,572.24, which includes interest.	There is a 2015 special assessment for weed cutting in the amount of \$143.86, which includes interest.

Wichita, Kansas  
June 8, 2015  
10:00 a.m., Monday  
Conference Room, 12<sup>th</sup> Floor

MINUTES - BOARD OF BIDS AND CONTRACTS\*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Senior Accountant, Finance, representing the Director of Finance, Elizabeth Goltry, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Zack Daniel, Fellow, representing the City Manager's Office and Janis Edwards, Deputy City Clerk, present.

Minutes of the regular meeting dated June 1, 2015, were read and on motion approved.

Bids were opened June 5, 2015, pursuant to advertisements published on:

**Sycamore Bicycle Boulevard (Douglas and Sycamore to Orient and Euclid) (87TE-0622-01/472-85113/707056/211516) Traffic to be maintained during construction using flag persons and barricades. (District IV)**

Traffic Control Services Inc. - \$87,720.00

**2015 Sanitary Sewer Rehabilitation Phase C (north of Harry, east of Tyler) (468-85026/620741/665005) Traffic to be maintained during construction using flag persons and barricades. (District I, III, V, VI)**

Layne Inliner LLC - \$325,823.00

**2015 Sanitary Sewer Reconstruction Phase 5 (north of Harry, east of West Street) (468-85034/620744/665005) Traffic to be maintained during construction using flag persons and barricades. (District I, II, IV, VI)**

Dutton Construction and Plumbing LLC - \$174,233.00

**17th Street Sewer Replacement to serve WSU (east of Hillside, south of 21st St N) (468-85021/620740/655551) Traffic to be maintained during construction using flag persons and barricades. (District I)**

Wildcat Construction - \$1,149,900.10

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.

**PUBLIC WORKS AND UTILITIES DEPARTMENT/FLEET AND FACILITITES DIVISION: City Hall Renovations 5<sup>th</sup> Floor.**

Sky Contracting Company Inc. - \$53,950.00

**HOUSING AND COMMUNITY SERVICES DEPARTMENT/PUBLIC HOUSING DIVISION: New Construction One (1) Home.**

S & A Construction Inc. - \$129,793.00

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.

On motion the Board of Bids adjourned.

---

Marty Strayer, Administrative Assistant  
Department of Public Works

---

Janis Edwards, CMC  
Deputy City Clerk

## FORMAL BID REPORT

TO: Robert Layton, City Manager  
 DATE: June 8, 2015

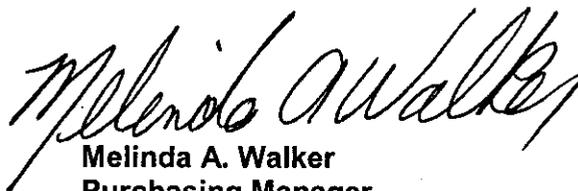
**ENGINEERING BIDS – GARY JANZEN, CITY ENGINEER****June 5, 2015**

Sycamore Bicycle Boulevard (Douglas and Sycamore to Orient and Euclid) – Public Works & Utilities Department/Engineering Division <b>Traffic Control Services, Inc.</b>	<b>\$87,720.00</b>
2015 Sanitary Sewer Rehabilitation Phase C (north of Harry, east of Tyler) – Public Works & Utilities Department/Engineering Division <b>Layne Inliner, LLC</b>	<b>\$325,823.00</b>
2015 Sanitary Sewer Reconstruction Phase 5 (north of Harry, east of West Street) – Public Works & Utilities Department/Engineering Division <b>Dutton Construction and Plumbing, LLC</b>	<b>\$174,233.00</b>
17 <sup>th</sup> Street Sewer Replacement to serve WSU (east of Hillside, south of 21 <sup>st</sup> Street N.) – Public Works & Utilities Department/Engineering Division <b>Wildcat Construction</b>	<b>\$1,149,900.10</b>

**PURCHASING BIDS – MELINDA A. WALKER, PURCHASING MANAGER****June 5, 2015**

City Hall Renovations 5th Floor – Public Works & Utilities Department/Fleet & Facilities Division <b>Sky Contracting Company, Inc.</b>	<b>\$53,950.00</b>
New Construction of One (1) Single Family ADA Unit at 2608 N. Spruce – Housing & Community Services Department/Public Housing Division <b>S &amp; A Construction, Inc.</b>	<b>\$129,793.00</b>

ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.

  
 Melinda A. Walker  
 Purchasing Manager

**PAVING BID TABULATION SUMMARY**

BOARD OF BIDS - May 29, 2015

RQ540487

<b>FB540079</b>		Engineer's Construction Estimate	Traffic Control Services Inc.		
<b>Sycamore Bicycle Boulevard</b>		\$93,235.00	<del>\$87,720.00</del>		
<b>(Douglas and Sycamore to Orient and Euclid)</b>	BID BOND		x		
	ADDENDA	1	x		
87TE-0622-01/472-85113 (707056)					
		Engineer's Construction Estimate			
<b>Sycamore Bicycle Boulevard</b>		\$93,235.00			
<b>(Douglas and Sycamore to Orient and Euclid)</b>	BID BOND				
	ADDENDA	1			
87TE-0622-01/472-85113 (707056)					
		Engineer's Construction Estimate			
<b>Sycamore Bicycle Boulevard</b>		\$93,235.00			
<b>(Douglas and Sycamore to Orient and Euclid)</b>	BID BOND				
	ADDENDA	1			
87TE-0622-01/472-85113 (707056)					
		Engineer's Construction Estimate			
<b>Sycamore Bicycle Boulevard</b>		\$93,235.00			
<b>(Douglas and Sycamore to Orient and Euclid)</b>	BID BOND				
	ADDENDA	1			
87TE-0622-01/472-85113 (707056)					

CHECKED BY:   
 REVIEWED BY: 

**SANITARY SEWER BID TABULATION SUMMARY**

BOARD OF BIDS - June 5, 2015

RQ540560

<b>FB#540090</b>		Engineer's Construction Estimate	Layne Inliner LLC	SAK Construction LLC	Insituform Technologies USA LLC
<b>2015 Sanitary Sewer Rehabilitation Phase C</b>		\$354,550.00	\$325,823.00	\$373,960.50	\$379,998.60
<b>(north of Harry, east of Tyler)</b>	BID BOND			X	X
468-85026	ADDENDA	0			
(620741)					
		Engineer's Construction Estimate	Municipal Pipe Tool Co. LLC	Nowak Construction	Utilities Plus
<b>2015 Sanitary Sewer Rehabilitation Phase C</b>		\$354,550.00	\$355,895.70		
<b>(north of Harry, east of Tyler)</b>	BID BOND		X		
468-85026	ADDENDA	0			
(620741)					
		Engineer's Construction Estimate	Wildcat Construction	Stannard Construction d/b/a WB Carter	
<b>2015 Sanitary Sewer Rehabilitation Phase C</b>		\$354,550.00			
<b>(north of Harry, east of Tyler)</b>	BID BOND				
468-85026	ADDENDA	0			
(620741)					
		Engineer's Construction Estimate			
<b>2015 Sanitary Sewer Rehabilitation Phase C</b>		\$354,550.00			
<b>(north of Harry, east of Tyler)</b>	BID BOND				
468-85026	ADDENDA	0			
(620741)					

CHECKED BY: 

REVIEWED BY: 

**SANITARY SEWER BID TABULATION SUMMARY**

BOARD OF BIDS - June 5, 2015

RQ540604

FB540096		Engineer's Construction Estimate	Duling Construction	Dutton Construction and Plumbing LLC	Mies Construction
<b>2015 Sanitary Sewer Reconstruction Phase 5</b>		\$378,630.00	\$289,874.00	\$174,233.00	
(north of Harry, east of West Street)	BID BOND			X	
468-85034	ADDENDA	0			
(620744)					
		Engineer's Construction Estimate	McCullough Excavation	Nowak Construction	Utilities Plus
<b>2015 Sanitary Sewer Reconstruction Phase 5</b>		\$378,630.00			
(north of Harry, east of West Street)	BID BOND				
468-85034	ADDENDA	0			
(620744)					
		Engineer's Construction Estimate	Wildcat Construction	Stannard Construction d/b/a WB Carter	
<b>2015 Sanitary Sewer Reconstruction Phase 5</b>		\$378,630.00			
(north of Harry, east of West Street)	BID BOND				
468-85034	ADDENDA	0			
(620744)					
		Engineer's Construction Estimate			
<b>2015 Sanitary Sewer Reconstruction Phase 5</b>		\$378,630.00			
(north of Harry, east of West Street)	BID BOND				
468-85034	ADDENDA	0			
(620744)					

CHECKED BY: LD

REVIEWED BY: [Signature]





**BID RESULTS**

[Registration](#)    [Solicitations](#)    [Document Inquiry](#)    [Login](#)    [Help](#)

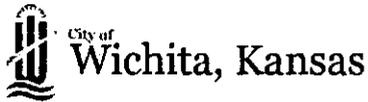
This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

**Vendor Group Line**  
**Solicitation:** FB540093    **City Hall Renovations 5th Floor**    **Close Date/Time:** 6/5/2015 10:00 AM CST  
**Solicitation Type:** Formal Bid    **Return to the Bid List**  
**Award Method:** Aggregate Cost  
**Department:** Public Works Fleet & Facilities    **Responses:** 3

Vendors	Complete	Bid Total	City Comments
SKY CONTRACTING COMPANY INC	Complete	\$53,950.00	Award 6-9-15 Public Works & Utilities Dept./Fleet & Facilities Division
BAUER & SON CONSTRUCTION CO INC	Complete	\$68,000.00	
ARAMBULA CONSTRUCTION CO INC	Complete	\$135,425.00	

[Top of the Page](#)





**BID RESULTS**

[Registration](#)    [Solicitations](#)    [Document Inquiry](#)    [Login](#)    [Help](#)

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

**Vendor Group Line**

**Solicitation:** FB540095    **New Construction One (1) Home**    **Close Date/Time:** 6/5/2015 10:00 AM CST

**Solicitation Type:** Formal Bid

[Return to the Bid List](#)

**Award Method:** Aggregate Cost

**Department:** Housing and Community Services

**Responses:** 3

Vendors	Complete	Bid Total	City Comments
S & A CONSTRUCTION INC	Complete	\$129,793.00	Award 06/09/2015 Housing & Community Services Department/Public Housing Division
JAKUB'S LADDER INC.	Complete	\$146,000.00	
ARAMBULA CONSTRUCTION CO INC	Complete	\$158,173.00	

[Top of the Page](#)



**PRELIMINARY ESTIMATES  
FOR CITY COUNCIL JUNE 9, 2015**

- a. 2015 Sanitary Sewer Reconstruction Phase 3 (north of 31st Street South, east of Hillside) (468-85027/620742/665005) Traffic to be maintained during construction using flagpersons and barricades. (District III) - \$264,000.00

To be Bid:

May 29, 2015

**PRELIMINARY ESTIMATE of the cost of:**  
 2015 Sanitary Sewer Reconstruction Phase 3  
 (north of 31st Street South, east of Hillside)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

**LUMP-SUM BID ITEMS**

1	Site Clearing	1	LS
2	Site Restoration	1	LS

**MEASURED QUANTITY BID ITEMS**

3	Pipe, SS 8"	1,254	lf
4	Pipe Removed (6" or 8")	1,244	lf
5	MH, Removed	3	ea
6	MH, Shallow SS (4')	15	ea
7	MH, Shallow SS (5')	1	ea
8	MH, Standard SS (4')	1	ea
9	Outside Drop Const. (or Reconst)	1	ea
10	Concrete Sidewalk Removed & Repl	4	lf
11	Service Connection Replaced (4" serv)	3	ea
12	Service Reconnection, Sewer (4")	35	ea
13	BMP, Construction Entrance	1	ea
14	BMP, Silt Fence	40	lf
15	BMP, Ditch Check	1	ea
16	BMP, Erosion Control Mat	40	sy
17	BMP, Back of Curb Protection	20	lf
18	BMP, Curb Inlet Protection	1	ea

**Construction Subtotal** \_\_\_\_\_

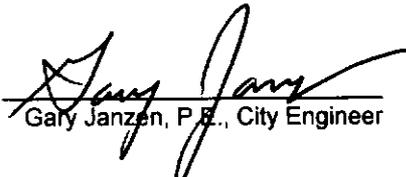
Engineering & Inspection  
 Administration  
 Publication

**Total Estimated Cost** \_\_\_\_\_

**\$264,000.00**

CITY OF WICHITA)  
 STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

  
 Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this \_\_\_\_\_  
 (DATE)

\_\_\_\_\_  
 City Clerk

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Kellogg, Cypress to Wiedemann (Kellogg and Webb Interchange) – Westar Relocation Agreement No. 2 (District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

-----

**Recommendation:** Approve the agreement.

**Background:** On December 10, 2013, the City Council approved a utility relocation agreement with Westar Energy, Inc. The Westar owned utilities are located in a public right-of-way and are being moved from overhead to underground as part of the Kellogg and Webb Road improvement project. The agreement authorized the City to bid and construct a duct bank for the electric lines, provided that Westar would install the operating hardware for the utilities within the newly constructed duct bank.

**Analysis:** Construction of the duct bank will be completed with the Kellogg and Webb Interchange project. Following completion of the duct bank, Westar will install the operating hardware as detailed in the proposed second agreement.

**Financial Considerations:** The estimated cost to install the operating hardware is \$861,216. Funding is available in the existing budget, which was approved by the City Council on October 8, 2013. The agreement provides that Westar will pay any expenses above the stated estimate, unless the increase is a result of changes requested by the City. The cost sharing details of any increase for which the City may be responsible will be agreed upon by both parties, and the agreement returned to the City Council for approval, prior to the expenses being incurred.

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

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

**Attachments:** Agreement.

Electric Line Modification/Relocation Agreement

WESTAR ENERGY, INC., a Kansas corporation hereinafter referred to as "WEI", hereby agrees with the City of Wichita hereinafter referred to as "CUSTOMER", that WEI will provide the labor, equipment, materials and supplies to modify or relocate the electric power line on the property herein described, according to the terms and conditions set forth below.

1. The parties agree that the line modification/relocation is necessary to improve the following described real property, so the property will be suitable for the intended use by the CUSTOMER:

**Relocate Westar Energy electric facilities to clear Kellogg – KTA to Greenwich Rd. road widening project**

2. CUSTOMER will be liable for the cost difference between overhead line construction and underground cable installation of the line modification/relocation. This cost is based on the labor, equipment, supplies, materials and property acquisitions (such as easements or rights of way), needed to modify or relocate the line in accordance with standard industry practice and in order for the line to comply with WEI standards and the NESC. The cost of the line modification/relocation is **\$861,216**. WEI agrees to pay any expense above this estimated cost, unless changes are requested by the Customer and then both parties shall agree to the cost sharing before the work begins.
3. CUSTOMER will pay installation cost of conduit and manholes as a bid item of road work as shown on separate agreement.
4. CUSTOMER will pay in full after completion of the line modification/relocation.
5. Provided the foregoing conditions have been met, WEI will begin work on the line on or before **03/01/16**, and will have the modification or relocation completed on or before **08/01/16**. However, WEI may adjust or extend this work schedule as weather conditions require and/or with approval of City of Wichita traffic engineer.
6. When the line modification or relocation is complete, WEI will submit to CUSTOMER an invoice for the final modification/relocation costs. CUSTOMER will then have 30 days from receipt of the invoice to pay WEI the amount due.

Executed this 21<sup>st</sup> day of May, 2015

WESTAR ENERGY, INC.

By: Miles Capps

Title: Mgr. Dist. Design /Tech. Support

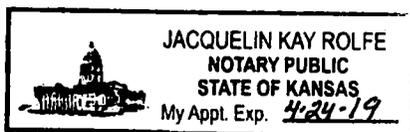
Attest: Jacquelin Kay Rolfe  
RA#5823/WR#000826, 001340

City of Wichita  
("CUSTOMER")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_



Approved as to Form:

Jennifer Magaña  
Jennifer Magaña, City Attorney &  
Director of Law

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council  
**SUBJECT:** Supplemental Design Agreement No. 2 for Improvements to Tyler Road, 29<sup>th</sup> to 37<sup>th</sup> Streets North (District V)  
**INITIATED BY:** Department of Public Works & Utilities  
**AGENDA:** Consent

---

**Recommendations:** Approve the supplemental agreement.

**Background:** On August 19, 2008, the City entered into an agreement with Baughman Company, P.A., for the design of paving improvements to Tyler Road between 29<sup>th</sup> and 37<sup>th</sup> Streets North. The following agreements with Baughman have been approved by the City Council to date:

Agreement	Date Approved	Services Provided	Cost
Original	August 19, 2008	Original design services agreement	\$162,000
SA 1	March 4, 2014	Supplemental design services to redesign from a five lane roadway to a three lane roadway	\$32,960
		Total design fee to date:	\$194,960

**Analysis:** Additional services are requested of Baughman for surveying and coordination with the Kansas State Historical Society regarding the preservation of section corner monuments within the project area. When the original design agreement was approved in 2008, the City had a licensed surveyor on staff to provide these services. The State of Kansas requires the expertise of a licensed surveyor for the monument preservation. The City no longer retains a licensed surveyor on staff, so a supplemental agreement is required to obtain the services and meet State requirements.

**Financial Considerations:** The cost of the additional services is \$950. The addition of this supplemental agreement brings the contract total to \$195,910. Funding is available within the existing approved budget in General Obligation (GO) bond funding, which was approved by the City Council on December 3, 2013.

**Legal Considerations:** The Law Department has reviewed and approved the supplemental agreement as to form.

**Recommendation/Actions:** It is recommended that the City Council approve the supplemental agreement and authorize all necessary signatures for the acquisition or granting of easements, utility relocation agreements, and all required permits.

**Attachments:** Supplemental Agreement No. 2

SUPPLEMENTAL AGREEMENT NO. 2  
TO THE  
AGREEMENT FOR PROFESSIONAL SERVICES DATED AUGUST 19, 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 an Agreement (dated August 19, 2008) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to TYLER, 29<sup>TH</sup> TO 37<sup>TH</sup> STREET NORTH (Project No.472-84700\_706991).

WHEREAS, Paragraph IV. B. of the above referenced Agreement 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:

**Resetting endangered monument for Tyler, 29<sup>th</sup> St. to 37<sup>th</sup> St. North  
(see Attached for details)**

B. PAYMENT PROVISIONS

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

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee amount of **\$950.**

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 within the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

- (a) Field check plans of the project for distribution to utilities by June 2014 sm.
- (b) Office check plans by Oct 2014 sm.
- (c) Completion of all work required by this agreement (including submittal of final approved plans, field notes, and related project documents by Dec 2016 sm.

D. PROVISIONS OF THE ORIGINAL AGREEMENT

The parties hereunto mutually agree that all provisions and requirements of the original Agreement, not specifically modified by this Supplemental Agreement, are hereby ratified and confirmed.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF WICHITA

\_\_\_\_\_  
Jeff Longwell, Mayor

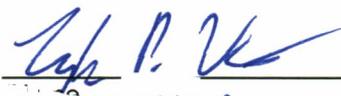
ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

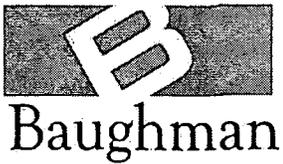
  
\_\_\_\_\_  
Sharon Dickgrafe, Interim Director of Law and  
City Attorney

BAUGHMAN COMPANY, P.A.

  
\_\_\_\_\_  
Tyler P. Voth, PE

ATTEST:

  
\_\_\_\_\_  
Kacey Thomas



April 20, 2015

Shawn Mellies, P.E.  
City of Wichita  
Department of Engineering  
455 N. Main, 7<sup>th</sup> Floor  
Wichita, KS 67202

**RE: Tyler Road- 29<sup>th</sup> Street North to 37<sup>th</sup> Street North  
Supplemental Fee Request**

Dear Mr. Mellies:

In the process of finalizing the above referenced project, the City has requested that Baughman Co. be responsible for taking ties to the endangered ¼ corner prior to construction and resetting the monument after construction. As a result, a supplemental fee is being requested to offset the cost of the following surveying processes that will be necessary to fulfill that request:

- Take ties to existing ¼ corner
- File necessary permits for an endangered monument
- Resetting ¼ corner after construction

For this added work we are requesting a total of \$950 be added to our original contract. Should you have any questions or need more clarification on this request, please email me at [tvoth@baughmanco.com](mailto:tvoth@baughmanco.com) or give me a call me at 262-7271. Thank you.

Most Respectfully,  
Baughman Co. P.A.

Tyler P. Voth, P.E.  
Director of Municipal Engineering

cc: N. Brent Wooten, P.E.  
File

E N G I N E E R I N G  
S U R V E Y I N G  
P L A N N I N G  
L A N D S C A P E  
A R C H I T E C T U R E

Baughman Company, P.A.  
315 Ellis  
Wichita, Kansas 67211  
P 316-262-7271 F 316-262-0149

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Supplemental Design Agreement for the Emporia and St. Francis Relief Sewer Project (District VI)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendations:** Approve the supplemental agreement.

**Background:** The sanitary sewers in the Emporia and St. Francis area are aged and overtaxed during peak flows and storm events. Of additional concern is the 126-year old sewer system that currently flows under the ever expanding Via Christi St. Francis campus.

The City Council approved a project on August 26, 2008 to re-route the sanitary sewer around the Via Christi Medical Center Campus and redirect neighborhood flows into the sewer system surrounding the campus in three phases. Phase I was completed in 2009 and design for the remaining phases was initiated in 2013.

On December 17, 2013, the City Council approved an agreement with Baughman Company, P.A. for development of design concepts for Phases II and III of the Emporia and St. Francis Relief Sewer Project. The concept development fee was \$7,000.

**Analysis:** In addition to isolating the neighborhood flows from the hospital flows into separate systems, the Emporia and St. Francis project will relieve peaking flows from Old Town, thus reducing the amount of stress on the system. The proposed supplemental agreement between the City and Baughman provides for completion of final design plans for both remaining phases.

**Financial Considerations:** The estimated fee for final design work is \$72,000, which brings the total design fee to \$79,000. This total estimated cost is within the range provided by Baughman in the proposal phase. Funding in the amount of \$2,550,000 was approved by the City Council on August 26, 2008. Funding is available within the existing budget. The funding sources are future revenue bond sales or sewer utility cash reserves.

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

**Recommendation/Actions:** It is recommended that the City Council approve Supplemental Agreement No. 1 and authorize the necessary signatures.

**Attachments:** Supplemental Agreement No. 1

SUPPLEMENTAL AGREEMENT NO. 1

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

EMPORIA/ST. FRANCIS RELIEF SEWER

THIS SUPPLEMENTAL AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, 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".

WHEREAS, the CITY intends to contract;

**EMPORIA/ST. FRANCIS RELIEF SEWER (Project No. 468-84935).**

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for the final design of the Emporia/St. Francis Relief Sewer improvements and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**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 **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:

<b>Project No. 468 84935</b>	
<b>Phase I</b>	<b>\$24,000</b>
<b>Phase II</b>	<b><u>\$48,000</u></b>
<b>Total</b>	<b>\$72,000</b>

- 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.

City of Wichita

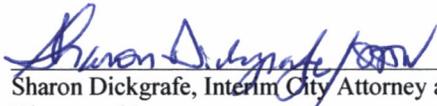
\_\_\_\_\_  
Jeff Longwell, Mayor

SEAL:

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Sharon Dickgrafe, Interim City Attorney and  
Director of Law

BAUGHMAN COMPANY, P.A.

  
\_\_\_\_\_  
Tyler Voth, P.E.  
Municipal Division Director

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.

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

Phase 1, the ENGINEER shall design a 21" sanitary sewer to replace the existing 18" sewer that is currently located in the alley between North Emporia Avenue and North St. Francis Avenue, from just south of East Central Avenue to East Pine Street. An alignment will need to be determined by the ENGINEER and approved by the CITY. A special diversion manhole structure shall be designed for East Pine Street to allow the control of flow going both east and south from that structure.

Phase 2, the ENGINEER shall design a sanitary sewer relocation from East 10th Street to East Pine Street, on North Santa Fe Avenue or as approved by the CITY that will reroute the flow from an existing manhole on the 18" sewer main in East 10th Street, between North St. Francis Avenue and North Emporia Avenue, to an existing sewer in East Pine Street.

1. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the CITY within the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

**Completion of all work required by this agreement (including submittal of final approved plans, field notes, and related project documents by September 1, 2015.**

**EXHIBIT "B"**

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

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

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
  1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or

subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**City of Wichita  
City Council Meeting  
June 9, 2015**

**TO:** Mayor and City Council

**SUBJECT:** Change Order No. 4 for Redbud Multi-Use Path (District I)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

**Recommendation:** Approve the change order.

**Background:** On December 9, 2014, the City Council approved a contract with Cornejo & Sons for the construction of the Redbud Multi-Use Path from Hydraulic, near Murdock, to the intersection of 17<sup>th</sup> Street and Oliver. The following change orders have been processed for this project to date:

Change Order	Date Processed or Approved	Provided	Cost
Original	December 9, 2014	Original construction contract.	\$2,153,840
No. 1	February 13, 2015	The set price for artist fees was incorrectly listed in Addendum No. 1. Due to this, two artists' fees needed adjusted to match previously agreed amounts.	\$5,000
No. 2	March 5, 2015	Hot dip galvanizing prevents propagation of rust and will provide a much longer service life for the handrail, thus reducing long term maintenance costs for repair and replacement. The specifications for the handrail were updated requiring hot dip galvanizing after final plans had been approved.	\$16,000
No. 3	April 9, 2015	The electrical service serving the current Hillside and 9 <sup>th</sup> Street traffic signal is in poor condition and operating on a street light circuit, which does not meet current code. Westar Energy requires a new service to be installed so a new transformer and meter can be added to meet current code requirements.	\$2,243
		Total change orders approved to date:	\$23,243
		Total contract cost to date:	\$2,177,083

**Analysis:** The project site has known contamination that must be disposed of according to the Kansas Department of Health and Environment (KDHE) rules and regulations. As part of the project, the contractor hired an environmental consultant to provide a soil management plan and perform initial testing on excavated soil from various sites within the project to determine the level of contamination. Results from that testing found high contamination levels to classify the soil as hazardous waste. The soil must be disposed of properly at a facility approved and permitted to accept hazardous waste. Additional environmental consulting is necessary for site visits, secondary testing and tracking and reporting of the hazardous waste transported. Staff and the contractor will monitor the quantity of hazardous material for final adjustment of budget charges.

Due to variations of contamination levels within the proposed excavated areas, and in agreement with the KDHE, an accurate analysis of soil contamination levels prior to bidding was not possible. The project bid with the provision that any necessary sampling, analysis and treatment costs would be compensated via change order.

**Financial Considerations:** The cost of the change order is \$57,666, made up of \$19,741 for the additional environmental consulting work, \$10,925 for hazardous waste transportation and \$27,000 for hazardous waste disposal. The total of all change orders to date is \$80,909, which is approximately 4% of the original contract amount. The change order brings the new total contract amount to \$2,234,749. Funding is available in the existing budget, which was approved by the City Council on January 27, 2015, \$1,651,868 of which is federally funded and \$1,200,000 in general obligation at-large bonds.

**Legal Considerations:** The Law Department has reviewed and approved the change order as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the change order and authorize the necessary signatures.

**Attachments:** Change Order No. 4.

4154



PUBLIC WORKS-ENGINEERING

April 28, 2015  
**CHANGE ORDER**

To: Cornejo & Sons, LLC

Project: Redbud Multi-Use Path

Change Order No.: 4

Project No.: 87TE-0353-01/472-85007

Purchase Order No.: 440973

OCA No.: 707035

CHARGE TO OCA No.: 707035

PPN: 211500

Please perform the following extra work at a cost not to exceed **\$57,666.00**  
Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 6 weeks for approval.

**Additional Work:** Environmental consulting, hazardous waste transport and disposal.

**Reason for Additional Work:** The project site has known contamination that must be disposed of according to Kansas Department of Health and Environment (KDHE) rules and regulations. As part of the project, the contractor hired an environmental consultant to provide a soil management plan and perform initial testing on excavated soil from various sites within the project to determine the level of contamination. Results from that testing found high contamination levels to classify the soil as hazardous waste. The soil must be disposed of properly at a facility approved and permitted to accept hazardous waste. Additional environmental consulting is necessary for site visits, secondary testing, tracking, and reporting of the hazardous waste transported. Staff and the contractor will monitor the quantity of hazardous material for a final adjustment of budget charges.

Due to variations of contamination levels within proposed excavated areas, and in agreement with KDHE, an accurate analysis of soil contamination levels prior to bidding was not possible. The project bid with the provision that any necessary sampling, analysis, and treatment costs would be compensated via Change Order.

Line #	KDOT #	Item	Negotiated/ Bid	Qty	Unit Price	Extension
120	4	Environmental Consulting	Negotiated	1 LS	\$19,741.00	\$19,741.00
121	4	Haz. Waste Transport (Truck)	Negotiated	5 ea	\$2,185.00	\$10,925.00
122	4	Haz. Waste Disposal	Negotiated	100 ton	\$270.00	\$27,000.00

**Additional Work:** Calendar date extension

**Reason for Additional Work:** The completion date will be extended to July 31<sup>st</sup> to account for delays for review of the soil management plan, hazardous waste disposal, and the time required to approve this change order but no additional delay costs will be added.

Line #	KDOT #	Item	Negotiated/ Bid	Qty	Unit Price	Extension
123	1	Calendar date extension	Negotiated	1 LS	\$0.00	\$0.00

**TOTAL: \$57,666.00**

<b>CIP Budget Amount:</b>	<b>\$2,851,868.00</b>	<b>Original Contract Amt.:</b>	<b>\$2,153,840.25</b>
<b>Consultant: Baughman</b>		<b>Current CO Amt.:</b>	<b>\$57,666.00</b>
<b>Exp. &amp; Encum. To Date:</b>	<b>\$2,671,162.41</b>	<b>Amt. of Previous CO's:</b>	<b>\$23,243.00</b>
<b>CO Amount</b>	<b>\$57,666.00</b>	<b>Total of All CO's:</b>	<b>\$80,909.00</b>
<b>Unencum. Bal. After CO:</b>	<b>\$123,039.59</b>	<b>Adjusted Contract Amt.:</b>	<b>\$2,234,749.25</b>

**Recommended By:**

Steve Degenhardt 05/01/15  
 Steve Degenhardt, P.E. Date  
 Construction Division Manager

**Approved:**

Gary Janzen 05/04/15  
 Gary Janzen, P.E. Date  
 City Engineer

**Approved:**

Eric Li 5/1/2015  
 Contractor comego & sons Date

**Approved**

\_\_\_\_\_  
 Alan King Date  
 Director of Public Works & Utilities

**Approved as to Form:**

Jennifer Magaña 5-5-15  
 Jennifer Magaña Date  
 Director of Law

**By Order of the City Council:**

\_\_\_\_\_  
 Jeff Longwell Date  
 Mayor

**Attest:** \_\_\_\_\_  
 City Clerk

**City of Wichita  
City Council Meeting  
June 9, 2015**

**TO:** Mayor and City Council

**SUBJECT:** Change Order No. 5 for Improvements to William, Main to Emporia (District I)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

**Recommendations:** Approve the change order.

**Background:** On December 18, 2012, the City Council approved a project to convert William Street, between Main and Emporia, from a one-way westbound street to a two-way street with one lane in each direction. The project also includes replacement of wheelchair ramps and significant modification of the traffic signals. The City Council approved a construction contract with Kansas Paving on September 10, 2013, in the amount of \$302,794. Construction began in October 2013. The following change orders have been processed for this project to date:

Change Order	Date Processed	Change Provided	Cost
Original	September 10, 2013	Original construction contract.	\$302,794
No. 1	October 24, 2013	Administrative change required to split the encumbrance between two different organizational cost accounting numbers.	None
No. 2	January 7, 2014	Extended the contract completion time due to delays in traffic signal manufacturing and temperature restrictions.	None
No. 3	April 22, 2014	Lowered the meter and power supply for a traffic signal pole to meet electrical code, and provided construction of a new base to allow installation of a pedestrian push button pole. The contract completion time was extended to May 16, 2014.	\$29,637
No. 4	July 22, 2014	The basement of the City-owned Finney State Office Building, which is located on the northwest corner of the William and Broadway intersection, extends to the edge of the curb, directly beneath an existing sidewalk and wheelchair ramp. Record information used during design did not indicate the basement was within the right-of-way. As a result, the ceiling of the basement was damaged during removal of the wheelchair ramp. Additional work required included repairs to the ceiling, including setting forms, steel reinforcement, concrete work, and waterproofing.	\$15,338
Total change orders approved to date			\$44,975

Total contract cost to date:	\$347,769
------------------------------	-----------

**Analysis:** Based on final field measurements, an adjustment is required in the quantity of items that were listed in the original contract. The items requiring adjustment are brick removal and replacement, asphalt concrete pavement and reinforced concrete for a base repair.

**Financial Considerations:** The estimated cost of the repair work is \$7,771. The total of all change orders to date is \$52,746, which is approximately 17% of the original contract amount. The change order brings the new total contract amount to \$355,540. Funding is available within the existing budget, which was approved by the City Council on December 18, 2012.

**Legal Considerations:** Change Order No. 5 has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:** It is recommended that the City Council approve Change Order No.5 and authorize the necessary signatures.

**Attachments:** Change Order No. 5.

3165 4161



PUBLIC WORKS-ENGINEERING

May 4, 2015  
CHANGE ORDER

To: Kansas Paving

Project: William Street, Main to Emporia  
2013 Traffic Signalization  
Project No.: 472-85077/472-85073  
OCA No.: 707042/707043  
PPN: 211507/211508

Change Order No.: 5  
Purchase Order No.: PO340610  
CHARGE TO OCA No.: 707043

Please perform the following extra work at a cost not to exceed \$7,770.50  
Additional Work: Adjust measured quantity items.

Reason for Additional Work: Adjust measured quantity items based on final field measurements.

Line #	KDOT #	Item	Negotiated/		Unit Price	Extension
			Bid	Qty		
10		Brick Removal & Replacement	Bid	13 sf	\$3.50	\$45.50
12		AC Pavement 2" (BM-2, PG70-28)	Bid	330 sy	\$11.00	\$3,630.00
13		6" Reinf Concr. Base Repair	Bid	117 sy	\$35.00	\$4,095.00
<b>TOTAL:</b>						<b>\$7,770.50</b>

CIP Budget Amount:	\$275,000.00 (707042)	Original Contract Amt.:	\$302,793.50
	\$525,000.00 (707043)		
Consultant: Baughman		Current CO Amt.:	\$7,770.50
Total Exp. & Encum. To Date:	\$457,917.46	Amt. of Previous CO's:	\$44,975.23
CO Amount:	\$7,770.50	Total of All CO's:	\$52,745.73
Unencum. Bal. After Co:	\$59,312.04	Adjusted Contract Amt.:	\$355,539.23

Recommended By:

Approved:

Steve Degenhardt, P.E.  
Construction Division Manager  
Date: 05/11/15

Gary Janzen, P.E.  
City Engineer  
Date: 05/18/15

Approved:

Approved:

Contractor  
Date

Alan King  
Director of Public Works & Utilities  
Date

Approved as to Form:

By Order of the City Council:

Jennifer Magaha  
Director of Law and City Attorney  
Date: 5-19-15

Jeff Longwell  
Mayor  
Date

Attest:  
City Clerk

**CONTRACTS & AGREEMENTS  
BLANKET PURCHASE ORDERS RENEWAL OPTIONS  
MAY 2015**

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Guard Service for the Wichita Intervention Program	5/31/2016	Smart Security, Inc.	Municipal Court	6/1/2014 - 5/31/2015	3 - 1 year options
Intervention Program Facility (Wichita)	5/31/2016	Davis BW LLC DBA Best Western Wichita North	Municipal Court	6/1/2014 - 5/31/2015	3 - 1 year options
Janitorial Services - Water Distribution	5/31/2016	Able Janitorial, Inc.	Public Works & Utilities	6/19/2014 - 5/31/2015	1 - 1 year option
Joint & Crack Sealant	5/31/2016	Crafco, Inc.	Public Works & Utilities	6/4/2013 - 5/31/2014	Last option
Landscape Maintenance - Transit	5/31/2016	Complete Landscaping Systems, Inc.	Wichita Transit	6/1/2013 - 5/31/2014	Last option
Liquid Oxygen	5/31/2016	Lampton Welding Supply	Public Works & Utilities	6/1/2014 - 5/31/2015	1 - 1 year option
Liquid Sulfur Dioxide	5/31/2016	Brenntag Southwest, Inc.	Public Works & Utilities	6/1/2013 - 5/31/2014	Last option
Meter Box Rings, Lids & Risers	5/31/2016	Hajoca Corporation	Public Works & Utilities	6/3/2014 - 5/31/2015	1 - 1 year option
Meter Boxes - 21" & 30" Meter Boxes - Group 3	5/31/2016	HD Supply Waterworks, Ltd.	Public Works & Utilities	6/11/2013 - 5/31/2014	Last option
Meter Boxes - 2" Custom Setters - Group 1 and 20" Monitor Covers - Group 2	5/31/2016	Wichita Winwater Works Company	Public Works & Utilities	6/11/2013 - 5/31/2014	Last option
Mow, Trim, Edge & Maintenance at 724 E. Osie Tri-State Central	5/31/2016	Professional Landscaping Services	Public Works & Utilities	6/1/2013 - 5/31/2014	Last option
Mowing & Haying, Floodway	5/31/2016	Challenger Construction Corporation	Public Works & Utilities	5/13/2014 - 5/31/2015	3 - 1 year options
MRI (Magnetic Resonance Imaging Services)	5/31/2016	Heartland Open MRI LLC dba AMI Allied Medical Imaging	Finance	6/1/2013 - 5/31/2014	2 - 1 year options
Oils -Lubricating, Gear, Grease, Transmission Fluid and Oil Analysis - Group 2	5/31/2015	Universal Lubricants, LLC	Various	2/1/2012 - 1/31/2013	Last option
Overhead Door Repair	5/31/2015	Overhead Door Company dba Ark Valley Door	Various	6/11/2013 - 5/31/2014	1 - 1 year option
Paint - Supply Exterior and Interior	5/31/2016	PPG Architectural Finishes, Inc. dba Porter Paint	Public Works & Utilities	6/3/2014 - 5/31/2015	1 - 1 year option
Sand & Gravel: Fill Sand & Delivery - Group 1; Mason Sand & Delivery - Group 3; Limestone Rock AB-3 (Grey) & Delivery -Group 11; Fill Dirt & Delivery - Group 21	5/31/2016	Pearson Construction, LLC	Various	6/1/2014 - 5/31/2015	1 - 1 year option
Sand & Gravel: Fill Sand Only - Group 2; Mason Sand Only - Group 4	5/31/2016	Associated Material & Supply Company, Inc.	Various	6/1/2014 - 5/31/2015	1 - 1 year option
Sand & Gravel: Limestone Rock AB-3 (Grey) Only - Group 13; Crushed Limestone (Severy) Grey/Brown Hard Durable & Delivery - Group 17; Crushed Limestone (Severy) Grey/Brown Hard Durable (Only) - Group 18	5/31/2016	Martin Marietta Materials	Various	6/1/2014 - 5/31/2015	1 - 1 year option
Sand & Gravel: Pea Gravel & Delivery (Unwashed) - Group 8; Limestone Rock AB-3 (Cream) & Delivery - Group 12; Mud Balls & Delivery - Group 15; Top Soil & Delivery - Group 19	5/31/2016	A-Plus Logistics, LLC	Various	6/1/2014 - 5/31/2015	1 - 1 year option
Sand & Gravel: Road Gravel & Delivery - Group 5; Road Gravel Only - Group 6; Pea Gravel & Delivery (Washed) - Group 7; Pea Gravel Only (Washed) - Group 9; Limestone Rock AB-3 (Cream) Only - Group 14; Mud Balls Only - Group 16; Top Soil Only - Group 20; Fill Dirt Only - Group 22; Top Soil & Delivery (Shredded/Pulverized) - Group 23; Top Soil Only (Shredded/Pulverized) - Group 24	5/31/2016	Cornejo Materials, LLC	Various	6/1/2014 - 5/31/2015	1 - 1 year option
Translation and Interpreter Services	5/31/2016	Foreign Language Interpreter Services, Inc.	Municipal Court	6/1/2012 - 5/31/2013	1 - 1 year option

Tree Trimming, Pruning & Removal Service	5/31/2016	Arbor Masters Tree Service, Inc.	Housing & Community Services	6/1/2014 - 5/31/2015	1 - 1 year option
Water Utility Service Lines (Installation of)	5/31/2016	Mies Construction, Inc.	Public Works & Utilities	6/4/2013 - 5/31/2014	Last option

**PROFESSIONAL CONTRACTS UNDER \$50,000  
MAY 2015**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
Burns & McDonnell Engineering Co., Inc.	PO540376	Engineering Consulting	27,000.00		
Professional Engineering Consultants	PO540433	Engineering Consulting	16,500.00		
MKEC Engineering Inc.	PO540446	Engineering Consulting	43,170.00		

**ANNUAL MAINTENANCE CONTRACTS OVER \$50,000  
DIRECT PURCHASE ORDERS FOR MAY 2015**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		

**Senior Management Expenses**  
For the Quarter Ended March 31, 2015

<b>Employee by Department</b>	<b>Purpose</b>	<b>Amount</b>
<b>City Manager</b>		
Robert Layton, City Manager	<b>Large Cities Executive Forum, San Jose, CA</b>	\$ 1,368.96
Robert Layton, City Manager	National League of Cities Conference, Washington, DC	2,062.94
<b>Airport</b>		
Brad Christopher, Assistant Director of Airports	South Central AAAE Conference, Tulsa OK	589.05
John Oswald, Engineering and Planning Manager	Airport Planning, Design and Construction Symposium, Denver, CO	422.20
<b>Finance</b>		
Shawn Henning, Director of Finance	Callan Investments Institute, San Francisco, CA	1,620.40
<b>Fire</b>		
Brad Crisp, Deputy Fire Chief	International Association of Arson Investigators Seminar, Topeka, KS	436.33
<b>Housing and Community Services</b>		
Mary K. Vaughn, Director of Housing and Community Services	Mayors Challenge to End Veteran Homelessness, Kansas City, MO	321.91
<b>Library</b>		
Cynthia Berner, Director of Library	Innovative Directors Symposium, New Orleans, LA	1,093.51
<b>Police</b>		
Nelson Mosley, Interim Chief	Chief Executive Leadership Training, Farmington, NM	1,370.25
Nelson Mosley, Interim Chief	Deployment of Body Cameras, Ft. Worth, TX	258.60
Hassan Ramzah, Deputy Chief	Chief Executive Leadership Training, Farmington, NM	1,370.25
John Speer, Deputy Chief	FBI Leadership Institute, Oklahoma City, OK	717.57
Gavin Seiler, Interim Deputy Chief	Deployment of Body Cameras, Ft. Worth, TX	258.60
<b>Public Works &amp; Utilities</b>		
Joe Pajor, Deputy Director of Public Works & Utilities	Kansas Municipal Day at the Capital, Topeka, KS	215.17
Joe Pajor, Deputy Director of Public Works & Utilities	Kansas Water Conference, Topeka, KS	78.50
Gary Janzen, City Engineer	Kansas Transportation Engineering Conference, Manhattan, KS	108.00
<b>Total</b>		<b><u>\$ 12,292.24</u></b>

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Correcting Resolution for Water Distribution System in Krug South Addition (District II)

**INITIATED BY:** Department of Finance

**AGENDA:** Consent

---

**Recommendation:** Adopt the correcting resolution, repealing Resolution 14-082.

**Background:** On March 18, 2014, the City Council adopted Resolution No. 14-082 for Water Distribution System in Krug South Addition. A review of the resolution revealed an error with respect to the description of the property comprising the improvement district.

**Analysis:** Section 4 of Resolution No.14-082 omitted the legal description of the improvement district. The new resolution rescinds Resolution No. 14-082 and corrects the omission by listing the improvement district as KRUG SOUTH ADDITION, Lots 17 through 25, Block 1; Lots 7 through 14, Block 5 in Section 5 of the correcting resolution.

**Financial Considerations:** The project budget remains \$32,000 with a benefit fee of \$4,969 and is funded by special assessments.

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

**Recommendation/Action:** It is recommended that the City Council adopt the correcting resolution and authorize the necessary signatures.

**Attachment:** Correcting resolution

First Published in the Wichita Eagle on June 12, 2015

**RESOLUTION NO. 15-166**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF **WATER DISTRIBUTION SYSTEM NUMBER 448-90564 (SOUTH OF 21ST, WEST OF 143RD ST. EAST)** 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 **WATER DISTRIBUTION SYSTEM NUMBER 448-90564 (SOUTH OF 21ST, WEST OF 143RD ST. EAST)** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

**SECTION 1.** That Resolution No. 14-082 adopted on **March 18, 2014** is hereby rescinded and replaced with the contents hereof.

**SECTION 2.** That Resolution No. 12-154 adopted on **June 19, 2012** is hereby rescinded.

**SECTION 3.** That it is necessary and in the public interest to improve **Water Distribution System Number 448-90564 (south of 21st, west of 143rd St. East)**.

**SECTION 4.** That the cost of said improvements provided for in Section 2 hereof is estimated to be **Thirty -Two Thousand Dollars (\$32,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **May 1, 2012**, 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 water main, such benefit fee to be in the amount of Four Thousand Nine Hundred Sixty Nine Dollars (\$4,969); and distributed on a fraction basis as follows:

Lots 17 through 25, Block 1; and Lots 7 through 14, Block 5; Krug South Addition shall each pay 1/17 of the total cost payable by the improvement district.

**SECTION 5.** 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:

**KRUG SOUTH ADDITION**

Lots 17 through 25, Block 1

Lots 7 through 14, Block 5

**SECTION 6.** 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 17 through 25, Block 1; and Lots 7 through 14, Block 5; KRUG SOUTH ADDITION shall each pay 1/17 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 7.** 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 8.** 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 9.** 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 10.** 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 11.** 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 9th day of June, 2015.

\_\_\_\_\_  
JEFF LONGWELL, MAYOR

ATTEST:

\_\_\_\_\_  
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
JENNIFER MAGANA,  
DIRECTOR OF LAW

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council  
**SUBJECT:** Construction Funding for 17th Street and Oliver Avenue Waterline Installation and Replacement (Wichita State University Innovation Campus) (District I)  
**INITIATED BY:** Department of Public Works & Utilities  
**AGENDA:** Consent

---

**Recommendations:** Approve the budget.

**Background:** On April 28, 2015, the City Council approved a design agreement with PEC in the amount of \$7,000 for the design of waterline improvements in 17<sup>th</sup> Street and Oliver. The waterline improvements are needed to adequately serve the expansion of the Wichita State University (WSU) Innovation Campus, which is planned to begin construction later this year.

**Analysis:** The original project scope includes construction of 3,000 feet of new 12 inch water line in 17<sup>th</sup> Street and Oliver to provide the necessary capacity for the Innovation Campus expansion. The existing waterline in 17<sup>th</sup> will also need to be replaced now due to its proximity with the soon-to-be constructed sanitary sewer main for the Innovation Campus.

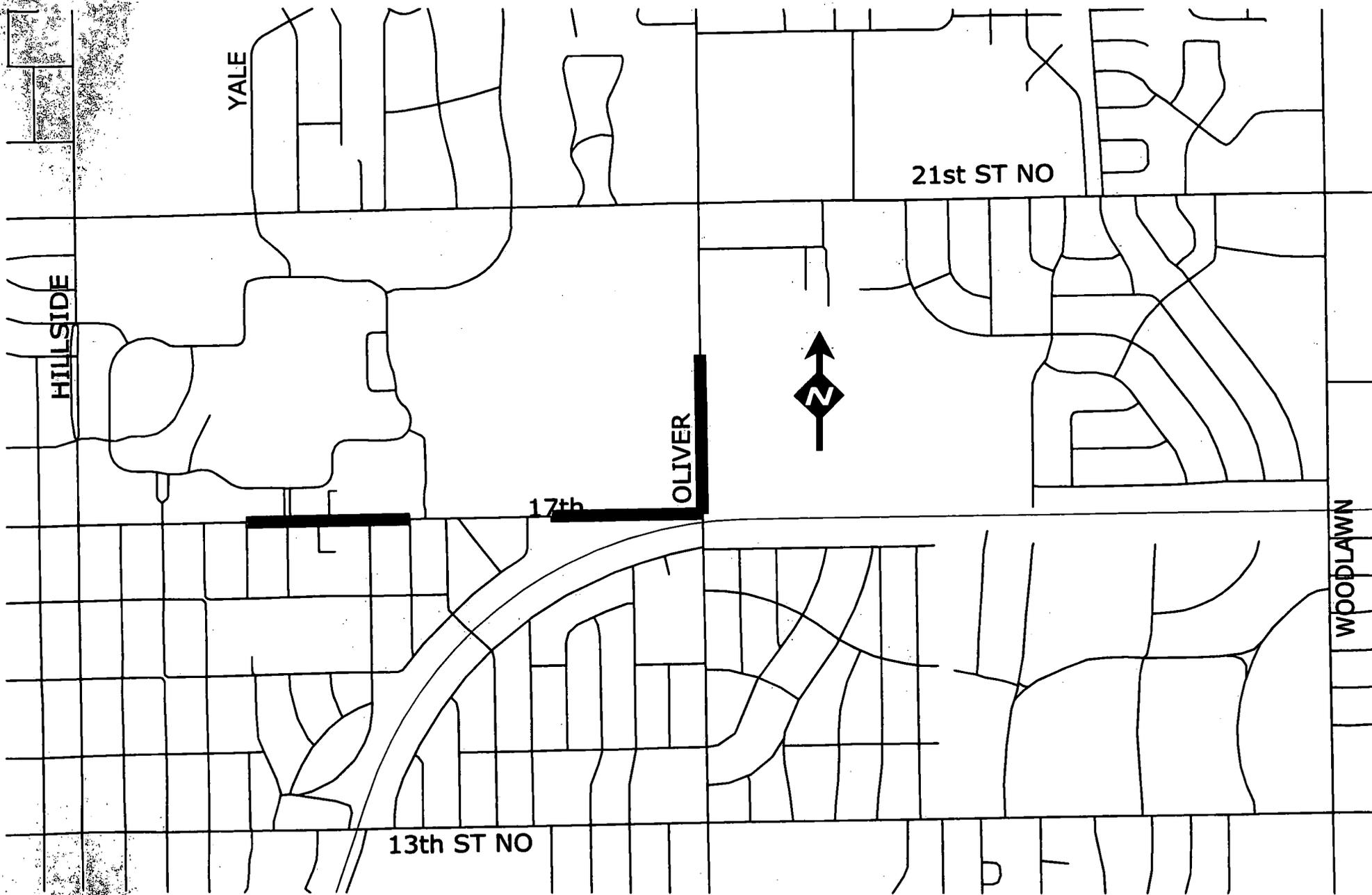
Construction of both waterlines must be completed before construction of WSU’s Innovation Campus can begin. Campus construction is expected to begin in June 2015, which requires an aggressive project schedule for these improvements.

**Financial Considerations:** The project construction funding is included in the Proposed 2015-2024 Capital Improvement Program (CIP) and contains \$1,750,000 in 2015 for supplemental design fees, construction, and City staff oversight costs. The work will be funded by future revenue bond sales or water utility cash reserves. Staff requests the City Council approve the full amount at this time to facilitate the aggressive design and construction schedule required for this project.

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

**Recommendation/Actions:** It is recommended that the City Council approve the project and budget, adopt the resolution, and authorize all necessary signatures, including those for the acquisition or granting of easements, required permits, and all related agreements.

**Attachments:** Resolution, notice of intent, and map.



**RESOLUTION NO. 15-167**

**A RESOLUTION DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, TO ISSUE REVENUE BONDS FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.**

---

**WHEREAS**, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

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

**WHEREAS**, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 *et seq.*, as amended and supplemented by Charter Ordinance No. 211 of the City (collectively, the “Act”), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility in the following manner:

17<sup>th</sup> Street and Oliver Avenue Waterline Installation and Replacement (W-55)

(the “Project”) and to provide for the payment of all or a portion of the costs thereof by the issuance of revenue bonds of the City pursuant to the Act; said bonds to be payable from the revenues of the Utility.

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

**Section 1. Project Authorization.** It is hereby authorized, ordered and directed that the Project be acquired, constructed and/or installed in accordance with plans and specifications therefor prepared under the direction of the City Engineer or designate and approved by the Governing Body; said plans and specifications to be placed on file in the offices of the Utility. The estimated cost of the Project, including related design and engineering expenses is \$1,750,000. The Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

**Section 2. Project Financing.** It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City under the authority of the Act, in an aggregate principal amount not to exceed \$1,890,000 in order to pay all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs (the “Bonds”). The Bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of the Bonds, if any, shall be paid from unencumbered moneys of the Utility which will be available for that purpose. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this

Resolution, pursuant to Treasury Regulation 1.150-2.

**Section 3. Notice.** Before issuing the Bonds, there shall be published one (1) time in the official newspaper of the City, a notice of the intention of the Governing Body to undertake the Project and to issue the Bonds (the "Notice"); and if within fifteen (15) days after the publication of such Notice, there shall be filed with the City Clerk, a written protest against the Project or the issuance of the Bonds, signed by not less than twenty per cent (20%) of the qualified electors of the City, the Governing Body shall thereupon submit such proposed Project and the Bonds to the electors of the City at a special election to be called for that purpose as provided by the Act. If no sufficient protest is filed with the City Clerk within the period of time hereinbefore stated, then the Governing Body shall have the authority to proceed with the Project and issuance of the Bonds.

**Section 4. Effective Date.** This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

**ADOPTED** by the City Council of the City of Wichita, Kansas, by not less than two-thirds of the members voting in favor thereof, on June 9th.

(SEAL)

---

Jeff Longwell, Mayor

ATTEST:

---

Karen Sublett, City Clerk

APPROVED AS TO FORM:

---

Jennifer Magaña, City Attorney and  
Director of Law

(Published in *The Wichita Eagle*, on June 12<sup>th</sup>, 2015.)

**NOTICE**

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You are hereby notified that the City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”), by Resolution No. 15-167, duly adopted June 9<sup>th</sup>, 2015, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, which is owned and operated by the City (the “Utility”), in the following manner:

17<sup>th</sup> Street and Oliver Avenue Waterline Installation and Replacement (W-55)

(the “Project”) at an estimated cost, including related design and engineering expenses of \$1,750,000.

In order to finance all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds an aggregate principal amount not to exceed \$1,890,000 under the authority of K.S.A. 10-1201 *et seq.*, as amended and supplemented by Charter Ordinance No. 211 of the City (the “Bonds”). The Bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of the Bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

This Notice shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the Bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the Bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the Bonds is filed within said period, then the Governing Body shall have the authority to proceed with the Project and issuance of the Bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on June 9th.

/s/ JEFF LONGWELL, Mayor

ATTEST:

/s/ Karen Sublett, City Clerk

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Funding for Waterline Relocation for Kellogg and I-235 Interchange Improvements (District IV)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the revised budget and adopt the resolution.

**Background:** The Kansas Department of Transportation (KDOT) is planning a project to improve the interchange at I-235 and West Kellogg. The proposed improvements require the relocation of existing City owned waterline facilities. On October 21, 2014, the City Council approved a design contract with TranSystems for relocation of the waterlines. Design work is nearing completion and the first phase of the relocation work needs to begin in early summer, prior to the expected mid-September bid letting for the interchange project.

**Analysis:** KDOT plans to begin construction of the interchange in the fall of 2015. Relocation of the City's waterline facilities is proposed to be split into two phases, with the first phase being completed prior to construction of the interchange, and the second phase being completed along with construction of the interchange. Completing the second phase of the City's waterline relocation with construction of the interchange improvements will reduce costs and minimize traffic disruptions.

**Financial Considerations:** Design work was paid for out of the approved 2014 Water Distribution Mains Replacement budget. The 2015-2024 Proposed Capital Improvement Program includes \$1,400,000 in 2015 for supplemental design fees, construction, and City staff oversight. The costs are covered by the existing rate structure, so approval of the recommended action will not lead to any future impact to customer rates. The work will be funded by future revenue bond sales or water utility cash reserves.

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

**Recommendation/Action:** It is recommended that the City Council approve the revised budget, adopt the resolution, and authorize all necessary signatures, including those for the acquisition or granting of easements, and all required permits and agreements.

**Attachments:** Budget sheet, resolution, and notice of intent.

# Project Request

CIP    Non-CIP   CIP YEAR: 2015   CIP #: \_\_\_\_\_

NEIGHBORHOOD IMPROVEMENT

DEPARTMENT: 13 Public Works & Utilities   DIVISION: Engineering   RESOLUTION/ORDINANCE #: \_\_\_\_\_

ENGINEERING REFERENCE #: \_\_\_\_\_

FUND: 544 Water Construction

COUNCIL DISTRICT: 04 Council District 4   DATE COUNCIL APPROVED: \_\_\_\_\_   REQUEST DATE: \_\_\_\_\_

PROJECT #: \_\_\_\_\_   PROJECT TITLE: Waterline Relocation for Kellogg and I-235 Interchange

PROJECT DETAIL #: \_\_\_\_\_   PROJECT DETAIL DESCRIPTION: Relocation of the City's waterline facilities.

OCA #: \_\_\_\_\_   OCA TITLE: \_\_\_\_\_

PERSON COMPLETING FORM: LaShonda Garnes   PHONE #: 268-4594

PROJECT MANAGER: Shawn Mellies   PHONE #: 268-4632

NEW BUDGET    REVISED BUDGET

## REVENUE

## EXPENSE

<u>Object Level 3</u>	<u>Budget</u>	<u>Object Level 3</u>	<u>Budget</u>
9725 Revenue Bonds	\$1,400,000.00	_____	\$0.00
_____	\$0.00	_____	\$0.00
_____	\$0.00	_____	\$0.00
_____	\$0.00	_____	\$0.00
_____	\$0.00	_____	\$0.00
_____	\$0.00	_____	\$0.00
_____	\$0.00	_____	\$0.00
_____	\$0.00	_____	\$0.00
<b>REVENUE TOTAL:</b>	<b>\$1,400,000.00</b>	<b>EXPENSE TOTAL:</b>	<b>\$0.00</b>

NOTES:

Print Form

**SIGNATURES REQUIRED**

DIVISION HEAD: \_\_\_\_\_   DATE: \_\_\_\_\_

DEPARTMENT HEAD: \_\_\_\_\_   DATE: \_\_\_\_\_

BUDGET OFFICER: \_\_\_\_\_   DATE: \_\_\_\_\_

CITY MANAGER: \_\_\_\_\_   DATE: \_\_\_\_\_

**PROJECT LISTING BY FUNDING SOURCES AND YEAR**
**WATER FACILITIES DETAILED PROJECT LISTING**

		Non-GU	COUNCIL					
	PROJECT TITLE	FUNDING	DISTRICT	2015	2016	2017	2018	2019
1	37th St Booster PLC	RB	All	-	100,000	-	-	-
2	Arterial Projects	RB	All	5,700,000	1,300,000	5,000,000	4,200,000	3,500,000
3	Banner Replacement	RB	All	-	2,200,000	-	-	-
4	Chemical Feed Improv	RB	All	3,500,000	-	-	-	-
5	Cheney 60" Line Air-Rel Repl	RB	All	108,000	-	2,160,000	-	-
6	Cheney Dam - Concrete Cap	RB	All	270,000	-	-	-	-
7	Cheney Ozone Air Rel Repl	RB	All	-	-	-	-	-
8	Che Ozone Gen/Pwr Sup Rep	RB	All	-	-	-	-	-
9	Cheney Repr Inop Intake	RB	All	-	-	-	300,000	2,000,000
10	Cheney Roof Replacement	RB	All	300,000	-	-	-	-
11	Cheney Strainer Repl	RB	All	-	30,000	500,000	-	-
12	Che Surge Tank Repl/Recoat	RB	All	-	-	-	-	-
13	Che Switch Gear Enc & Cool	RB	All	240,000	-	2,000,000	-	-
14	Che Zeb Musl Cntrl - CI Inj	RB	All	-	-	-	-	-
15	Dead End Elim & Red Feed	RB	All	4,030,000	640,000	1,530,000	1,300,000	500,000
16	Distribution Mains Repl	RB	All	5,400,000	5,400,000	5,400,000	5,400,000	5,400,000
17	ILWSP - Local Wellfield Exp	RB	All	-	-	-	-	-
18	Innovation Campus - WSU	RB	All	1,750,000	-	-	-	-
19	Kellogg, 119th-135th W	RB	All	-	-	-	-	-
20	Kellogg, 127th-159th	RB	All	1,620,000	-	-	-	-
21	Kellogg, 135th-151st W	RB	All	610,000	-	-	-	-
22	Kellogg, Greenwich Intrchn	RB	All	-	-	216,000	1,404,000	-
23	Kellogg, I-235 Interchange	RB	All	1,400,000	-	-	-	-
24	Kellogg, K-96 & Greenwich	RB	All	1,330,000	-	-	-	-
25	Local E Wellfield Recons	RB	All	-	-	-	-	-
26	Main Replacement Projects	RB	All	14,900,000	250,000	250,000	250,000	-
27	Mains for Future Dev	RB	All	1,774,217	1,850,000	1,900,000	1,950,000	2,000,000
28	NE Boost Stat VFD & Pump	RB	All	550,000	-	-	-	-
29	NE Water Tower Rehab	RB	All	-	-	-	-	700,000
30	NEBPS Upgrade	RB	All	-	-	-	-	-
31	Outlet Gate Repairs	RB	All	-	-	-	-	-

**RESOLUTION NO. 15-168**

**A RESOLUTION DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, TO ISSUE REVENUE BONDS FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.**

---

**WHEREAS**, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

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

**WHEREAS**, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 *et seq.*, as amended and supplemented by Charter Ordinance No. 211 of the City (collectively, the “Act”), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility in the following manner:

**Waterline Relocation for Kellogg and I-235 Interchange (W-56)**

(the “Project”) and to provide for the payment of all or a portion of the costs thereof by the issuance of revenue bonds of the City pursuant to the Act; said bonds to be payable from the revenues of the Utility.

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

**Section 1. Project Authorization.** It is hereby authorized, ordered and directed that the Project be acquired, constructed and/or installed in accordance with plans and specifications there for prepared under the direction of the City Engineer or designate and approved by the Governing Body; said plans and specifications to be placed on file in the offices of the Utility. The estimated cost of the Project, including related design and engineering expenses is **\$1,400,000**. The Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

**Section 2. Project Financing.** It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City under the authority of the Act, in an aggregate principal amount not to exceed **\$1,512,000** in order to pay all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs (the “Bonds”). The Bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of the Bonds, if any, shall be paid

from unencumbered moneys of the Utility which will be available for that purpose. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation 1.150-2.

**Section 3. Notice.** Before issuing the Bonds, there shall be published one (1) time in the official newspaper of the City, a notice of the intention of the Governing Body to undertake the Project and to issue the Bonds (the "Notice"); and if within fifteen (15) days after the publication of such Notice, there shall be filed with the City Clerk, a written protest against the Project or the issuance of the Bonds, signed by not less than twenty per cent (20%) of the qualified electors of the City, the Governing Body shall thereupon submit such proposed Project and the Bonds to the electors of the City at a special election to be called for that purpose as provided by the Act. If no sufficient protest is filed with the City Clerk within the period of time hereinbefore stated, then the Governing Body shall have the authority to proceed with the Project and issuance of the Bonds.

**Section 4. Effective Date.** This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

**ADOPTED** by the City Council of the City of Wichita, Kansas, by not less than two-thirds of the members voting in favor thereof, on June 9<sup>th</sup>, 2015.

(SEAL)

---

Jeff Longwell, Mayor

ATTEST:

---

Karen Sublett, City Clerk

APPROVED AS TO FORM:

---

Jennifer Magaña, Director of Law

(Published in *The Wichita Eagle*, on June 12<sup>th</sup>, 2015.)

## NOTICE

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You are hereby notified that the City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”), by Resolution No. 15-168, duly adopted June 9th, 2015, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, which is owned and operated by the City (the “Utility”), in the following manner:

Waterline Relocation for Kellogg and I-235 Interchange (W-56)

(the “Project”) at an estimated cost, including relocation work and engineering expenses of \$1,400,000.

In order to finance all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds an aggregate principal amount not to exceed \$1,512,000 under the authority of K.S.A. 10-1201 *et seq.*, as amended and supplemented by Charter Ordinance No. 211 of the City (the “Bonds”). The Bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of the Bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

This Notice shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the Bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the Bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the Bonds is filed within said period, then the Governing Body shall have the authority to proceed with the Project and issuance of the Bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on June 9<sup>th</sup>, 2015.

/s/ JEFF LONGWELL, Mayor

ATTEST:

/s/ Karen Sublett, City Clerk

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council Members

**SUBJECT:** Nuisance Abatement Assessments, Lot Clean Up (Districts I, III, IV, and VI)

**INITIATED BY:** Metropolitan Area Building and Construction Department

**AGENDA:** Consent

---

**Recommendation:** Approve the assessments and place the ordinance on first reading.

**Background:** The Metropolitan Area Building and Construction Department (MABCD) supports neighborhood maintenance and improvement through abatement of nuisances under Titles 7 and 8 of the City Code. State law and local ordinance allow the City to clean-up private properties that are in violation of environmental standards after proper notification is sent to the responsible party. A private contractor performs the work, and the MABCD bills the cost to the property owner.

**Analysis:** State law and City ordinance allow placement of the lot clean-up costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the nuisance abatements in question, and the MABCD is requesting permission for the Department of Finance to process the necessary special assessments.

**Financial Considerations:** Nuisance abatement contractors are paid through budgeted appropriations from the City's General Fund. Owners of abated property are billed for the contractual costs of the abatement, plus an additional administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property. Nuisance abatements to be placed on special assessments are listed on the attached property list.

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

**Recommendation/Action:** It is recommended that the City Council approve the proposed assessments and place the ordinance on first reading.

**Attachments:** Property List for Special Assessments and Ordinance.

<u>PIN #</u>	<u>Geo Code#</u>	<u>Address / Location</u>	<u>Amount</u>	<u>District #</u>
00106219	A 05990	1010 S Main	\$615.48	3
00107999	A 07612	V/L S of 1625 S Palisade	\$1,127.15	3
00121769	B 03053	1207 E 9th St N	\$534.20	1
00122629	B 03722	1507 E 15th St N	\$1,659.21	1
00125164	B 05913	1749 S Topeka	\$823.70	3
00126132	B 06610	212 S Greenwood	\$385.00	1
00126975	B 073830002	1142 S Ellis Ave	\$647.78	1
00130187	B 09967	2426 S Ida Ave	\$581.40	3
00130482	B 10243	1703 N Pennsylvania Ave	\$622.60	1
00135587	C 00611	V/L of 541 N Ash	\$574.48	1
00136520	C 01246	1625 N Grove Ave	\$763.85	1
00136536	C 01260	1513 N Grove	\$411.40	1
00136537	C 01261	1507 N Grove	\$413.80	1
00136958	C 014320001	1827 N Grove	\$715.31	1
00137086	C 01460001B	1841 N Minnesota	\$540.61	1
00137375	C 01605	V/L N of 434 N Volutsia	\$482.60	1
00138691	C 02728	1351 N Poplar Ave	\$420.15	1
00139024	C 03024	1208 N Chautauqua Ave	\$759.68	1
00139148	C 031330001	V/L W of 2616 E 9th	\$657.90	1
00152942	C 08312	3915 E Edgemont Pl	\$1,483.06	1
00153007	C 08372	633 N Dellrose Ave	\$532.60	1
00154501	C 09800	249 S Minnesota Ave	\$485.00	1
00157482	C 11871	1121 S Minnesota Dr	\$621.20	1
00159570	C 13836	3607 E Lavon Dr	\$411.40	1
00166301	C 20886	2833 E Ellen St	\$429.64	1
00170432	C 24994	2335 S McAdam Dr	\$649.96	3
00171460	C 26067000A	2920 S Volutsia Ave	\$591.60	3
00174485	C 29138	3361 E Cessna St	\$385.00	3
00175530	C 30164	4204 E Menlo Dr	\$650.54	3
00215868	D 14689	3422 W 1st St N	\$428.00	6
00484676	C 55287	6048 S Hydraulic Ave	\$799.00	3
00485422	D 54396	6000 S Osage	\$945.60	4
		<b>TOTAL</b>	<b>\$21,148.90</b>	

Published in the Wichita Eagle on June 19, 2015

**ORDINANCE NO. 50-024**

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE COST OF ABATING CERTAIN PUBLIC HEALTH NUISANCES (**LOT CLEAN UP**) UNDER THE PROVISION OF SECTION 7.40.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That the sum set opposite each of the following lots, pieces and parcels of land or ground, herein specified, be and the same is hereby levied to pay the cost of abating certain public nuisances under the provision of Section 7.40.050 of the Code of the City of Wichita, Kansas, which public health nuisances are determined to have existed upon the following described property:

<b>Legal of Parcel in Benefit District</b>	<b>Assessment</b>
LOT 118 & N 1/2 LOT 120 MAIN ST. LEE'S ADD.	\$615.48
LOTS 17-19 PALISADE AVE. EUREKA OR ROCK ISLAND ADD.	\$1,127.15
LOTS 2-4 MOORE'S 2ND. ADD.	\$534.20
LOT 37 & E1/2 LOT 39 & VAC 5 FT ADJON N & 1/2 VAC ALLEY ADJ ON S 15TH. ST. IN VAC. SPRING GROVE 2ND. ADD.	\$1,659.21
LOTS 21-23 & N 1/2 LOT 25 BLOCK 3 WILSON'S ADD.	\$823.70
S 10 FT LOT 42-ALL LOTS 44-46 FANNIE AVE. HYDE'S ADD.	\$385.00
LOT 16 ELLIS AVE. AMIDON'S ADD.	\$647.78
LOTS 26-28 WABASH AVE. WABASH AVE. SUB.	\$581.40
LOT 5 FOX-HUEY ADD.	\$622.60
LOTS 25-27 ASH ST. STITES BROS. 2ND. ADD.	\$574.48
LOTS 67-69 TYLER NOW GROVE ST. LOGAN ADD.	\$763.85
LOTS 129-131 TYLER NOW GROVE ST. LOGAN ADD.	\$411.40
LOTS 133-135 GROVE ST. LOGAN ADD.	\$413.80
LOTS 72-74 TYLER NOW GROVE STOUT'S ADD.	\$715.31
LOTS 157-159 BLOCK 14 PENNSYLVANIA ADD.	\$540.61
LOT 2 & N 10 FT LOT 4 BURR NOW VOLUTSIA AVE. MAPLE GROVE ADD.	\$482.60
LOTS 7-9 MONA NOW POPLAR ST. FAIRMOUNT PARK ADD.	\$420.15
LOTS 90-92 MT OLIVE NOW CHAUTAUQUA AVE FAIRMOUNT PARK ADD	\$759.68
LOTS 5-6 BLOCK 3 ESTERBROOK PARK ADD.	\$657.90
LOTS 11-12 & E 8 FT LOT 13 & 1/2 VAC ALLEY ADJ ON S WICKERSHAM ADD.	\$1,483.06
LOTS 95-96 OVERLOOK ADD.	\$532.60
LOT 10 BLOCK 2 MC KNIGHT PLACE ADD.	\$485.00
LOT 5 BLOCK 2 SCHWEITER'S 7TH. ADD.	\$621.20
LOT 2 BLOCK C YALE HEIGHTS ADD.	\$411.40
LOT 19 BLOCK N AUDREY MATLOCK HEIGHTS 1ST. ADD.	\$429.64
LOT 19 BLOCK G MC ADAM ACRES 2ND	\$649.96
W 70 FT LOT 15 BUTLER'S 2ND. ADD.	\$591.60
LOT 14 BLOCK H PLANEVIEW SUB. NO. 1	\$385.00

LOT 45 EXC BEG SELY COR NELY 38.37 FT NWLY 80 FT TO PT ON NWLY LI SWLY 38.45 FT TO SWLY COR SELY 80 FT TO BEG BLOCK E HILLTOP MANOR SUB A REPLAT OF PT HILLTOP MANOR & HILLTOP MANOR 2ND	\$650.54
LOT 10 BLOCK A MT CARMEL 4TH ADD	\$428.00
LOT 5 BLOCK 1 SOUTH HYDRAULIC GARDENS ADD.	\$799.00
W 54 FT LOT 39 3RD. CLARKDALE SUB.	\$945.60

SECTION 2. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **16th day of June, 2015.**

\_\_\_\_\_  
 Jeff Longwell, Mayor

ATTEST:

\_\_\_\_\_  
 Karen Sublett, City Clerk

(SEAL)

Approved as to form:

:

\_\_\_\_\_  
 Jennifer Magana, City Attorney and Director of Law

**Agenda Item No. II-14**

**City of Wichita  
City Council Meeting  
June 9, 2015**

**TO:** Mayor and City Council  
**SUBJECT:** Novation of Contract  
**INITIATED BY:** Law Department  
**AGENDA:** Consent

---

**Recommendation:** Approve the Contract Amendment.

**Background:** On November 1, 2014, the City entered into an agreement to provide catering services to Century II tenants with B.L.A. Enterprises, Inc., d/b/a Corporate Caterers of Wichita, which was the successful proposer in a competitive selection process. The agreement called for catering services on a shared market basis with Hyatt catering services, and allowed use of the Century II kitchen and equipment for in-house and non-competing outside catering activities. B.L.A. Enterprises, Inc. has since merged with A.V.I. Sea Bar & Chophouse, LLC, and the surviving entity to continue all contractual obligations is A.V.I. Sea Bar & Chophouse, LLC.

**Analysis:** The ownership of the former B.L.A. Enterprises, Inc. and A.V.I. Sea Bar & Chophouse, LLC are the same two people with the exact same ownership interest. The business entities have completed all required steps with the Kansas Secretary of State to accomplish the merger. The surviving entity will continue to operate under the business name of Corporate Caterers of Wichita.

**Financial Considerations:** None. All assets of the former B.L.A. Enterprises, Inc. have transferred to A.V.I. Sea Bar & Chophouse, LLC, which has also contractually undertaken to accept all contractual obligations and rights running to B.L.A. Enterprises, Inc.

**Legal Considerations:** The Law Department has prepared and approved the Contract Amendment as to form. This novation releases the original (and no longer existing) corporation from the Agreement and accepts the entity surviving the merger as the new obligee to the City. All terms of the original Agreement remain effective and unchanged, to be satisfied by the new party, A.V.I. Sea Bar & Chophouse, LLC.

**Recommendations/Actions:** It is recommended that the City Council approve the Contract Amendment accepting a novation due to a merger.

**Attachment:** Contract Amendment.

## CONTRACT AMENDMENT

This Contract Amendment is entered into this \_\_\_\_ day of June, 2015 between the City of Wichita, Kansas, a municipal corporation (City) and A.V.I. Sea Bar & Chophouse, LLC, a Kansas limited liability company (AVI), doing business as Corporate Caterers of Wichita.

Whereas, City approved an Agreement on November 1, 2014 with B.L.A. Enterprises, Inc., a Kansas Corporation (BLA), to provide catering services to Century II facility tenants, and to allow outside catering from the Century II kitchen to the extent such outside catering is not in conflict or competition with Century II activities; and

Whereas, BLA merged with AVI and AVI is the surviving entity from that merger.

Therefore, City and AVI agree as follows:

AVI agrees to provide services and adhere to all obligations set out in the November 1, 2014 Agreement, including any obligations or services begun, but not completed by BLA. City releases BLA as an entity from the terms of the November 1, 2014 Agreement and City accepts a novation of the November 1, 2014 Agreement with AVI as the new contracting party.

All other terms of the November 1, 2014 Agreement are affirmed and adopted by the City and AVI as of the date of execution of this Contract Amendment.

CITY OF WICHITA, KANSAS,  
a municipal corporation

By: \_\_\_\_\_  
Jeff Longwell, Mayor

Approved as to form:

ATTEST:

\_\_\_\_\_  
Jennifer Magaña, City Attorney  
and Director of Law

\_\_\_\_\_  
Karen Sublett, City Clerk

A.V.I. SEA BAR & CHOPHOUSE, LLC,  
a Kansas limited liability company

By: \_\_\_\_\_  
Ben Arnold, Member

By: \_\_\_\_\_  
Dwight Wells, Member

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Partial Loan Forgiveness Request, Home Repair Program  
(District I)

**INITIATED BY:** Housing and Community Services Department

**AGENDA:** Consent

---

**Recommendation:** Approve the partial loan forgiveness request, with all net proceeds from the approved sale to be paid to the City, and authorize the necessary signatures.

**Background:** The Housing and Community Services Department provides loans for home repair and/or rehabilitation assistance through the Home Repair program. In most cases, the loans are zero-interest with payments deferred. Loans can be provided for as little as \$500 for emergency assistance needs and for as much as \$35,000 for whole-house rehabilitation. The current program design was implemented in 2006, and provides for forgiveness of Emergency Assistance and Minor Home Repair deferred loans of less than \$5,000, after a period of five years. Deferred loans between \$5,000 and \$35,000, which are provided for whole-house rehabilitation, are partially forgiven after a period of five years.

**Analysis:** On March 15, 1999, a deferred payment loan in the amount of \$4,040 was extended to Mathias and Earlene Thompson, for repairs to a single-family residence located at 1537 N. Estelle. The loan is secured by a mortgage on the property and includes no forgiveness provisions. Mr. and Mrs. Thompson are now deceased, and their daughter, Lisa Jacques, is the sole owner of the property. Ms. Jacques has advised City staff that she does not have the resources sufficient to rehabilitate and maintain the property, and seeks to sell it to an investor.

According to the Sedgwick County Appraiser, the value of the property with improvements is \$25,550, and it is designated to be in “Fair” condition. However, an inspector from the Housing and Community Services Department’s Home Improvement Program recently inspected the property and found it to be in extremely poor condition. There is evidence of illegal occupancy of the home, much of the electrical wiring and plumbing have been removed, and there is extensive long-term water damage to the drywall and flooring, which is primarily the result of roof leaks and an actual hole in the roof. Staff estimates the cost of repairs/rehabilitation necessary to achieve compliance with the minimum housing code to be in excess of \$50,000.

Ms. Jacques has received an offer of \$5,000 for the property “as is”. Given the condition of the property and the owner’s lack of financial capacity to renovate and maintain it, staff recommends that the owner be allowed to proceed with the sale.

**Financial Considerations:** Under the proposed arrangement, the City will forgive the balance of its loan that cannot be paid from the net proceeds of the sale, as recommended by staff. Sales proceeds will be used for costs associated with the sale, and payment of past due property taxes. Net proceeds from the sale are estimated to be \$3,750. Ms. Jacques will receive no proceeds from the sale. There are no general funds involved in the transaction.

**Legal Considerations:** Upon receipt of the net proceeds and forgiveness of outstanding loans, the City will prepare documents necessary to release the mortgage lien on the property to be filed of record by the closing agent.

**Recommendations/Actions:** It is recommended that the City Council approve the partial loan forgiveness request, with all net proceeds from the approved sale to be paid to the City, and authorize the necessary signatures.

**Attachments:** None.

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Partial Loan Forgiveness Request, Historic Revolving Loan Program  
(District VI)

**INITIATED BY:** Housing and Community Services Department

**AGENDA:** Consent

---

**Recommendation:** Approve the partial loan forgiveness request, with all proceeds from the approved sale to be paid to the City, and authorize the necessary signatures.

**Background:** The Housing and Community Services Department provides loans for the preservation, restoration and improvement of historically and architecturally significant residential properties under a Memorandum of Understanding with the Metropolitan Area Planning Department – Historic Preservation Office. Low-interest installment loans can be provided for as much as \$25,000 for a period of 20 years, and with total loan-to-value ratios of up to 125%, depending on the loan applicant’s credit history. The loan program was initiated with Community Development Block Grant (CDBG) funding, and continues to be self-funded with payments received from outstanding loans.

**Analysis:** On August 26, 2013, an installment loan in the amount of \$25,000 was extended to Kellie Thiessen, to partially fund improvements to her family’s personal residence, which is located at 1716 N. Park Place. The current balance of the loan is \$23,277. The City’s loan provided for partial window replacement, exterior painting, bathroom renovations, replacement of flooring, and replacement of the roof. The loan is secured by a mortgage on the property and includes no forgiveness provision. Ms. Thiessen was recruited for a position with the University of Manitoba, Canada, in April of 2014. In anticipation of relocating, she listed the home for sale on April 24, 2014, for \$159,900. In July of 2014, Ms. Thiessen and her family relocated to Canada, so that she could accept the employment offer with the University of Manitoba.

According to the Sedgwick County Appraiser, the value of the property with improvements is \$144,120 and it is considered to be in “Average +” condition. In August of 2014, a local real estate professional prepared a market analysis for the property which reflects that \$135,000 would be the estimate of the highest price the property would sell for, if it were exposed on the open market, allowing a reasonable time to find a knowledgeable buyer. The estimated value was based on comparable sales and statistics.

In March of this year, Ms. Thiessen received a viable offer for the property, in the amount of \$130,000. The buyers obtained an inspection of the property, which reflected termite activity within the house structure, a need for electrical system upgrades and renovations to the garage. The inspection report also noted some concrete settlement issues. The buyer is not requesting financial concessions or seller payment for any repairs, under the purchase agreement. Ms. Thiessen is requesting partial forgiveness of the City loan, so that the sale may close. She states that she and her family are experiencing financial hardship related to maintaining the expenses of two households. In addition, she states that her family continues to deal with financial losses related to the exchange rate every time funds are transferred to pay debt in the United States, part of which is related to the financing of renovations to the home.

On April 13, 2015, Housing and Community Services Department staff presented the offer in the amount of \$130,000 to the City's Historic Preservation Board. The members of the board, indicating that the offer was commensurate with current property values, unanimously voted to recommend approval of a negotiated sale of the property, with partial forgiveness of the City's loan.

Given the market analysis information, the information provided in the inspection report, the amount of time the property has been listed for sale, and the recommendation of the Historic Preservation Board, staff recommends that the owner be allowed to proceed with the sale, with partial forgiveness of the City's loan.

**Financial Considerations:** The net proceeds from the sale are estimated to be \$5,000, following repayment of the first mortgage loan and payment of reasonable selling expenses, including the real estate commission. Under the proposed arrangement, the City will forgive the remaining loan balance, in the approximate amount of \$18,400, as approved by staff. The seller will not share in the proceeds. There are no general funds involved in the transaction.

**Legal Considerations:** Upon receipt of the proceeds and forgiveness of outstanding loans, the City will prepare documents necessary to release its mortgage lien on the property, to be filed of record by the closing agent.

**Recommendations/Actions:** It is recommended that the City Council approve the partial loan forgiveness request, with all proceeds from the approved sale to be paid to the City, and authorize the necessary signatures.

**Attachments:** None.

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Purchase of Paratransit Vans (All Districts)

**INITIATED BY:** Wichita Transit

**AGENDA:** Consent

---

**Recommendation:** Approve the contract to purchase up to 50 paratransit vans over a five-year period and an initial purchase of nine paratransit vans in 2015.

**Background:** Wichita Transit operates a fleet of 24 paratransit vans. In 2015, 19 paratransit vans are eligible for replacement. Wichita Transit plans to replace nine vans in 2015 and the remaining 10 vans in 2016. These vehicles have been included in Wichita Transit's fleet replacement schedule and the City's 2011-2020 Adopted Capital Improvement Program.

**Analysis:** The useful life expectancy for paratransit vans has been established by the Federal Transit Administration (FTA) at four years. Wichita Transit does try to extend the life of the vans through good maintenance practices, but not to the point that they become very costly and unreliable. Replacement of vans that are beyond their useful life will result in better control over maintenance costs and improvement in service dependability.

The following procurement process has been followed as per City of Wichita Purchasing Policies and Procedures and FTA regulations. A request for proposal (RFP) was advertised on January 8, 2015 soliciting vendor proposals for this procurement. Requests for clarification and approved equals were made by prospective vendors and responses were provided by Wichita Transit staff. Four proposals were received on February 20 for the RFP. A selection committee held meetings on March 24 and April 2 in 2015 to interview two vendors and review references. After evaluations were scored by the selection committee, the highest ranked proposal was submitted by Kansas Truck Equipment Company Inc., Wichita, Kansas.

**Financial Consideration:** The cost per vehicle for the initial year of the procurement is \$71,247. The total cost will be \$641,223. The total cost will be funded at an 85% Federal share (\$545,040) and the 15% local match (\$96,183) will be cash from the Transit Fund. The purchase of paratransit vans is included in the City's 2011-2020 Adopted Capital Improvement Program.

**Legal Consideration:** The City's Law Department has reviewed and approved this contract as to form.

**Recommendation/Actions:** It is recommended that the City Council approve the selection of Kansas Truck and Equipment Co., Inc. for the purchase of up to 50 Paratransit vans over the next five years and approve the order of nine paratransit vans in 2015.

**Attachments:** Contract with Kansas Truck Equipment Company Inc.

**CONTRACT  
For  
PARATRANSIT VANS**

**THIS CONTRACT** entered into this 9th day of June, 2015, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **KANSAS TRUCK EQUIPMENT COMPANY, INC.** (Vendor Code Number 806770-001), whose principal office is at 1521 S. Tyler Road, Wichita, KS Telephone Number (316) 722-4291 hereinafter called "**VENDOR**".

**WITNESSETH:**

**WHEREAS**, the **CITY** has solicited bids for **Paratransit Vans** (Formal Proposal – FP440085) [Commodity Code Number 55630]; and

**WHEREAS, VENDOR** has submitted the bid most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

**NOW, THEREFORE**, the parties hereto agree as follows:

**1. Scope of Services.** **VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP440085 [Commodity Code Number 55630] which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans, addenda and FTA required contract clauses, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP440085, shall be considered a part of this contract and is incorporated by reference herein.

**2. Compensation.** **CITY** agrees to pay to **VENDOR** the **unit prices as per Exhibit B for Paratransit Vans** for Formal Proposal – FP440085 [Commodity Code Number 55630], for Wichita Transit as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of February 20, 2015, and as approved by the City Council on June 9, 2015.

**Billing Terms – Net Thirty (30) Days**

**3. Term.** This contract shall be effective **June 9, 2015**. Possible quantity of Paratransit Vans to be ordered is 50 over a five year period. **City** anticipates ordering 9 vans the first year and up to 41 vans over the following 4 years. The quantities listed are estimated only and do not guarantee or limit in any way the amount of vehicles the **City** may purchase under this contract. This contract is subject to cancellation by the **City**, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR**.

**4. Indemnification and Insurance.**

a. **VENDOR** shall save and hold the **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 **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

**5. Independent Contractor.** The relationship of the **VENDOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **VENDOR** shall be considered an employee of the **CITY**.

**6. Compliance with Laws.** **VENDOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

**7. No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

**8. Non-Discrimination.** **VENDOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

**9. Third Party Rights.** It is specifically agreed between the parties 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.

**10. No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

**11. Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas. The parties agree that this contract has been created in Kansas.

**12. Representative's Authority to Contract.** By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

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

**ATTEST:**

**THE CITY OF WICHITA**

\_\_\_\_\_  
Karen Sublett  
City Clerk

\_\_\_\_\_  
Jeff Longwell  
Mayor

**APPROVED AS TO FORM:**

**KANSAS TRUCK EQUIPMENT  
COMPANY, INC.**

\_\_\_\_\_  
Jennifer Magana, City Attorney &  
Director of Law

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Signature Name

\_\_\_\_\_  
Title *(President or Corporate Officer)*

Exhibit A

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

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

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
  
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;



D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** Assignment of Lease and Documents Related to Sale of Old Town Marriott Courtyard Hotel (District VI)

**INITIATED BY:** Office of Urban Development

**AGENDA:** Consent

---

**Recommendation:** Approve the Resolution authorizing the City of Wichita to (I) consent to the assignment of a lease and related documents by Old Town Lodging, LLC (the “Tenant”) to Ashford Wichita LP, (II) consent to the execution of an operating sublease and management agreement, (III) execute an amendment to the Industrial Revenue Bond (IRB) lease, and (IV) consent to the transfer of a bond by Wells Fargo Bank to Ashford Wichita LP and the pledge of such bond to Morgan Stanley Bank N.A. and authorize necessary signatures.

**Background:** On December 28, 2006, the City of Wichita issued Series VI-A and Series VI-B Industrial Revenue Bonds (IRBs) in the amount of \$14,135,000 for the benefit of Old Town Lodging, LLC to finance the conversion of a warehouse at 820 E. 2<sup>nd</sup> St. N. in Old Town into a Courtyard by Marriott Hotel. Old Town Lodging renovated the two-story former Printing Inc. warehouse and added three additional stories to create a hotel with 129 guest rooms, a restaurant/coffee shop, meeting rooms, a fitness center and a large atrium area. In 2011, an affiliate of Rockbridge Capital bought Old Town Lodging, LLC and its assets which included the leasehold in the Courtyard Marriott property.

Old Town Lodging, LLC now has a contract to sell its interest in the hotel. The bond documents require consent from the City and the bondholder to allow the Tenant to assign the Lease while the bonds are outstanding.

**Analysis:** An affiliate of Rockbridge Capital acquired 100% ownership of Old Town Lodging, LLC in 2011 and continued to have the property managed by AG Hospitality, a hotel management company based in Wichita. The Tenant is now under contract to sell the property to an affiliate of Ashford Hospitality Trust, a publicly traded real estate investment trust located in Dallas, Texas. Ashford operates a portfolio of 116 properties with over 25,000 rooms.

The IRB Lease allows for the Tenant to assign its interest in the Lease with the consent of the bondholder and City, as issuer of the bonds. All liability for performance required in the Lease and related documents becomes the responsibility of the new tenant, including the assumption of all obligations of the Tenant under the Lease, the Guaranty Agreement, the Administrative Service Fee Agreement and the balance of the Bond Origination Fee.

**Financial Considerations:** There is no financial impact to the City by approving the sale of the property. Bondholders and the Trustee have provided consent to the sale of the project and assignment of the lease.

**Legal Considerations:** All documents have been reviewed and approved as to form by the Law Department prior to the refinance.

**Recommendation/Actions:** It is recommended that the City Council approve the Resolution authorizing the

City of Wichita to (I) consent to the assignment of a lease and related documents by Old Town Lodging, LLC (the “Tenant”) to Ashford Wichita LP, (II) consent to the execution of an operating sublease and management agreement, (III) execute an amendment to the Industrial Revenue Bond (IRB) lease, and (IV) consent to the transfer of a bond by Wells Fargo Bank to Ashford Wichita LP and the pledge of such bond to Morgan Stanley Bank N.A. and authorize necessary signatures.

**Attachments:** Resolution, Assignment of Lease and Related Documents, 2<sup>nd</sup> Amendment to Lease

**RESOLUTION NO. 15-169**

**A RESOLUTION AUTHORIZING THE CITY OF WICHITA, KANSAS TO (I) CONSENT TO THE ASSIGNMENT OF A CERTAIN LEASE AND RELATED DOCUMENTS BY OLD TOWN LODGING, LLC TO ASHFORD WICHITA LP, (II) CONSENT TO THE EXECUTION OF A CERTAIN OPERATING LEASE AND MANAGEMENT AGREEMENT, (III) EXECUTE AN AMENDMENT TO THE LEASE, AND (IV) CONSENT TO THE TRANSFER OF A CERTAIN BOND BY WELLS FARGO BANK, NATIONAL ASSOCIATION TO ASHFORD WICHITA LP.**

**WHEREAS**, the City of Wichita, Kansas (the “Issuer”), has previously entered into a Lease dated as of December 1, 2006, with Old Town Lodging, LLC (the “Tenant”), as amended and supplemented by the First Amendment to Lease between the same parties (as supplemented and amended, the “Lease”) in connection with the issuance by the Issuer of its Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC), none of which remain outstanding, and its Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC), which remain outstanding in the aggregate principal amount of \$885,000 (the “Bonds”); and

**WHEREAS**, pursuant to *Sections 8.1* and *8.2* of the Lease, the Issuer is required to consent to any assignment of Tenant's interest in the Lease; and

**WHEREAS**, in connection with the issuance of the Bonds and execution and delivery of the Lease, the Tenant has entered into the following documents (collectively, the “Related Documents”):

- (a) Guaranty Agreement dated as of December 1, 2006, between the Tenant and Security Bank of Kansas City, Kansas City, Kansas, as successor trustee to UMB Bank, N.A., Kansas City, Missouri (the “Trustee”);
- (b) Direct Pay Agreement dated as of December 1, 2006, between the Tenant and the Trustee;
- (c) Administrative Service Fee Agreement dated as of December 1, 2006, between the Issuer and the Tenant;
- (d) Industrial Revenue Bond Origination Fee Agreement approved October 18, 2013, between the Issuer and the Tenant; and

**WHEREAS**, (i) Tenant has proposed to (A) execute and deliver to Ashford Wichita LP, a Delaware limited partnership (the “Assignee”), an Assignment of Lease and Related Documents (the “Assignment”) assigning its interest in, to, and under the Lease and the Related Documents to Assignee, and (B) cause a transfer of the Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC) (the “Series B Bonds”) from Wells Fargo Bank, National Association, a national banking association, to Assignee; and (ii) the Assignee has proposed to execute and deliver, or cause the execution and delivery of, (A) a document accepting the Assignment and assuming the obligations of Tenant under the Lease and the Related Documents, (B) the Lease Agreement between Assignee, as lessor, and Ashford TRS Wichita Licensee LLC, a Kansas limited liability company, as lessee (the “Operating Lease”), (C) the Addendum to Hotel Master Management Agreement between Ashford TRS Corporation, a Delaware

corporation, as lessee, Ashford TRS Wichita Licensee LLC, as new lessee, and Remington Lodging & Hospitality, LLC, a Delaware limited liability company, as manager (the "Management Agreement"), and (D) a collateral assignment of the Series B Bonds in favor of Morgan Stanley Bank, N.A., a national banking association; and

**WHEREAS**, the Tenant and Assignee have requested that the Issuer consent to the execution and delivery of (i) the Assignment, (ii) the Operating Lease, and (iii) the Management Agreement; and

**WHEREAS**, the Tenant and Assignee have requested that the Issuer waive any restrictions upon the transfer, sale, assignment, or hypothecation of the Series B Bonds imposed in Section 6(C) of the Bond Purchase Agreement dated December 28, 2006, between the Issuer and Tenant (the "Bond Purchase Agreement"), and consent to the transfer, sale, and assignment of the Series B Bonds from Wells Fargo Bank, National Association to Assignee, and the subsequent collateral assignment of the Series B Bonds by Assignee in favor of Morgan Stanley Bank, N.A.; and

**WHEREAS**, the Assignee has requested an amendment to the Lease concurrently with such Assignment; and

**WHEREAS**, pursuant to *Section 27.1* of the Lease and *Section 1202* of the Indenture, the Issuer and Trustee may amend the Lease with the consent of the owners of 100% of the outstanding Bonds; and

**WHEREAS**, the Lease and the Trust Indenture dated as of December 1, 2006, between the Issuer and the Trustee authorizing and securing the Bonds (the "Indenture") were approved by the governing body of the Issuer pursuant to Ordinance No. 47-317 passed December 19, 2006.

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

**Section 1.** The Issuer hereby consents to the execution and delivery of the (i) Assignment and confirms that Tenant is released from performing all the terms, covenants and conditions of the Lease and the Related Documents from and after the effective date of the Assignment, (ii) the Operating Lease, (iii) the Management Agreement, and (iv) the Lease Amendment (defined below). Notwithstanding such consent, the Issuer expressly reserves to itself and its assignees all rights and privileges accruing to it under the terms of the Lease and the Related Documents, as expressly provided therein.

**Section 2.** The Issuer hereby waives any restrictions upon the transfer, sale, assignment, and hypothecation of the Series B Bonds imposed in Section 6(C) of the Bond Purchase Agreement, and consents to the transfer, sale, and assignment of the Series B Bonds to Assignee, and the collateral assignment of the Series B Bonds by Assignee in favor of Morgan Stanley Bank, N.A.

**Section 3.** The form of the Second Amendment to Lease (the "Lease Amendment") to be entered into between the Issuer and the Assignee, as successor tenant, is hereby approved in substantially the form presented to the governing body of the Issuer concurrently with this Resolution.

**Section 4.** The Mayor and the City Clerk are hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the Issuer, the Issuer's consent to the Assignment, the Operating Agreement, the Management Agreement, the transfer, sale, and assignment of the Series B Bonds from Wells Fargo Bank, National Association to Assignee, and the collateral assignment of the Series B Bonds by Assignee in favor of Morgan Stanley Bank, N.A. upon receipt of the written consent of the owners of 100% of the outstanding Bonds. The Mayor and City Clerk are further authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the Issuer, the Lease Amendment upon

receipt of the Trustee's executed copy of the Lease Amendment and the written consent of the owners of 100% of the outstanding Bonds.

**Section 5.** This resolution shall take effect and be in full force immediately after its adoption by the governing body of the Issuer.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**ADOPTED** by the City Council of the City of Wichita, Kansas, on June 9, 2015.

(SEAL)

\_\_\_\_\_  
Jeff Longwell, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer Magaña, Director of Law and  
City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution adopted by the City Council of the City of Wichita, Kansas on June 9, 2015, as the same appears of record in my office.

DATED: June [\_\_], 2015.

\_\_\_\_\_  
Karen Sublett, City Clerk

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

## ASSIGNMENT OF LEASE AND RELATED DOCUMENTS

**THIS ASSIGNMENT OF LEASE AND RELATED DOCUMENTS** (the “Assignment”) is made as of [\_\_\_\_\_], 2015 (the “Effective Date”), by Old Town Lodging, LLC, a Kansas limited liability company (the “Assignor”), to Ashford Wichita LP, a Delaware limited partnership (the “Assignee”);

### WITNESSETH:

**WHEREAS**, Assignor, as seller, and Assignee, as buyer, entered into that certain Hotel Purchase and Sale Agreement, dated as of April 17, 2015 (as the same may be amended from time to time, the “Purchase Agreement”) pursuant to which Assignor has agreed to sell, assign, transfer and convey to Assignee certain property including that certain hotel commonly known as the “Courtyard by Marriott – Wichita Old Town”.

**WHEREAS**, Assignor has heretofore entered into a Lease, as Tenant, with the City of Wichita, Kansas (the “Issuer”), as Issuer, dated as of December 1, 2006, as amended and supplemented by the First Amendment to Lease between the same parties (as supplemented and amended, the “Lease”) covering the land, buildings, and certain other improvements and property described on *Schedule I* attached hereto (the “Project”), which Lease was entered into in connection with the issuance by the Issuer of its Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC), none of which remain outstanding, and its Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC), which remain outstanding in the aggregate principal amount of \$885,000 (the “Bonds”); and

**WHEREAS**, in connection with the issuance of the Bonds and execution and delivery of the Lease, the Assignor has entered into the following documents (collectively, the “Related Documents”):

(a) Guaranty Agreement dated as of December 1, 2006, between the Assignor and Security Bank of Kansas City, Kansas City, Kansas, as successor trustee to UMB Bank, N.A., Kansas City, Missouri (the “Trustee”);

(b) Direct Pay Agreement dated as of December 1, 2006, between the Assignor and the Trustee;

(c) Administrative Service Fee Agreement dated as of December 1, 2006, between the Issuer and the Tenant;

(d) Industrial Revenue Bond Origination Fee Agreement approved October 18, 2013, between the Issuer and the Tenant; and

**WHEREAS**, Assignor and Assignee have agreed that Assignee will acquire Assignor's leasehold rights in the Project and will assume Assignor's obligations under the Lease and the Related Documents.

**THEREFORE**, Assignor, for itself, its successors and assigns, hereby agrees and covenants with Assignee, its successors and assigns, as follows:

**Section 1. Assignor's Representations and Warranties.** Assignor represents and warrants to Assignee as follows:

(a) In accordance with Sections 8.1 and 8.2 of the Lease, the Issuer and the owners of 100% of the outstanding Bonds have filed with the Trustee their written consent to this Assignment.

(b) The Lease is in full force and effect and, to Assignor's knowledge, there is no existing, and no event has occurred that with the giving of notice or the passing of time, or both, would constitute a, (i) Default or Event of Default (as each term is defined in the Lease) under the provisions of the Lease, or (ii) breach, violation, or default under the provisions of the Related Documents or in the performance of any terms, covenants, conditions or warranties of either the Lease or the Related Documents to be observed and performed by Assignor.

(c) All Basic Rent and Additional Rent reserved in the Lease payable prior to the date hereof have been paid.

(d) Assignor has not modified, amended or in any way altered the terms of the Lease (except as disclosed to Assignee), or waived, excused, condoned or in any way released or discharged the Issuer from the obligations, covenants, conditions and agreements to be done and performed by the Issuer.

**Section 2. Assignment and Warranty.** Assignor does hereby sell, assign, transfer and set over to Assignee all of the Assignor's rights, title and interest in, to, and under the Lease (including, without limitation, any and all rights or interests of Assignor in or to the Project, or any part thereof or interest therein, arising under the Lease) and the Related Documents on and subject to the conditions contained in the Lease and the Related Documents. Assignor covenants and warrants with Assignee, its successors and assigns that as of the Effective Date, title to the Project described on *Schedule I* attached hereto is free and clear of all liens and encumbrances, except such liens and encumbrances that have been disclosed to and accepted by Assignee in accordance with the Purchase Agreement. Assignor further agrees to warrant and defend title to the property assigned from any and all claims of all persons claiming by, through or under Assignor, but against none other.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, Assignor has caused this Assignment of Lease and Related Documents to be executed by its duly authorized officer.

**OLD TOWN LODGING, LLC**

By: RB Wichita CY Holdings LLC, a Delaware limited liability company, its Sole Member

By: RB Wichita CY Investment Holdings LLC, a Delaware limited liability company, its Sole Member

By: RockBridge Real Estate Fund III LLC, a Delaware limited liability company, its Sole Member

By: RockBridge Capital, LLC, an Ohio limited liability company, its Manager

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, the \_\_\_\_\_ of Rockbridge Capital, LLC, an Ohio limited liability company, which is the Manager of RockBridge Real Estate Fund III LLC, a Delaware limited liability company, which is the sole member of RB Wichita CY Investment Holdings LLC, a Delaware limited liability company, which is the sole member of RB Wichita CY Holdings LLC, a Delaware limited liability company, which is the sole member of Old Town Lodging, LLC, a Kansas limited liability company, on behalf of such limited liability companies.

\_\_\_\_\_  
Notary Public

(Notary Seal)

Typed or printed name of Notary Public:

\_\_\_\_\_

Appointment Expires: \_\_\_\_\_

**ACCEPTANCE AND ASSUMPTION**

Ashford Wichita LP, a Delaware limited partnership, hereby accepts the foregoing Assignment of Lease and Related Documents from Old Town Lodging, LLC, a Kansas limited liability company, and hereby assumes and agrees to fully perform, observe, pay and discharge each and every term, covenant, obligation, duty, liability, undertaking and agreement of Old Town Lodging, LLC under or pursuant to the Lease and the Related Documents, in each case whether absolute, accrued, contractual, contingent or otherwise, arising from and after the Effective Date as defined in the foregoing Assignment of Lease and Related Documents.

**IN WITNESS WHEREOF**, Assignee has caused this Acceptance and Assumption of the Assignment of Lease and Related Documents to be executed by its duly authorized officer.

**ASHFORD WICHITA LP,**  
a Delaware limited partnership

By: Ashford Wichita GP LLC,  
a Delaware limited liability company,  
its general partner

By: \_\_\_\_\_  
Name: David Brooks  
Title: President

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by David Brooks, President of Ashford Wichita GP LLC, a Delaware limited liability company, which is the general partner of Ashford Wichita LP, a Delaware limited partnership, on behalf of such limited liability company and limited partnership.

(Notary Seal)

\_\_\_\_\_  
Notary Public

Typed or printed name of Notary Public:

\_\_\_\_\_

Appointment Expires: \_\_\_\_\_

(Acceptance and Assumption)

**ISSUER’S CONSENT**

The City of Wichita, Kansas (the “Issuer”), as Issuer under a Lease dated as of December 1, 2006, with Old Town Lodging, LLC, a Kansas limited liability company (the “Tenant”), as amended and supplemented by the First Amendment to Lease between the same parties (as supplemented and amended, the “Lease”) covering the land, buildings, and certain other improvements and property described on *Schedule I* attached hereto (the “Project”), hereby consents to the foregoing Assignment of Lease and Related Documents by the Tenant to Ashford Wichita LP, a Delaware limited partnership (the “Assignee”), of all of the Tenant’s rights, title and interest in the Lease (including, without limitation, any and all rights or interests of Tenant in or to the Project, or any part thereof or interest therein, arising under the Lease) and the Related Documents on and subject to the conditions contained in the Lease and the Related Documents described in the foregoing Assignment of Lease and Related Documents, said consent being authorized by Resolution No. \_\_\_ of the Issuer.

In addition, the Issuer hereby consents to the execution and delivery of the following documents between the following parties: (A) a Lease Agreement between Assignee, as lessor, and Ashford TRS Wichita Licensee LLC, a Kansas limited liability company, as lessee, and (B) an Addendum to Hotel Master Management Agreement between Ashford TRS Corporation, a Delaware corporation, as lessee, Ashford TRS Wichita Licensee LLC, as new lessee, and Remington Lodging & Hospitality, LLC, a Delaware limited liability company, as manager, said consent being authorized by Resolution No. \_\_\_\_ of the Issuer.

Further, the Issuer hereby waives any restrictions upon the transfer, sale, assignment, and hypothecation of the Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC), which remain outstanding in the aggregate principal amount of \$885,000 (the “Series B Bonds”), imposed in Section 6(C) of the Bond Purchase Agreement dated December 28, 2006, between the Issuer and Tenant, and consents to the transfer, sale, and assignment of the Series B Bonds from Wells Fargo Bank, National Association, a national banking association, to Assignee, and the subsequent collateral assignment of the Series B Bonds by Assignee in favor of Morgan Stanley Bank, N.A., a national banking association, said waiver and consent being authorized by Resolution No. \_\_\_ of the Issuer.

The Issuer confirms that as of the Effective Date (as defined in the Assignment of Lease and Related Documents) (1) the Lease is in full force and effect and has not been modified, amended, terminated or assigned except as described above, (2) to its knowledge there are no existing defaults under the Lease by any party to the Lease, and (3) Assignor is released from performing all of the terms, covenants and conditions of the Lease and the Related Documents from and after the Effective Date.

The Issuer expressly reserves to itself and its assignees all rights and privileges accruing to it under the terms of the Lease and the Related Documents as expressly provided therein.

**CITY OF WICHITA, KANSAS**

By: \_\_\_\_\_  
Jeff Longwell, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

(Issuer’s Consent)

**ACKNOWLEDGMENT**

STATE OF KANSAS )  
 ) SS.  
COUNTY OF SEDGWICK )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Jeff Longwell, Mayor, and Karen Sublett, City Clerk, of the City of Wichita, Kansas, a political subdivision of the State of Kansas, both on behalf of the City of Wichita, Kansas.

(Notary Seal)

\_\_\_\_\_  
Notary Public

Typed or printed name of Notary Public:

\_\_\_\_\_

Appointment Expires:\_\_\_\_\_

**BONDHOLDER’S CONSENT**

Re: City of Wichita, Kansas  
Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006  
(Old Town Lodging, LLC) (the “Bonds”)

The undersigned, being a duly authorized representative of Wells Fargo Bank, National Association, a national banking association (the “Bondholder”), the sole owner of 100% of the outstanding principal amount of the referenced Bonds, hereby consents to the foregoing Assignment of Lease and Related Documents.

In addition, the undersigned hereby consents to the execution and delivery of the following documents between the following parties: (A) a Lease Agreement between Ashford Wichita LP, a Delaware limited partnership (“Assignee”), as lessor, and Ashford TRS Wichita Licensee LLC, a Kansas limited liability company, as lessee, and (B) an Addendum to Hotel Master Management Agreement between Ashford TRS Corporation, a Delaware corporation, as lessee, Ashford TRS Wichita Licensee LLC, as new lessee, and Remington Lodging & Hospitality, LLC, a Delaware limited liability company, as manager.

Further, the undersigned hereby consents to the transfer, sale, and assignment of the Bonds from the Bondholder to Assignee, and the subsequent collateral assignment of the Bonds by Assignee in favor of Morgan Stanley Bank, N.A., a national banking association.

**IN WITNESS WHEREOF**, the Bondholder has caused this Bondholder’s Consent to be executed by its duly authorized officer.

Dated: \_\_\_\_\_, 2015

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name:  
Title:

(Bondholder’s Consent)



**TRUSTEE’S ACKNOWLEDGEMENT AND CONSENT**

Security Bank of Kansas City, Kansas City, Kansas (the “Trustee”), as successor trustee to UMB Bank, N.A., Kansas City, Missouri, under a certain Trust Indenture dated as of December 1, 2006, between the City of Wichita, Kansas (the “Issuer”) and the Trustee, pursuant to which the Issuer issued its Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC), which remain outstanding in the aggregate principal amount of \$885,000 (the “Series B Bonds”), and as assignee of all of the Issuer’s assignable rights under a Lease dated as of December 1, 2006, with Old Town Lodging, LLC, a Kansas limited liability company (the “Tenant”), as amended and supplemented by the First Amendment to Lease between the same parties (as supplemented and amended, the “Lease”) covering the land, buildings, and certain other improvements and property described on *Schedule I* attached hereto (the “Project”), hereby acknowledges and consents to the following:

1. Execution and delivery of the foregoing Assignment of Lease and Related Documents by the Tenant to Ashford Wichita LP, a Delaware limited partnership (the “Assignee”), pursuant to which Tenant assigned all of its rights, title and interest in, to, and under the Lease (including, without limitation, any and all rights or interests of Tenant in or to the Project, or any part thereof or interest therein, arising under the Lease) and the Related Documents on and subject to the conditions contained in the Lease and the Related Documents described in the foregoing Assignment of Lease and Related Documents.
2. Execution and delivery of the Lease Agreement between Assignee, as lessor, and Ashford TRS Wichita Licensee LLC, a Kansas limited liability company, as lessee.
3. Execution and delivery of the Addendum to Hotel Master Management Agreement between Ashford TRS Corporation, a Delaware corporation, as lessee, Ashford TRS Wichita Licensee LLC, as new lessee, and Remington Lodging & Hospitality, LLC, a Delaware limited liability company, as manager.
4. The transfer, sale, and assignment of the Series B Bonds from Wells Fargo Bank, National Association, a national banking association, to Assignee, and the subsequent collateral assignment of the Series B Bonds by Assignee in favor of Morgan Stanley Bank, N.A., a national banking association.

The Trustee expressly reserves its security interest in all equipment, machinery and fixtures constituting a part of the Project described in the Lease, and does not by this instrument authorize the sale, exchange or other disposition thereof by Tenant or Assignee.

**SECURITY BANK OF KANSAS CITY**  
Kansas City, Kansas, as Trustee

By: \_\_\_\_\_  
Bonnie Mosher  
Vice President and Trust Officer

(Trustee’s Acknowledgement and Consent)

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2015, by Bonnie Moshier, Vice President and Trust Officer of Security Bank of Kansas City, a state banking corporation, on behalf of such bank.

(Notary Seal)

\_\_\_\_\_  
Notary Public

Typed or printed name of Notary Public:

\_\_\_\_\_

Appointment Expires: \_\_\_\_\_

**SCHEDULE I**

**PROPERTY SUBJECT TO LEASE**

(a) THE "LAND": The following described real property located in Sedgwick County, Kansas, to wit:

Parcel 1:

Lots 19, 20, 21, 22, 23 and 24, except the west 10 feet thereof together with the vacated west 10 feet of Mosley Avenue adjoining said lots on the east, Block A, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

ALSO KNOWN AS:

That part of Lots 19, 20, 21, 22, 23, 24 and vacated Mosley Avenue, Block A, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas, described as beginning 10 feet east of the southwest corner of said Lot 24; thence N 89°52'45" E along the south line of said Lot 24, 140 feet to a point 10 feet east of the southeast corner of said Lot 24; thence N 00°00'00" W parallel to the east line of said lots 300 feet; thence S 89°52'52" W, along the north line of said Lot 19 extended, 140 feet to a point 10 feet east of the northwest corner of said Lot 19; thence S 00°01'11" E parallel to the west line of said Lots, 300 feet to the point of beginning.

Parcel 2:

Lots 1, 2, and 3, except the north 0.73 feet of Lot 3; together with the west half of vacated alley abutting said property on the east, Block B, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

ALSO KNOWN AS:

That part of Lots 1, 2, 3 and vacated alley abutting on east, Block B, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas, described as beginning at the southwest corner of said Lot 1; thence N 89°52'57" E along the south line of said Lot 1, 145.5 feet to the center line of said vacated alley; thence N 00°00'19" W along said centerline, 149.22 feet; thence S 89°52'21" W, 145.5 feet to the west line of said Lot 3; thence S 00°00'00" E along the west line of said Lots, 149.22 feet to the point of beginning.

(b) THE IMPROVEMENTS: All buildings and improvements now or hereafter purchased, constructed, located or installed on the Land and paid for with proceeds from the 2006 Bonds (as defined in the Lease) pursuant to said Lease, constituting the "Improvements" as defined in said Lease and said Indenture (as defined in the Lease), and more specifically described as

a 128-room hotel to be operated as a Courtyard by Marriott.

The property described in paragraphs (a) and (b) of this Schedule I, together with any alterations or additional improvements properly deemed a part of the Project (as defined in the Lease) pursuant to and in accordance with the provisions of Sections 10.1 and 11.1 of the Lease, constitute the "Project" as referred to in both the Lease and the Indenture.

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Ashford Wichita LP  
c/o Ashford Hospitality Trust, Inc.  
Attn: David A. Brooks and Christopher A. Peckham  
14185 Dallas Parkway, Suite 1100  
Dallas, Texas 75254

**SECOND AMENDMENT TO LEASE**

THIS SECOND AMENDMENT TO LEASE (this "**Amendment**"), is executed June [ ], 2015, by the City of Wichita, Kansas, a municipal corporation (the "**City**" or the "**Issuer**") and Ashford Wichita LP, a Delaware limited partnership, as successor-in-interest to Old Town Lodging, LLC, a Kansas limited liability company ("**Tenant**").

**WITNESSETH:**

WHEREAS, the City, as lessor, and Old Town Lodging, LLC ("**Old Town**"), as lessee, entered into that certain Lease dated as of December 1, 2006, a Notice of Lease for which was recorded on December 28, 2006 as Document No. FLM-PG 28845674, covering that certain Project known as the Courtyard by Marriott – Wichita Old Town and located at 820 East 2<sup>nd</sup> Street North, Wichita, Kansas, as more particularly described on Exhibit A attached hereto and in the Lease, which was amended by that certain First Amendment to Lease recorded on November 29, 2011 as Document No. FLM-PG 29256131, and Old Town's interest under which was assigned to Tenant by that certain Assignment of Lease and Related Documents dated June [ ], 2015 (collectively, the "**Lease**");

WHEREAS, pursuant to that certain Trust Indenture dated December 1, 2006 entered into in connection with the issuance by the City of certain bonds to fund the development of the Project (the "**Trust Indenture**"), the City executed an Assignment of Lease which was recorded on December 28, 2006 as Document No. FLM-PG: 28845675 assigning its interest in the Lease to UMB Bank, N.A., Kansas City, Missouri, as trustee under the Trust Indenture, to secure the City's obligations thereunder;

WHEREAS, Security Bank of Kansas City, Kansas City, Kansas has succeeded UMB Bank, N.A., Kansas City, Missouri as trustee under the Trust Indenture (the "**Trustee**");

WHEREAS, Morgan Stanley Bank, N.A., a national banking association (such entity and its successors and assigns, "**Mortgage Lender**"), is giving Tenant a mortgage loan to finance Tenant's acquisition of the Project (the "**Mortgage Loan**"), which Mortgage Loan will be secured by a certain Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement given by Tenant to Mortgage Lender (the "**Security Instrument**") which shall encumber Tenant's interest in the Lease and shall be evidenced by, among other things, that certain Loan Agreement between Tenant, certain affiliates of Tenant and Mortgage Lender (the "**Loan Agreement**"; the Security Instrument, the Loan

Agreement and all other documents executed and/or delivered in connection with the Mortgage Loan are referred to herein, collectively, as the “**Mortgage Loan Documents**”);

WHEREAS, Morgan Stanley Mortgage Capital Holdings LLC, a New York limited liability company (such entity and its successors and assigns, “**Mezzanine Lender**”; Mortgage Lender and Mezzanine Lender, together with their respective successors and assigns as their interests may appear, individually and/or collectively, as the context may require, “**Lender**”) is giving the 100% equity owner of Tenant and Tenant’s general partner a mezzanine loan to finance Tenant’s acquisition of the Project (the “**Mezzanine Loan**”; and together with the Mortgage Loan, the “**Loan**”), which Mezzanine Loan is secured by, among other things, a Mezzanine Pledge and Security Agreement (the “**Mezzanine Pledge Agreement**”; the Mezzanine Pledge Agreement and all other documents executed and/or delivered in connection with the Mezzanine Loan are referred to herein, collectively, as the “**Mezzanine Loan Documents**”) (the Mortgage Loan Documents and the Mezzanine Loan Documents are collectively referred to herein as the “**Loan Documents**”); and

WHEREAS, the City and Tenant desire to amend the Lease, *inter alia*, (i) to incorporate terms required by Mortgage Lender and Mezzanine Lender and otherwise generally recognized among financial institutions as desirable in leasehold financing transactions, and (ii) to demonstrate and unequivocally evidence the City’s consent and approval of Tenant entering into the Loan; and

WHEREAS, in addition, Trustee is executing this Amendment in order to (i) demonstrate its acknowledgment of and consent to the Loan and (ii) evidencing its agreement that the Lease be amended as set forth herein;

NOW THEREFORE, as an inducement to Lender to make the Loan to Tenant, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Tenant do hereby covenant and agree as follows.

## **Section 1. Amendment to Lease**

### **1.1 Definitions.**

1.1.1 Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Lease.

1.1.2 The following definitions set forth in Article I of the Lease are hereby deleted and replaced with the following:

“**Authorized Tenant Representative**” means David A. Brooks or such other person or persons at any time designated by Tenant to act on behalf of Tenant.

“**Mortgage**” means any first priority mortgage encumbering Tenant’s interest in the Project and/or any first priority pledging of the direct or indirect equity interests in Tenant as security for a mezzanine loan, as applicable.

“**Mortgagee**” means any mortgage lender or mezzanine lender that holds a first priority lien on Tenant’s interest in the Project or any direct or indirect equity interest in Tenant, as applicable, including, without limitation, Morgan Stanley Bank, N.A., Morgan Stanley Mortgage Capital Holdings LLC and their successors and assigns.

**"Notice Address"** means the following addresses or such other addresses provided in writing by such parties from time to time:

(1) With respect to the Tenant:

Ashford Wichita LP  
c/o Ashford Hospitality Trust, Inc.  
Attn: David A. Brooks and Christopher A. Peckham  
14185 Dallas Parkway, Suite 1100  
Dallas, Texas 75254  
Telephone: (972) 778-9270  
Fax: (972) 490-9605

With a copy to:

Cynthia B. Nelson  
Gardere Wynne Sewell LLP  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201-4757  
Telephone: (214) 999-4884  
Fax: (214) 999-3884

(2) With respect to the Issuer

City of Wichita, Kansas  
City Hall - 455 North Main  
Wichita, Kansas 67202  
Attn: City Clerk

(3) With respect to the Trustee

Security Bank of Kansas City  
Attn: Corporate Trust  
701 Minnesota Ave., Suite 206  
Kansas City, Kansas 66101

With a copy to:

Security Bank of Kansas City  
Attn: Bonnie Mosher  
200 W. Douglas, Suite 612  
Wichita, Kansas 67202

(4) With respect to the Mortgagee:

Morgan Stanley Bank, N.A.  
1585 Broadway  
New York, New York 10036  
Attention: Stephen Holmes  
Fax: (212) 507-4859

With a copy to:

Alston & Bird LLP  
90 Park Avenue  
New York, New York 10016  
Attn: Ellen M. Goodwin  
Fax: (212) 922-3947

And to:

Morgan Stanley Mortgage Capital Holdings LLC  
1585 Broadway  
New York, New York 10036  
Attention: Stephen Holmes  
Fax: (212) 507-4859

With a copy to:

Alston & Bird LLP  
90 Park Avenue  
New York, New York 10016  
Attn: Ellen M. Goodwin  
Fax: (212) 922-3947

1.1.3 The following definition is hereby added to Article I of the Lease:

**“Lender”** means any Mortgagee.

1.2 Section 6.3 of the Lease is hereby deleted and replaced with the following:

**Section 6.3 Issuer May Not Sell; Subordination.** Issuer covenants that it will not, without the prior written consent of Tenant and Mortgagee, unless required by law, sell or otherwise part with or encumber (except for Permitted Encumbrances) its fee or other ownership interest in the Project at any time during the life of the Lease. Any current or future lien or other encumbrance on the Issuer's fee interest in the Project (including, without limitation, Issuer's pledge of the fee interest in the Property to the Trustee pursuant to the Indenture, but specifically excluding any of the matters shown on Schedule II, attached hereto and made a part hereof for all purposes) shall be subordinate to the Mortgage and to Tenant's interest in the Lease and the Issuer will cause any party to any such lien or encumbrance to enter into an agreement with Mortgagee that is reasonably satisfactory to Mortgagee to evidence the subordination of any such lien or encumbrance relating thereto to the lien created by the Mortgage and to Tenant's interest in the Lease.

1.3 Section 28.3(j) of the Lease is hereby deleted and replaced with the following:

The Lease shall not be modified, terminated, amended, altered, subordinated or cancelled, nor shall a surrender of the Project be accepted by the Issuer before the expiration thereof without the prior written consent of Mortgagee, which shall not be unreasonably withheld, and that any such action taken without Mortgagee's consent shall not be binding on Tenant or Mortgagee.

1.4 The following is hereby added as Section 28.3(l) of the Lease:

(l) Notwithstanding anything herein to the contrary, Mortgagee shall have the right to exercise any option to renew the term of the Lease and/or to exercise any option to purchase the Project in accordance with the terms of the Lease if Tenant shall fail to exercise any such option. Furthermore, notwithstanding anything herein to the contrary, upon an Event of Default, Mortgagee may exercise the purchase option pursuant to Section 16 hereof in lieu of electing to enter into a new lease pursuant to Section 28.3 hereof.

1.5 Section 28.5 of the Lease is hereby deleted and replaced with the following:

Any of Mortgagee or Mortgagee's successors and assigns of the Mortgage Loan Documents (including any subsidiary or affiliate thereof) or a third party purchaser at foreclosure shall, without the Issuer's prior consent, have the right to succeed to the Tenant's interest in the Lease (or the direct or indirect ownership interest in Tenant) (whether by foreclosure, deed or assignment-in-lieu of foreclosure or otherwise) and thereafter assign, sublet or otherwise transfer said interest without the Issuer's consent (any of such assignments, sublettings or other transfers, collectively, the "Permitted Assignments"). Any assignment, subletting or other transfer of said interest subsequent to the Permitted Assignments shall be subject to the restrictions contained in Article VIII hereof. Any person or entity that is the beneficiary of a Permitted Assignment shall not be liable for any act, omission and/or breach of the Lease by any prior tenant, and shall only be liable for obligations under the Lease first arising from and after the date such person or entity acquires Tenant's interest in the Lease. Upon any transfer or assignment of the Lease by such person or entity, such person or entity shall be automatically released and discharged from all liability thereafter accruing under the Lease.

## **Section 2. Miscellaneous**

2.1 This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and together shall be construed as one document.

2.2 All approvals and other actions required to authorize the undersigned's execution of this Amendment have been received or otherwise taken. The undersigned acknowledges that Tenant, any affiliate of Tenant that actually takes title to the Project or any interest in the Project, and Lender, together with its respective successors and/or assigns as their interests may appear, may rely upon and will rely upon this Amendment in connection with the acquisition of and financing for the acquisition of the Project described herein.

2.3 Upon full execution and delivery by the City, Tenant, and Trustee, this Amendment, or a memorandum thereof, shall be filed for record with the Sedgwick County, Kansas Register of Deeds.

2.4 Except as specifically amended hereby, the Lease shall remain unmodified and in full force and effect and hereby is ratified and confirmed. To the extent that there are any conflicts between the terms of this Amendment and the Lease, the terms of this Amendment shall control, and the Lease shall be deemed amended hereby.

IN WITNESS WHEREOF, the parties hereto have executed these presents and have caused the same to be dated as of the date and year first above written.

**ISSUER:**

**CITY OF WICHITA, KANSAS**

By: \_\_\_\_\_  
Jeff Longwell, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Jeff Longwell, Mayor, and Karen Sublett, City Clerk, of the City of Wichita, Kansas, a political subdivision of the State of Kansas.

(Notary Seal)

\_\_\_\_\_  
Notary Public

Typed or printed name of Notary Public:

\_\_\_\_\_

Appointment Expires: \_\_\_\_\_

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**



ACKNOWLEDGMENT, CONSENT AND CONFIRMATION OF TRUSTEE

I, the undersigned, Bonnie Mosher, a duly authorized, qualified and acting Vice President and Trust Officer of Security Bank of Kansas City, Kansas City, Kansas (the "Trustee"), as successor trustee to UMB Bank, N.A., Kansas City, Missouri, pursuant to the Trust Indenture dated as of December 1, 2006, entered into in connection with the issuance by the City of Wichita, Kansas (the "City"), of Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC) and Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC) and as holder, by way of assignment from the City, of the lessor's interest in the Lease dated as of December 1, 2006, between the City and Old Town Lodging, LLC, a Kansas limited liability company ("Old Town"), a Notice of Lease for which was recorded on December 28, 2006, under Document No. FLM-PG-28845674, as amended by the First Amendment to Lease, between the City and Old Town, which was recorded on November 29, 2011, under Document No. FLM-PG-29256131 (as the same has been assigned by Old Town, collectively, the "Lease"), hereby acknowledge and consent to the execution, delivery and recordation of the Second Amendment to Lease (the "Amendment") attached hereto and hereby confirm and agree that it is the intent of the undersigned, as holder of the lessor's interest in the Lease, that the Lease shall be amended as provided in the Amendment after such execution, delivery and recordation.

SECURITY BANK OF KANSAS CITY  
Kansas City, Kansas, as Trustee

By: \_\_\_\_\_  
Bonnie Mosher, Vice President and Trust  
Officer

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2015, by Bonnie Mosher, Vice President and Trust Officer of Security Bank of Kansas City, a state banking corporation, on behalf of such bank.

(Notary Seal)

\_\_\_\_\_  
Notary Public

Typed or printed name of Notary Public:

\_\_\_\_\_

Appointment Expires: \_\_\_\_\_



**Exhibit A**

**Legal Description**

*Exhibit A*

**PROPERTY SUBJECT TO LEASE**

(a) **THE "LAND":** The following described real property located in Sedgwick County, Kansas, to wit:

**Parcel 1:**

Lots 19, 20, 21, 22, 23 and 24, except the west 10 feet thereof together with the vacated west 10 feet of Mosley Avenue adjoining said lots on the east, Block A, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

**ALSO KNOWN AS:**

That part of Lots 19, 20, 21, 22, 23, 24 and vacated Mosley Avenue, Block A, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas, described as beginning 10 feet east of the southwest corner of said Lot 24; thence N 89°52'45" E along the south line of said Lot 24, 140 feet to a point 10 feet east of the southeast corner of said Lot 24; thence N 00°00'00" W parallel to the east line of said lots 300 feet; thence S 89°52'52" W, along the north line of said Lot 19 extended, 140 feet to a point 10 feet east of the northwest corner of said Lot 19; thence S 00°01'11" E parallel to the west line of said Lots, 300 feet to the point of beginning.

**Parcel 2:**

Lots 1, 2, and 3, except the north 0.73 feet of Lot 3; together with the west half of vacated alley abutting said property on the east, Block B, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

**ALSO KNOWN AS:**

That part of Lots 1, 2, 3 and vacated alley abutting on east, Block B, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas, described as beginning at the southwest corner of said Lot 1; thence N 89°52'57" E along the south line of said Lot 1, 145.5 feet to the center line of said vacated alley; thence N 00°00'19" W along said centerline, 149.22 feet; thence S 89°52'21" W, 145.5 feet to the west line of said Lot 3; thence S 00°00'00" E along the west line of said Lots, 149.22 feet to the point of beginning.

(b) **THE IMPROVEMENTS:** All buildings and improvements now or hereafter purchased, constructed, located or installed on the Land and paid for with proceeds from the 2006 Bonds (as defined in the Lease) pursuant to said Lease, constituting the "Improvements" as defined in said Lease and said Indenture (as defined in the Lease), and more specifically described as

a 128-room hotel to be operated as a Courtyard by Marriott.

The property described in paragraphs (a) and (b) of this Schedule I, together with any alterations or additional improvements properly deemed a part of the Project (as defined in the Lease) pursuant to and in accordance with the provisions of Sections 10.1 and 11.1 of the Lease, constitute the "Project" as referred to in both the Lease and the Indenture.

**Exhibit B**

**Lease**

HINKLE ELKOURI LAW FIRM L.L.C.

---

**LEASE**

BY AND BETWEEN

CITY OF WICHITA, KANSAS

AND

OLD TOWN LODGING, LLC

DATED AS OF DECEMBER 1, 2006

---

16771850  
Lease

**LEASE**

**TABLE OF CONTENTS**

		<b><u>Page</u></b>
	Parties .....	1
	Recitals .....	1
 <b><u>ARTICLE I</u></b>  		
Section	1.1. Definitions .....	2
Section	1.2. Representations and Covenants by Tenant .....	11
Section	1.3. Representations and Covenants by Issuer .....	12
 <b><u>ARTICLE II</u></b>  		
Section	2.1. Granting of Leasehold .....	13
 <b><u>ARTICLE III</u></b>  		
Section	3.1. Basic Rent .....	13
Section	3.2. Acquisition of Bonds .....	13
Section	3.3. Additional Rent .....	13
Section	3.4. Rent Payable Without Abatement or Setoff .....	13
Section	3.5. Deposit of Rent by Trustee .....	14
 <b><u>ARTICLE IV</u></b>  		
Section	4.1. Disposition of Original Proceeds .....	14
 <b><u>ARTICLE V</u></b>  		
Section	5.1. Project Contracts .....	14
Section	5.2. Payment of Project Costs .....	15
Section	5.3. Completion of Project .....	15
Section	5.4. Deficiency of Project Fund .....	15
Section	5.5. Surplus in Project Fund .....	15
Section	5.6. Right of Entry by Issuer .....	16
Section	5.7. Furniture, Fixtures, Machinery and Equipment Purchased by Tenant ..	16
Section	5.8. Project Property of Issuer .....	16
Section	5.9. Kansas Retailers' Sales Tax .....	16

**ARTICLE VI**

Section	6.1.	Impositions .....	16
Section	6.2.	Receipted Statements .....	17
Section	6.3.	Issuer May Not Sell .....	17
Section	6.4.	Contest of Impositions .....	17
Section	6.5.	Ad Valorem Taxes .....	17
Section	6.6.	Insurance .....	18
Section	6.7.	General Insurance Provisions .....	19
Section	6.8.	Title Insurance .....	20

**ARTICLE VII**

Section	7.1.	Use of Project .....	20
Section	7.2.	Environmental Provisions .....	21

**ARTICLE VIII**

Section	8.1.	Assignment by Tenant .....	22
Section	8.2.	Release of Tenant .....	23
Section	8.3.	Mergers and Consolidations .....	23
Section	8.4.	Covenant Against Other Assignments .....	23

**ARTICLE IX**

Section	9.1.	Repairs and Maintenance .....	23
Section	9.2.	Removal, Disposition and Substitution of Furniture, fixtures, machinery and equipment .....	23

**ARTICLE X**

Section	10.1.	Alteration of Project .....	25
---------	-------	-----------------------------	----

**ARTICLE XI**

Section	11.1.	Additional Improvements .....	25
---------	-------	-------------------------------	----

**ARTICLE XII**

Section	12.1.	Securing of Permits and Authorizations .....	26
Section	12.2.	Mechanics' Liens .....	26

		<u>Page</u>
Section	12.3. Contest of Liens .....	26
Section	12.4. Utilities .....	27

**ARTICLE XIII**

Section	13.1. Indemnity .....	27
---------	-----------------------	----

**ARTICLE XIV**

Section	14.1. Access to Project .....	27
---------	-------------------------------	----

**ARTICLE XV**

Section	15.1. Option to Extend Term .....	28
---------	-----------------------------------	----

**ARTICLE XVI**

Section	16.1. Option to Purchase Project .....	28
Section	16.2. Quality of Title and Purchase Price .....	28
Section	16.3. Closing of Purchase .....	29
Section	16.4. Effect of Failure to Complete Purchase .....	29
Section	16.5. Application of Condemnation Awards if Tenant Purchases Project .....	30

**ARTICLE XVII**

Section	17.1. Damage and Destruction .....	30
Section	17.2. Condemnation .....	31

**ARTICLE XVIII**

Section	18.1. Termination by Reason of Change of Circumstances .....	32
---------	--	----

**ARTICLE XIX**

Section	19.1. Remedies on Default .....	32
Section	19.2. Survival of Obligations .....	33
Section	19.3. No Remedy Exclusive .....	33

**ARTICLE XX**

Section 20.1. Performance of Tenant's Obligations by Issuer  
or Owners of Priority Bonds ..... 34

**ARTICLE XXI**

Section 21.1. Surrender of Possession ..... 34

**ARTICLE XXII**

Section 22.1. Notices ..... 34

**ARTICLE XXIII**

Section 23.1. Net Lease ..... 35  
Section 23.2. Funds Held by Trustee After Payment of Bonds ..... 35

**ARTICLE XXIV**

Section 24.1. Rights and Remedies ..... 35  
Section 24.2. Waiver of Breach ..... 35  
Section 24.3. Parties Shall Not Unreasonably Withhold Consents and Approvals .... 36

**ARTICLE XXV**

Section 25.1. Quiet Enjoyment and Possession ..... 36

**ARTICLE XXVI**

Section 26.1. Investment Tax Credit; Depreciation ..... 36

**ARTICLE XXVII**

Section 27.1. Amendments ..... 36  
Section 27.2. Granting of Easements ..... 36  
Section 27.3. Security Interests ..... 37  
Section 27.4. Construction and Enforcement ..... 37  
Section 27.5. Invalidity of Provisions of Lease ..... 37

	<u>Page</u>
Section 27.6. Covenants Binding on Successors and Assigns .....	38
Section 27.7. Section Headings .....	38
Section 27.8. Execution of Counterparts .....	38
Section 27.9. Ongoing Special Conditions .....	38
Section 27.10 Effect of Breach of Section 27.9; Remedies .....	38
 Executions, Seals & Acknowledgments .....	 39
Schedule I - Property Subject to the Lease	

## LEASE

THIS LEASE, dated as of December 1, 2006 (the "Lease"), by and between the City of Wichita, Kansas, a municipal corporation of the State of Kansas (the "Issuer" or "City"), and Old Town Lodging, LLC, a limited liability company organized under the laws of Kansas and qualified to conduct its business in the State of Kansas (the "Tenant")

WITNESSETH:

WHEREAS, Issuer is a municipal corporation duly organized and existing under the laws of the State of Kansas, believing itself to have full lawful power and authority to enter into this Lease by and through its governing body; and

WHEREAS, the governing body of the Issuer adopted an Ordinance on December 19, 2006 (the "Ordinance") providing for the issuance of two series of revenue bonds to be designated (i) "City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC)" in the aggregate principal amount of \$13,000,000 (the "Series A, 2006 Bonds") and (ii) "City of Wichita, Kansas, Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC)" in the aggregate principal amount of \$885,000 (the "Series B, 2006 Bonds") for the purpose of providing funds for acquiring, improving, equipping, furnishing, repairing and renovating an existing building located in the City of Wichita, Kansas to be used as a Courtyard by Marriott hotel (the "Project"); and

WHEREAS, Issuer, in furtherance of the purposes and pursuant to the provisions of the laws of the State, including the Act, and in order to provide for the industrial and commercial development and welfare of the City of Wichita, Kansas, and its environs and to provide employment opportunities for its citizens and to promote the economic stability of the State of Kansas, intends to:

- (a) Provide for the acquisition, purchasing, construction and equipping of the Project;
- (b) Lease the Project to Tenant for the rentals and upon the terms and conditions hereinafter set forth; and
- (c) Issue, for the foregoing purposes, the Series A, 2006 Bonds and the Series B, 2006 Bonds (collectively, the "2006 Bonds") under and pursuant to and subject to the provisions of the Act and Indenture (as hereinafter defined), said Indenture being incorporated herein by reference and authorized by the Ordinance; and

WHEREAS, Tenant, consistent with the foregoing intent of Issuer, desires to lease the Project from Issuer for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, Issuer and Tenant do hereby covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1 Definitions.** In addition to the words, terms and phrases elsewhere defined in this Lease, the following words, terms and phrases as used herein shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Act" means K.S.A. 12-1740 to 12-1749d, inclusive, as amended.

"Additional Bonds" means any Bonds hereafter issued in addition to the 2006 Bonds as authorized pursuant to the Indenture.

"Additional Rent" means all reasonable or necessary fees, charges and expenses of the Trustee, all Impositions, all amounts required under Article XXIII and Article XX hereof, all other payments of whatever nature (including liquidated damages) which Tenant has agreed to pay or assume under the provisions of the Lease and all expenses (including reasonable attorneys' fees) incurred by Issuer or Trustee in connection with the Lease, the Indenture, the Guaranty Agreement and the Individual Guaranty Agreement and the enforcement of any rights thereunder.

"Additional Term" shall mean that term commencing on the last day of the Basic Term and terminating 5 years thereafter.

"Administrative Service Fee Agreement" means that certain Administrative Service Fee Agreement by and between the Issuer and Tenant dated December 1, 2006 with respect to the administrative service fees paid to the Issuer related to the 2006 Bonds.

"Amortization Commencement Date" means January 1, 2009.

"Authorized Tenant Representative" means the James E. Korroch, or such person or persons at the time designated to act on behalf of the Tenant.

"Bankruptcy Code" means Title 11 of the United States Code, as amended.

"Basic Rent" means the amount when added to Basic Rent Credits which is sufficient to pay, on the next Payment Date, all principal of, redemption premium, if any, and interest on the Bonds which are due and payable on such Payment Date.

**"Basic Rent Credits"** means all funds on deposit in the Principal and Interest Payment Account and available for the payment of principal of, redemption premium, if any, and interest on the Bonds on any Payment Date.

**"Basic Rent Payment Date"** means each Payment Date.

**"Basic Term"** means that term commencing as of the date hereof and ending when the principal of, premium, if any and interest on all the Bonds and all other amounts payable under the Lease, the Indenture and the Guaranty Agreement are paid pursuant to the provisions of the Indenture hereinafter described.

**"Bond Counsel"** means any attorney or firm of attorneys acceptable to the Trustee, Tenant and Issuer.

**"Bondowner," "Bondholder," "Holder" or "Owner"** means the registered owner of any fully registered Bond.

**"Bonds"** means the 2006 Bonds and any Additional Bonds issued hereunder.

**"Business Day"** means a day which is not a Saturday, Sunday nor any day on which banks in the State or the state where the principal office of the Trustee is located are authorized to be closed.

**"Certificate of Completion"** means a written certificate signed by the Authorized Tenant Representative and approved by the Original Purchaser of the Series A, 2006 Bonds, stating that (1) the Improvements have been completed in accordance with the plans and specifications prepared or approved by Issuer or Tenant, as the case may be; (2) the Improvements have been completed in a good and workmanlike manner; (3) no mechanic's or materialmen's liens have been filed, nor is there any basis for the filing of such liens, with respect to the Project; (4) all Improvements constituting a part of the Project are located or installed upon the Land; (5) if required by resolutions duly adopted by Issuer or by applicable building codes, that an appropriate certificate of occupancy has been issued with respect to the Project; (6) a satisfactory report from the Original Purchaser's inspecting architect or engineer, and (7) acceptance of the Project by franchisor.

**"Change of Circumstances"** means the occurrence of any of the following events:

- (1) title to, or the temporary use of, all or any part of the Project shall be condemned by any authority exercising the power of eminent domain;
- (2) the Project is damaged or destroyed, in whole or in part, by fire, theft or other casualty; or
- (3) as a result of changes in the Constitution of the State or of legislative or administrative action by the State or any municipal corporation thereof, or by the United

States, or by reason of any action instituted in any court, the Lease shall become void or unenforceable, or impossible of performance without unreasonable delay or by reason of such change of circumstances, unreasonable burdens or excessive liabilities are imposed by the Lease upon Tenant.

**"Completion Date"** means the date of completion of the acquisition, purchase, construction and installation of the Project established as such pursuant to Section 5.3 hereof.

**"Costs of Issuance"** means any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including but not limited to the Trustee's initial fees and expenses, origination fees of the Original Purchaser, bond and other printing expenses, and legal fees and expenses of counsel.

**"Default"** means any event or condition the occurrence of which, with the lapse of time or the giving of notice or both, constitutes an Event of Default.

**"Delivery Date"** means December 28, 2006.

**"Event of Bankruptcy"** means an event whereby the Tenant shall (i) admit in writing its inability to pay its debts as they become due; or (ii) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the United States Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief; or (iii) make an assignment for the benefit of creditors; or (iv) consent to the appointment of a trustee or receiver for all or a major portion of its property; or (v) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) suffer the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the United States Bankruptcy Code, which order, if the Tenant has not consented thereto, shall not be vacated, denied, set aside or stayed within sixty (60) days after the day of entry; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within sixty (60) days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

**"Event of Default"** means any one of the following events:

(a) Failure of Tenant to make any payment of Basic Rent at the time and in the amounts required hereunder and the continuance thereof for more than five (5) days after notice of such failure is given to the Tenant by the Trustee; or

(b) Failure of Tenant to make any payment of Additional Rent at the times and in the amounts required hereunder, or failure to observe or perform any other covenant, agreement, obligation or provision of the Lease on the Tenant's part to be observed or performed (except that

a failure under Section 27.9 of this Lease shall not constitute an Event of Default hereunder), if the same is not remedied within thirty (30) days after the Issuer or the Trustee has given the Tenant written notice specifying such failure (or such longer period as shall be reasonably required to correct such default; provided that (i) Tenant has commenced such correction within said 30-day period, and (ii) Tenant diligently prosecutes such correction to completion); or

(c) An Event of Bankruptcy; or

(d) Tenant abandons the Project.

**"Full Insurable Value"** means the full actual replacement cost less physical depreciation as determined from time to time upon the request of Issuer, the Trustee or 100% of the Priority Bondholders (but not more frequently than once in every 12 months) by an architect, appraiser, appraisal company or one of the insurers, selected and paid by Tenant.

**"Guarantor"** means that person or entity (whether one or more) who, or which, shall execute and deliver the Guaranty Agreement to the Trustee.

**"Guaranty Agreement"** means the separate Guaranty Agreement dated as of December 1, 2006, of the Tenant to the Trustee, for the benefit of the Owners of the 2006 Bonds.

**"Hazardous Materials"** means

A. Any hazardous or toxic substances, material or waste;

- (1) designated or defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* and regulations promulgated thereunder, as amended; or
- (2) designated or defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* and regulations promulgated thereunder, as amended; or
- (3) designated or defined as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. Section 1251 *et seq.* and regulations promulgated thereunder, as amended; or
- (4) designated or defined as a "hazardous air pollutant" pursuant to the Clean Air Act, 42 U.S.C. Section 7401 *et seq.* and regulations promulgated thereunder, as amended; or

- (5) designated or defined as a "hazardous waste" or "acutely hazardous waste" pursuant to K.S.A. 65-3430 *et seq.* and regulations promulgated thereunder, as amended; and/or

B. Any substances, materials or waste, without limitation, which contain gasoline, diesel fuel or other petroleum hydrocarbons; and

C. Any waste, infectious waste, petroleum products, pesticides, PCBs or toxic or hazardous substances or materials of any kind or asbestos, the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action or policy or under common law.

**"Impositions"** means all taxes and assessments, general and special, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or payable for or in respect of the Project or any part thereof, or any improvements at any time thereon or Tenant's interest therein, including any new lawful taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would encumber Issuer's title to the Project.

**"Improvements"** means the buildings, fixtures, structures, facilities, furnishings, machinery, equipment and any other property purchased in whole or in part from the proceeds of the 2006 Bonds and more specifically described in Section (b) of Schedule I attached hereto and made a part hereof.

**"Indenture"** means the Trust Indenture dated as of the date hereof, by and between the Issuer and the Trustee, as it now exists and as it may from time to time be amended and supplemented by Supplemental Indentures in accordance with the provisions thereof.

**"Interest Payment Date"** means (i) with respect to the Series A, 2006 Bonds February 1, 2007 and the first day of each month thereafter, and terminating when the principal of, redemption premium if any, and interest on the Series A, 2006 Bonds have been fully paid or payment provided for pursuant to Article XIII of the Indenture, and (ii) January 1, 2008, and each January 1 thereafter, and terminating when the principal of, redemption premium if any, and interest on the Series B, 2006 Bonds have been fully paid or payment provided for pursuant to Article XIII hereof.

**"Issuer"** means the City of Wichita, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas, and its successors and assigns.

**"Land"** means the real property as described on Schedule I hereto.

**"Lease"** means this Lease dated as of December 1, 2006, as it now exists and as it may from time to time be amended and supplemented in accordance with the provisions thereof and of Article XII of the Indenture.

**"Mortgage"** means the mortgage from Old Town Lodging, LLC to Nationwide Life Insurance Company filed of record with the Sedgwick County Register of Deeds at Document #2873660, as the same may be amended.

**"Mortgagee"** means Nationwide Life Insurance Company, as Mortgagee under the Mortgage.

**"Mortgage Loan Documents"** mean all documents executed by the Tenant in connection with the Mortgage.

**"Net Proceeds"** means, when used with respect to any insurance or condemnation award with respect to the Project, the proceeds from the insurance or condemnation award remaining after the payment of all expenses (including attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such proceeds.

**"Notice Address"** means:

(1) With respect to the Tenant:

Old Town Lodging, LLC  
9340 East Central Avenue, Suite A  
Wichita, Kansas 67206  
Attn: James E. Korroch

with a copy to:

Adams Jones Law Firm, P.A.  
1635 Waterfront Parkway, #200  
Wichita, Kansas 67206-6602  
Attn: Mert Buckley

(2) With respect to the Issuer:

City of Wichita, Kansas  
City Hall - 455 North Main  
Wichita, Kansas 67202  
Attn: City Clerk

- (3) With respect to the Trustee:

UMB Bank, N.A.  
2401 Grand Blvd., Suite 200  
Kansas City, Missouri 64108  
Attn: Corporate Trust Department

and

UMB Bank, N.A.  
130 No. Market  
Wichita, Kansas 676202

- (4) With respect to the Original Purchaser of the Series A, 2006 Bonds:

Nationwide Life Insurance Company  
c/o RockBridge Real Estate Fund II LLC  
4100 Regent Street, Suite G  
Columbus, Ohio 43219  
Attn: Loan Servicing

**"Notice Representative"** means:

- (1) With respect to the Tenant, James E. Korroch, as the Manager thereof.
- (2) With respect to the Issuer, its duly elected or appointed City Clerk.
- (3) With respect to the Trustee, any corporate trust officer thereof.
- (4) With respect to the Original Purchaser of the Series A, 2006 Bonds, Nationwide Life Insurance Company, c/o RockBridge Capital, LLC, 4100 Regent Street, Suite G, Columbus, Ohio 43219, Attention: Loan Servicing.

**"Ordinance"** means Ordinance No. 47-317 of the City of Wichita, Kansas, which authorizes the issuance of the 2006 Bonds.

**"Original Proceeds"** means all proceeds, including accrued interest, if any, derived from the sale of the Bonds to the Original Purchaser.

**"Original Purchaser"** means, with respect to the Series A, 2006 Bonds, Nationwide Life Insurance Company, and, with respect to the Series B, 2006 Bonds, Old Town Lodging, LLC.

**"Outstanding"** means, as of a particular date, the unpaid portion of Bonds theretofore issued, authenticated and delivered, except:

(a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation pursuant to the Indenture;

(b) Bonds for the payment or redemption of which moneys or investments have been deposited in trust with the Trustee for the benefit of the Owners of the Bonds in accordance with the provisions of the Indenture; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to the Indenture.

**"Payment Date"** means any Interest Payment Date or Principal Payment Date.

**"Permitted Encumbrances"** means and includes:

(a) any restriction or encumbrance impacting or affecting the current or future use of property in connection with the operation of a gambling facility which consists of multi-game casino-style gambling on the property;

(b) any Imposition levied by the Issuer pursuant to K.S.A. 12-6a01 or similar law which levy creates a special assessment against the Land for public improvements by which the Land is especially benefitted;

(c) the encumbrances set forth on Schedule B to the ALTA Owner's Policy insuring the Issuer's interest in the Land and Improvements, including, but not limited to, the Issuer's Facade Easement filed of record with the Sedgwick County Register of Deeds as Document #2874450; and

(d) the Mortgage

**"Principal and Interest Payment Account"** means that account authorized and established with the Trustee by the Indenture and designated "City of Wichita, Kansas Principal and Interest Payment Account (Old Town Lodging, LLC)."

**"Principal Payment Date"** means, (i) with respect to the Series A, 2006 Bonds, January 1, 2009 and the first day of each month thereafter, terminating when the principal of, redemption premium, if any, and interest on the Series A, 2006 Bonds have been fully paid, and (ii) with respect to the Series B, 2006 Bonds, January 1, 2017 or such later date on which the Series A, 2006 Bonds have been paid in full.

**"Priority Bonds"** means the Series A, 2006 Bonds and any Additional Bonds issued on a parity with the Series A, 2006 Bonds; provided, however, at any time that no Priority Bonds remain Outstanding hereunder, all references herein to Priority Bonds shall be construed to refer to the Subordinated Bonds then Outstanding.

**"Project"** means and includes the Issuer's interest in the Land and the Improvements acquired, constructed or installed with the proceeds of the 2006 Bonds, and any Project Additions.

**"Project Additions"** means any additional improvements acquired, constructed or installed from proceeds of any Additional Bonds authorized and issued pursuant to the Indenture.

**"Project Costs"** means those costs incurred in connection with the Improvements, including:

(a) all costs and expenses necessary or incident to the acquisition of the Land and such of the Improvements as are acquired, purchased, constructed, installed or in progress at the date of such acquisition;

(b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of architects, appraisers, surveyors and engineers in relation to the construction, furnishing and equipping of the Improvements or the issuance of the Bonds;

(c) all costs and expenses incurred in constructing, acquiring, installing, furnishing or equipping the Improvements;

(d) payment of interest actually incurred on any interim financing obtained from a lender unrelated to the Tenant for acquisition of the Land and performance of work on the Improvements prior to the issuance of the Bonds;

(e) payment of interest accruing on the 2006 Bonds prior to the Completion Date;

(f) the cost of the title insurance policies required by the Lease; and

(g) Costs of Issuance.

**"Project Fund"** means the account authorized and established with the Trustee pursuant to the Indenture and designated the "City of Wichita, Kansas, Project Fund (Old Town Lodging, LLC Project)."

**"Project Replacement Fund"** means that fund authorized and established with the Trustee by the Indenture and designated the "City of Wichita, Kansas, Project Replacement Fund (Old Town Lodging, LLC Project)."

**"Record Date"** means the fifteenth day of the month prior to each Principal Payment Date or Interest Payment Date.

**"Rental Payments"** means, collectively, the Basic Rent and Additional Rent hereunder.

**"Series A, 2006 Bonds"** means the City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC Project) in the aggregate principal amount of \$13,000,000.

**"Series B, 2006 Bonds"** means the City of Wichita, Kansas, Subordinated Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC Project) in the aggregate principal amount of \$885,000.

**"State"** means the State of Kansas.

**"Subordinated Bonds"** means the Series B, 2006 Bonds and any Additional Bonds issued on a parity with the Series B, 2006 Bonds or otherwise subordinate to the Priority Bonds.

**"Tenant"** means Old Town Lodging, LLC, a Kansas limited liability company duly qualified to do business in the State, and the successors or assigns to its interest under the Lease.

**"Term"** means the Basic Term and any Additional Term of this Lease.

**"Trustee"** means UMB Bank, N.A., in its capacity as trustee, bond registrar and fiscal agent and its successor or successors and any other corporation or association which at the time may be substituted in its place pursuant to and at the time serving as Trustee under the Indenture.

**"2006 Bonds"** means, collectively, the Series A, 2006 Bonds and the Series B, 2006 Bonds.

**Section 1.2 Representations and Covenants by Tenant.** The Tenant makes the following covenants and representations as the basis for the undertakings on its part herein contained:

(a) **Due Organization and Authority of Tenant.** The Tenant represents that it is a limited liability company organized under Kansas law and duly authorized and qualified to do business in the State of Kansas, with lawful power and authority to enter into the Lease, acting by and through its members.

(b) **Maintenance of Existence by Tenant.** The Tenant or other entity into which it may be merged shall maintain and preserve its existence and organization as a limited liability company or other legal entity and its authority to do business in the State of Kansas and to operate the Project. Except as permitted in Article VIII hereof, the Tenant shall not initiate any proceedings of any kind whatsoever to dissolve or liquidate without (1) securing the prior written consent thereto of the

Issuer, which consent will not be unreasonably withheld, and (2) making provision for the payment in full of the principal of and interest and redemption premium, if any, on the Bonds. Tenant covenants to take appropriate steps to extend its existence if necessary by reason of an impending expiration of its existence before the Bonds are paid.

(c) No Conflicts. Tenant represents that neither the execution and delivery of the Lease, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of the Lease contravenes the Articles of Organization or Operating Agreement of the Tenant, or conflicts with or results in a breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which the Tenant is a party or by which it is bound, or to which it or any of its properties is subject, or constitutes a default (disregarding any required notice or the passage of any period of time) under any of the foregoing, or results in creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Tenant under the terms of any mortgage, debt, agreement, indenture or instrument, or violates any existing law, administrative regulation or court order or consent decree to which the Tenant is subject.

(d) Valid Obligations. The Lease constitutes a legal, valid and binding obligation of the Tenant enforceable in accordance with its terms.

(e) The Tenant will not, during the period of time the Bonds are Outstanding, have a commercial banking relationship with the Trustee unless all persons who are then Bondowners acknowledge in writing the existence of the relationship and waive any conflict that might exist as a result of such relationship.

**Section 1.3 Representations and Covenants by Issuer**. Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Municipal Corporation. In the opinion of the City Attorney, it is a municipal corporation existing under the Constitution and laws of the State of Kansas. To the best of its knowledge, Issuer has the power to enter into and perform the Lease and the Indenture and to carry out its obligations hereunder and thereunder.

(b) Prior Encumbrances. It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused any lien, claim or encumbrance to be placed against, the Project, except for the Lease, the assignment thereof to the Trustee, the pledge of the Project pursuant to the Indenture, and Permitted Encumbrances.

(c) Limitations on Future Encumbrances. Issuer will not during the Basic Term or the Additional Term, in whole or in part, assign, lease, hypothecate or otherwise create any other interest in, or dispose of, or cause any lien, claim or encumbrance (other than any applicable special assessments) to be placed against, the Project, except the Lease, the assignment thereof to the

Trustee, the pledge of the Project pursuant to the Ordinance and Indenture, and Permitted Encumbrances.

(d) Authorization of Documents and 2006 Bonds. It has, to the best of its knowledge, duly authorized the execution and delivery of the Lease and the Indenture and the issuance, execution and delivery of the 2006 Bonds.

## ARTICLE II

**Section 2.1 Granting of Leasehold.** Issuer by these presents hereby rents, leases and lets unto Tenant and Tenant hereby rents, leases and hires from Issuer, for the rentals and upon and subject to the terms and conditions hereinafter set forth, the Project for the Basic Term, subject to the restriction that no existing buildings, nor any new buildings constructed or placed upon the property, either temporarily or permanently, shall be used for housing the operation of any multi-game, casino-style gambling on the premises.

## ARTICLE III

**Section 3.1 Basic Rent.** Issuer reserves and Tenant covenants and agrees to pay to the Trustee hereinafter and in the Indenture designated, all Basic Rent in immediately available funds for the account of Issuer and during the Basic Term, for deposit in the Principal and Interest Payment Account established pursuant to the Indenture, on or before 11:00 a.m., Central Time, on the Basic Rent Payment Date.

**Section 3.2 Acquisition of Bonds.** In the event Tenant acquires any Outstanding Bonds, it may present the same to Issuer for cancellation, and upon such cancellation, Tenant's obligation to pay Basic Rent shall be reduced accordingly.

**Section 3.3 Additional Rent.** Within thirty (30) days after receipt of written notice thereof, Tenant shall pay any Additional Rent.

**Section 3.4 Rent Payable Without Abatement or Setoff.** Tenant covenants and agrees with and for the express benefit of Issuer and the Bondowner that all payments of Basic Rent and Additional Rent shall be made by Tenant as the same become due, and that Tenant shall perform all of its obligations, covenants and agreements hereunder without notice or demand and without abatement, deduction, setoff, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Improvements shall have been acquired, started or completed, or whether Issuer's title to the Project or any part thereof is defective or non-existent, and notwithstanding any failure of consideration or commercial frustration of purpose, the eviction or constructive eviction of Tenant, any Change of Circumstances, any change in the tax or other laws

of the United States of America, the State, or any political subdivision of either, any change in Issuer's legal organization or status, or any default of Issuer hereunder, and regardless of the invalidity of any action of Issuer or any other event or condition whatsoever, and regardless of the invalidity of any portion of the Lease, and Tenant hereby waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under the Lease or which releases or purports to release Tenant therefrom. Nothing in the Lease shall be construed as a waiver by Tenant of any rights or claims Tenant may have against Issuer under the Lease or otherwise, but any recovery upon such rights and claims shall be had from Issuer separately, it being the intent of the Lease that Tenant shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under the Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Bondowners.

**Section 3.5 Deposit of Rent by Trustee.** The Trustee shall deposit, use and apply all payments of Basic Rent and Additional Rent in accordance with the provisions of the Lease and the Indenture.

#### **ARTICLE IV**

**Section 4.1 Disposition of Original Proceeds.** The Original Proceeds of the Bonds shall be paid over to the Trustee for the account of Issuer. The Trustee shall, first, promptly pay from such Original Proceeds into the Principal and Interest Payment Account the full amount of any accrued interest and premium, if any, received upon such sale. The remainder of the proceeds of the 2006 Bonds shall be deposited by the Trustee in accordance with the terms of the Indenture.

#### **ARTICLE V**

**Section 5.1 Project Contracts.** It is recognized by the parties hereto that prior to the execution hereof Tenant may have entered into certain contracts with respect to the acquisition and/or construction of the Improvements, and that after the execution hereof, Tenant will enter into certain future contracts with respect to the acquisition and/or construction of the Improvements. All of said contracts are hereinafter referred to as the "Project Contracts." Prior to the execution hereof, certain work has been or may have been performed pursuant to said Project Contracts or otherwise. Subject to the rights of the Mortgagee under the Mortgage and Mortgage Loan Documents, Tenant hereby conveys, transfers and assigns to Issuer all of Tenant's rights in, but not its duties under, the Project Contracts and Tenant will continue to act for the purpose of executing and performing the Project Contracts. After the execution hereof, Tenant shall cause the Project Contracts to be fully performed by the contractor(s) thereunder in accordance with the terms thereof, and Tenant covenants to cause the Improvements to be acquired, constructed and/or completed in accordance with the Project Contracts. Tenant warrants that the construction and/or acquisition of the Improvements in accordance with said Project Contracts will result in the Project being suitable for use by Tenant for its purposes. Any and all amounts received by Issuer, Trustee or Tenant from any

of the contractors or other suppliers by way of breach of contract, refunds or adjustments shall become a part of and be deposited in the Project Fund.

**Section 5.2 Payment of Project Costs.** Issuer hereby agrees to authorize the Trustee to pay the Project Costs, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for the same, but solely from the Project Fund, from time to time, upon receipt by the Trustee of a certificate signed by the Authorized Tenant Representative, and in the form set forth in Schedule III to the Indenture which is incorporated herein by reference, provided, however, that the Trustee shall not be obligated to make any payments hereunder if an Event of Default hereunder has occurred and is continuing.

The sole obligation of Issuer under this section shall be to authorize the Trustee and the Trustee is hereby directed, to make such disbursements upon receipt of such certificates. The Trustee may rely fully on any such certificate and shall not be required to make any investigation in connection therewith, except that the Trustee may, in its sole discretion, (but shall not be obligated to do so) determine that it shall independently review or inquire as to the completeness and accuracy of the statements in such certificate.

Project Costs which are for the purchase and acquisition of any furniture, fixtures, machinery and equipment constituting a part of the Project shall be paid upon receipt by the Trustee of a certificate signed by the Authorized Tenant Representative in the form provided by Exhibit B to Schedule III to the Indenture, which is incorporated herein by reference and accompanied by such additional information as the Trustee may require; provided, however, that the Trustee shall not be obligated to make any payments hereunder if an Event of Default hereunder has occurred and is continuing. All machinery, equipment and/or personal property acquired, in whole or in part, with funds from the Project Fund pursuant to this section shall be and become part of the Project.

**Section 5.3 Completion of Project.** The Tenant warrants that the Improvements, when completed, will be necessary or useful in its business. Tenant covenants and agrees to proceed diligently to complete the Improvements and upon completion of the Improvements, Tenant shall, as soon as practicable, cause the Authorized Tenant Representative to deliver a Certificate of Completion to the Trustee.

**Section 5.4 Deficiency of Project Fund.** If all permissible amounts have been advanced on the Series A, 2006 Bonds and the Project Fund shall be insufficient to pay fully all Project Costs and to fully complete the Improvements, lien free, Tenant covenants to pay the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials, machinery, equipment, property and services as the same shall become due, and Tenant shall save Issuer and Trustee whole and harmless from any obligation to pay such deficiency.

**Section 5.5 Surplus in Project Fund.** Any amount remaining in the Project Fund after completion of the Improvements, shall be transferred by the Trustee into the Principal and Interest

Payment Account and used and applied by Trustee for the purposes and at the times authorized by the Indenture.

**Section 5.6 Right of Entry by Issuer.** The duly authorized agents of Issuer, Trustee and the Holder of the Series A, 2006 Bonds, shall have the right upon reasonable notice at any reasonable time to have access to the Project or any parts thereof for the purpose of inspecting and supervising the acquisition, installation or construction thereof.

**Section 5.7 Furniture, Fixtures, Machinery and Equipment Purchased by Tenant.** If no part of the purchase price of an item of machinery, equipment or personal property is paid from funds deposited in the Project Fund pursuant to the terms of the Lease or from the proceeds of the Bonds, then such item of furniture, fixtures, machinery, equipment or personal property shall not be deemed a part of the Project.

**Section 5.8 Project Property of Issuer.** All buildings, improvements and work constituting a part of the Project, all work and materials on the Project as such work progresses, and the Project as fully completed, anything under the Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by Tenant under the provisions of the Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of Issuer, subject to Tenant's rights under the Lease.

**Section 5.9 Kansas Retailers' Sales Tax.** The parties have entered into the Lease in contemplation that, under the existing provisions of K.S.A. 79-3606(d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project are entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act. The parties agree that Issuer shall, with Tenant's assistance and upon Tenant's request, attempt to promptly obtain from the State and furnish to the contractors and suppliers an exemption certificate for the construction of the Improvements. Tenant covenants that said exemption shall be used only in connection with the purchase of tangible personal property or services becoming a part of the Improvements. The Issuer agrees that the Tenant, in addition to other contractors and subcontractors working on the Improvements, will serve as its own "contractor" within the meaning of K.S.A. 79-3602(r), as it may be amended from time to time in making any acquisition of tangible personal property for the Improvements.

## **ARTICLE VI**

**Section 6.1 Impositions.** Tenant shall, during the life of the Lease, bear, pay and discharge, before the delinquency thereof, any and all Impositions. In the event any Impositions may be lawfully paid in installments, Tenant shall be required to pay only such installments thereof as become due and payable during the life of the Lease as and when the same become due and payable. Issuer covenants that without Tenant's written consent it will not, unless required by law, or otherwise allowed hereunder, take any action intended to cause or induce the levying or assessment

of ad valorem property taxes on property identified as property to be exempt from such taxes under this Article and that should any such levy or assessment (other than one required by law or allowed hereunder) be threatened or occur Issuer shall, at Tenant's request meet and confer with Tenant as to possible means to prevent any such levy or assessment.

**Section 6.2 Receipted Statements.** Unless Tenant exercises its right to contest any Impositions in accordance with Section 6.4 hereof, Tenant shall, within thirty (30) days after the last day for payment, without penalty or interest, of an Imposition which Tenant is required to bear, pay and discharge pursuant to the terms hereof, deliver to Issuer and the Trustee a photostatic or other suitable copy of the statement issued therefor duly receipted to show the payment thereof.

**Section 6.3 Issuer May Not Sell.** Issuer covenants that, unless Tenant has caused an Event of Default to exist under the Lease it will not, without Tenant's written consent, unless required by law, sell or otherwise part with or encumber (except for Permitted Encumbrances) its fee or other ownership interest in the Project at any time during the life of the Lease.

**Section 6.4 Contest of Impositions.** Tenant shall have the right, in its own or Issuer's name or both, to contest the validity or amount of any Imposition by appropriate legal proceedings instituted at least ten (10) days before the Imposition complained of becomes delinquent if, and provided, Tenant (i) before instituting any such contest, shall give Issuer and Trustee written notice of its intention to do so and, if requested in writing by Issuer, shall deposit with the Trustee a surety bond of a surety company acceptable to Issuer as surety, in favor of Issuer and Trustee, or cash, in a sum of at least the amount of the Imposition so contested, assuring the payment of such contested Impositions together with all interest and penalties to accrue thereon and costs of suit, and (ii) shall diligently prosecute any such contest and at all times effectively stay or prevent any official or judicial sale therefor, under execution or otherwise, and (iii) shall promptly pay any final judgment enforcing the Imposition so contested and thereafter shall promptly procure record release or satisfaction thereof. Tenant shall hold Issuer and Trustee whole and harmless from any costs and expenses Issuer or Trustee may incur related to any such contest.

**Section 6.5 Ad Valorem Taxes.**

(a) The parties acknowledge that under the existing provisions of K.S.A. 79-201a, as amended, it is their intention that the Project constructed or purchased with the proceeds of the 2006 Bonds (exclusive of any retail enterprise identified under standard industrial classification codes major groups 52 through 59, inclusive) shall be entitled to exemption from ad valorem taxation for a period of ten (10) calendar years after the calendar year in which the 2006 Bonds are issued, provided proper application is made therefor. Issuer covenants that, so long as any of the 2006 Bonds are Outstanding and except as otherwise allowed herein, it will not voluntarily take any action intended to cause or induce the levy or assessment of ad valorem taxes on the Improvements for an initial five (5) year period, and for an additional five (5) year period for a total of ten (10) years, if the additional five (5) year period is approved by the then current governing body of the Issuer. Issuer further covenants that it will reasonably cooperate with Tenant to make all necessary filings

regarding the application for such ad valorem tax exemption on or before March 1 in the calendar year following the calendar year in which the Bonds were issued, and will cooperate with Tenant in regard to annual filings from time to time in an effort to maintain such ad valorem tax exemption in full force and effect, in accordance with K.S.A. 79-210 et seq. and the regulations of the State Department of Revenue. Notwithstanding any of the foregoing provisions, if the Tenant fails to demonstrate a good faith effort to achieve its proposed employment goals or its Equal Opportunity/Affirmative Action goals, the City may revoke the tax abatement by either imposing payments in lieu of taxes (which the Tenant hereby agrees to pay) or by declining to make the annual exemption filing with the County Appraiser's Office. Any portion of the Improvements financed with special assessment funding for facade improvements will not be eligible for property tax abatement.

(b) The parties hereto acknowledge their understanding that under the existing provisions of K.S.A. 79-201a, as amended, the Improvements constructed or purchased with the proceeds of the Bonds shall be entitled to exemption from ad valorem taxation for the periods above-described without regard to whether such property is located in an environmental redevelopment project area created under K.S.A. 12-1771a. Notwithstanding the parties' understanding, nothing herein shall be deemed to limit the Issuer's authority to create any such areas pursuant to K.S.A. 12-1771a, nor the Issuer's authority to create redevelopment project areas pursuant to, K.S.A. 12-1770 et seq., generally.

(c) The Issuer and the Tenant hereby acknowledge and agree that, notwithstanding the provisions of Sections 7.5(a) above, the Tenant hereby agrees to make an annual payment in lieu of taxes in an amount equal to the difference between any taxes paid in a given year on the Project and \$45,000 (but not less than zero).

**Section 6.6 Insurance.** Tenant shall and covenants and agrees that it will, throughout the Term, at its sole cost and expense, keep the following policies of insurance in full force and effect:

(a) General accident and public liability insurance (including coverage for all losses whatsoever arising from the ownership, maintenance, use or operation of any automobile, truck or other vehicle in or upon the Project) under which Issuer, Tenant, the Owners of the Priority Bonds and Trustee shall be named as insureds or additional named insured, in an amount not less than the then maximum liability of a government entity for claims arising out of a single occurrence as provided by the Kansas tort claims act or other similar future law (currently \$500,000 per occurrence); which policy shall provide that such insurance may not be canceled by the issuer thereof without at least thirty (30) days' advance written notice to Issuer, Tenant and Trustee;

(b) Workers' Compensation Insurance;

(c) With regard to buildings and improvements constituting a part of the Project, builder's risk-completed value form insurance insuring the Project against fire, lightning and all other risks covered by the broadest form extended coverage endorsement then and from time to time thereafter

in use in the State to the Full Insurable Value of the Project. Such policy or policies of insurance shall name Issuer, Tenant, the Trustee and the Mortgagee as insureds, as their respective interests may appear. While the Priority Bonds are Outstanding, all payments received under such policy or policies shall be paid to the Mortgagee, to be held by the Mortgagee and applied in accordance with terms of the Mortgage Loan Documents. Thereafter, all payments received under such policy or policies by Issuer, Tenant shall be paid over to the Trustee and be deposited in the Project Fund; and

(d) With regard to buildings and improvements constituting a part of the Project which are not complete as of the date hereof, performance and labor and material payment bonds and statutory bonds with respect to the Project Contracts and in the full amount of the Project Contracts, made by the contractors thereunder as the principals and a surety company or companies qualified to do business in Kansas as surety. Said performance and labor and material payments bonds shall name Issuer, Tenant and the Trustee as obligees. The Tenant shall cause the statutory bonds to be filed with the Clerk of the Sedgwick County District Court and evidence of the filing to be furnished to the Trustee. All payments received by Issuer, Tenant or the Trustee under said bonds shall become a part of and be deposited in the Project Fund.

#### **Section 6.7 General Insurance Provisions.**

(a) Not less than thirty (30) days prior to the expiration dates of the expiring policies, originals or certificates or acceptable binders of the policies provided for in this Article, each bearing notations evidencing payment of the premiums or other evidence of such payment satisfactory to Issuer, shall be delivered by Tenant to the Trustee. All policies of such insurance and all renewals thereof shall name Issuer, Tenant, the Trustee and the Mortgagee as insureds as their respective interests may appear, shall contain a provision that such insurance may not be canceled or amended by the issuer thereof without at least thirty (30) days' written notice to Issuer, Tenant and the Trustee and shall be payable to the Trustee. While the Priority Bonds are Outstanding, Issuer and Tenant each hereby agree to take appropriate steps, be it the endorsement of checks or otherwise, to cause any such payment made by insurers to be directed to the Mortgagee, as long as such payment is required by this Lease to be made to the Mortgagee. Thereafter, Issuer and Tenant each hereby agree to take appropriate steps, be it the endorsement of checks or otherwise, to cause any such payment made by insurers to be directed to the Trustee, as long as such payment is required by this Lease to be made to the Trustee. Any charges made by the Trustee for its services shall be paid by Tenant.

(b) Each policy of insurance hereinabove referred to shall be issued by a nationally recognized responsible insurance company qualified under the laws of the State to assume the risks covered therein.

(c) The initial premium on the policies of insurance herein required shall be paid by Tenant, prior to or concurrently with the issuance of the Bonds, or at such later date as such policies of insurance may be required to be in force under the terms of this Article, and evidence of such insurance shall be filed with the Trustee at such time.

(d) Each policy of insurance hereinabove referred to may be subject to a reasonable deductible in an amount approved by the Trustee and the Priority Bondowner.

(e) Each policy of insurance required herein may be provided through blanket policies maintained by Tenant.

(f) Anything in the Lease to the contrary notwithstanding, Tenant shall be liable to Issuer for, and Tenant agrees to indemnify and hold the Issuer and the Trustee harmless pursuant to the provisions of the Lease or otherwise from, any liability or loss which arises from or is related to any loss or damage which may have been occasioned by the negligence of Tenant, its agents or employees.

(g) The proceeds received pursuant to any such policy of insurance shall be deposited in accordance with the provisions of Section 17.1 of this Lease.

**Section 6.8 Title Insurance.** Tenant shall purchase from the Project Fund or from Tenant's own funds, a policy of title insurance, insuring fee simple title to the Project in Issuer, in an amount not less than \$13,000,000. Issuer and Tenant agree that any and all proceeds received from title insurance during the Basic Term (i) if received before the completion of the Improvements shall be paid into and become a part of the Project Fund, (ii) if received thereafter but before the Bonds and interest thereon have been paid in full, shall be paid into and become a part of the Principal and Interest Payment Account, and (iii) if received after the Bonds, redemption premium, if any, and interest thereon have been paid in full, shall belong and be paid to Tenant or such other entity as may own the Project at such time.

## ARTICLE VII

**Section 7.1 Use of Project.** Subject to the provisions of the Lease, Tenant shall have the right to use the Project for any and all purposes allowed by law and contemplated by the Constitution of the State and the Act. Tenant shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. Tenant shall comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of the Lease. Tenant shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of Tenant to comply with the provisions of this Article.

**Section 7.2 Environmental Provisions.**

(a) The Tenant hereby covenants that it will not cause or permit any Hazardous Materials to be placed, held, located or disposed of on, under or at the Project, other than in the ordinary course of business and in compliance with all applicable laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided to the Issuer hereunder and in the Indenture, the Tenant hereby agrees to indemnify and hold harmless the Issuer and the Trustee 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 Issuer or the Trustee by any person, including any individual, partnership, joint venture, corporation or other business enterprise, or any other governmental unit or agency, for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from the Project of any Hazardous Material (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 Material) regardless of whether or not caused by or within the control of the Tenant; provided, however, such indemnity shall not extend to Hazardous Materials arising from events occurring prior to the Tenant's possession of the Land which are the subject of a certificate and release from the Issuer releasing the Tenant and anyone claiming under the Tenant from any liability for environmental conditions affecting the site that are the subject of environmental remediation orders from the Kansas Department of Health and Environment ("KDHE") (such Hazardous Materials being referred to herein as "Excluded Environmental Conditions").

(c) If the Tenant 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 Material on the Project site or in connection with the Tenant's operations thereon or (ii) any complaint, order, citation or notice of violations with regard to air emissions, water discharges or any other environmental matter that could materially adversely affect the Tenant (an "Environmental Complaint") from any regulatory authority (including, without limitation, the United States Environmental Protection Agency and KDHE) then the Tenant shall immediately notify the Issuer and the Trustee in writing of said notice.

(d) The Issuer shall have the right, but not the obligation, and without limitation of the Issuer's other rights under the Lease, upon reasonable notice to the Tenant, to enter the Project or to take such actions as deemed necessary under any applicable environmental law, regulation or order to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Hazardous Material or Environmental Complaint following receipt of any notice from any person, including any individual, partnership, joint venture, corporation or other business enterprise, or any

other governmental unit or agency, asserting the existence of any Hazardous Material or an Environmental Complaint pertaining to the Project or any part thereof which, if true, could result in an order, suit or other action against the Tenant and/or which, in the judgment of the Issuer, could jeopardize its interests. All reasonable costs and expenses incurred by the Issuer or Trustee in the exercise of any such rights (except with respect to Excluded Environmental Conditions) shall be payable by the Tenant upon demand.

(e) If an Event of Default shall have occurred and be continuing, or if there shall be reason to believe that the Project or any adjacent property has been contaminated with Hazardous Materials (other than Excluded Hazardous Materials), the Tenant at the request of the Issuer or Trustee shall periodically perform (at the Tenant's expense) an environmental audit and, if reasonably deemed necessary by the Issuer, an environmental risk assessment, (each of which must be reasonably satisfactory to the Issuer), of the Project, or the hazardous waste management practices and/or hazardous waste disposal sites used by the Tenant with respect to the Project. Said audit and/or risk assessment shall be conducted by an environmental consultant satisfactory to the Issuer or Trustee. Should the Tenant fail to perform any such environmental audit or risk assessment within thirty (30) days of the written request of the Issuer or Trustee, the Issuer or Trustee shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the Issuer or the Trustee in the exercise of such rights shall be payable by the Tenant on demand.

(f) The Tenant shall not install nor permit to be installed in the Project friable asbestos or any banned substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Project, and respecting such material, and with respect to any such material currently present in the Project, shall promptly either (i) remove any such material which such applicable regulations deem hazardous and require to be removed or (ii) otherwise comply with such applicable federal and state regulations, at the Tenant's expense. If the Tenant shall fail to so remove or otherwise comply, the Issuer may declare an Event of Default and/or do whatever is necessary to eliminate said substances from the Project or otherwise comply with the applicable law, regulation, or order, and the costs thereof shall be payable by the Tenant on demand. The Tenant shall defend, indemnify, and save the Issuer and the Trustee harmless from all costs and expenses (including consequential damages) asserted or proven against the Tenant by any Person, as compliance with such regulations. The foregoing indemnification shall be a recourse obligation of the Tenant.

(g) The indemnity provisions of this Section 7.2 shall survive the termination of the Lease.

## ARTICLE VIII

**Section 8.1 Assignment by Tenant.** Tenant may assign its interest in the Lease with the prior written consent of the Issuer and the Owners of 100% of the Priority Bonds. In the event of any such assignment, Tenant shall remain fully liable for the performance of its duties and obligations hereunder, except to the extent hereinafter provided, and no such assignment and no

dealings or transactions between Issuer or the Trustee and any such assignee shall relieve Tenant of any of its duties and obligations hereunder, except as may be otherwise provided in the following sections.

**Section 8.2 Release of Tenant.** If, in connection with an assignment by Tenant of its interests in the Lease pursuant to the preceding section, (1) the Issuer and the holders of one hundred percent (100%) in aggregate principal amount of the Outstanding Priority Bonds shall file with the Trustee their prior written consent to such assignment, which consent may be withheld in the Issuer's or such Holders' sole discretion, and (2) the proposed assignee shall expressly assume and agree to perform all of the obligations of Tenant under the Lease, Guaranty Agreement and Administrative Service Fee Agreement; then and in such event Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment.

**Section 8.3 Mergers and Consolidations.** Notwithstanding the provisions of Section 8.2, if Tenant shall assign its interests in the Lease in connection with a transaction involving the merger or consolidation of Tenant with or into, or a sale, lease or other disposition of all or substantially all of the property of Tenant as an entirety to another person, association, corporation or other entity, and (1) the Issuer and the Owners of 100% of the Priority Bonds shall file with the Trustee its prior written consent to such assignment, and (2) the proposed assignee shall expressly assume and agree to perform all of the obligations of Tenant under the Lease, Guaranty Agreement and Administrative Service Fee Agreement; then and in such event Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment.

**Section 8.4 Covenant Against Other Assignments.** Tenant will not assign or in any manner transfer its interests under the Lease, nor will it suffer or permit any assignment thereof by operation of law, except in accordance with the limitations, conditions and requirements set forth in this Article.

## **ARTICLE IX**

**Section 9.1 Repairs and Maintenance.** Tenant covenants and agrees that it will keep and maintain the Project and all parts thereof in good condition and repair, ordinary wear and tear excepted, including but not limited to the furnishing of all parts, mechanisms and devices required to keep the machinery, equipment and personal property constituting a part of the Project in good mechanical and working order, and that during said period of time it will keep the Project and all parts thereof free from filth, nuisance or conditions unreasonably increasing the danger of fire.

**Section 9.2 Removal, Disposition and Substitution of Furniture, fixtures, machinery and equipment.** Tenant shall have the right, provided Tenant is not in default in the payment of Basic Rent and Additional Rent or otherwise in material default, to remove and sell or otherwise dispose of any furniture, fixtures, machinery and equipment (other than fixtures) which constitutes a part of the Project and which are no longer used by Tenant or, in the opinion of Tenant, are no

longer useful to Tenant in its operations (whether by reason of changed processes, changed techniques, obsolescence, depreciation or otherwise), subject, however, to the following conditions:

(a) With respect only to such items of furniture, fixtures, machinery and equipment that originally cost in excess of 10% of the combined aggregate principal amount of the Priority Bonds then Outstanding under the Indenture, to the following:

(1) Prior to any such removal, Tenant shall deliver to the Trustee a certificate signed by Tenant (i) containing a complete description, including the make, model and serial numbers, if any, of any furniture, fixtures, machinery and equipment constituting a part of the Project which it proposes to remove, (ii) stating that such removal will not impair the use of the Project or the security for payment of the Bonds, (iii) stating what disposition, if any, of the furniture, fixtures, machinery and equipment is to be made by Tenant after such removal and the consideration to be received by Tenant therefor, if any, and (iv) setting forth the original cost of such furniture, fixtures, machinery and equipment.

(2) Prior to any such removal, Tenant shall pay the consideration received by Tenant, if any, for such furniture, fixtures, machinery and equipment as set forth in said certificate to the Trustee and the Trustee shall deposit such amount in the Principal and Interest Payment Account.

(3) Tenant may remove any furniture, fixtures, machinery and equipment constituting a part of the Project without first complying with the provisions of subparagraph (2) above; provided, however, that Tenant shall promptly replace any such furniture, fixtures, machinery and equipment so removed with furniture, fixtures, machinery and equipment of the same or a different kind but which are capable of performing a similar function or some other function needed for Tenant's operations at the Project, and the furniture, fixtures, machinery and equipment so acquired by Tenant to replace such furniture, fixtures, machinery and equipment shall be deemed a part of the Project. Within thirty (30) days after any such replacement by Tenant, Tenant shall deliver to the Trustee a certificate of the Tenant setting forth a complete description, including make, model and serial numbers, if any, of the furniture, fixtures, machinery and equipment which Tenant has acquired to replace the furniture, fixtures, machinery and equipment so removed by Tenant, the cost thereof and that said furniture, fixtures, machinery and equipment have been installed.

(b) The provisions of subparagraph (a) (1) and (2) above shall not apply with respect to such items of furniture, fixtures, machinery and equipment that originally cost less than an amount equal to 10% of the combined aggregate principal amount of the Priority Bonds then Outstanding under the Indenture. In no event shall Tenant in any calendar year pursuant to this Subsection (b) remove items of furniture, fixtures, machinery and equipment having an aggregate original cost in excess of 20% of the combined aggregate principal amount of the Bonds then Outstanding under the Indenture without the consent of the Owners of 100% of the aggregate principal amount of all Priority Bonds then Outstanding and prior written notice to the Trustee.

All furniture, fixtures, machinery and equipment constituting a part of the Project and removed by Tenant pursuant to this Section shall become the absolute property of Tenant and may be sold or otherwise disposed of by Tenant without accounting to Issuer with respect thereto; provided, however, Tenant must demonstrate compliance with this Article prior to termination by the City of any UCC filing. In all cases, Tenant shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage caused thereby. Tenant's rights under this Article to remove furniture, fixtures, machinery and equipment constituting a part of the Project is intended only to permit Tenant to maintain an efficient operation by the removal of such furniture, fixtures, machinery and equipment no longer suitable to Tenant's use for any of the reasons set forth in this paragraph and such right is not to be construed to permit a removal under any other circumstances and shall not be construed to permit the wholesale removal of such furniture, fixtures, machinery and equipment by Tenant.

## ARTICLE X

**Section 10.1 Alteration of Project.** Tenant shall have and is hereby given the right, at its sole cost and expense, to make such additions, changes and alterations in and to any part of the Project as Tenant from time to time may deem necessary or advisable; provided, however, Tenant shall not make any major addition, change or alteration which will adversely affect the intended use or structural strength of any part of the Project; provided, further, Tenant shall not make any addition, change or alteration to any part of the Project without the prior written consent of the Owners of 100% of the Priority Bonds and prior written notice to the Issuer and the Trustee. All additions, changes and alterations made by Tenant pursuant to the authority of this Article shall (i) be made in a workmanlike manner and in compliance with all laws and ordinances applicable thereto, (ii) when commenced, be prosecuted to completion with due diligence, and (iii) when completed, shall be deemed a part of the Project; provided, however, that additions of machinery, equipment and/or personal property of Tenant not purchased or acquired from funds deposited with the Trustee hereunder and not constituting a part of the Project shall remain the separate property of Tenant and may be removed by Tenant prior to expiration of the Term of the Lease; provided further, however, that all such additional machinery, equipment and/or personal property which remain in the Project after the termination of the Lease for any cause other than the purchase of the Improvements and the Land pursuant to Article XVI hereof, shall, upon and in the event of such termination, become the separate and absolute property of Issuer.

## ARTICLE XI

**Section 11.1 Additional Improvements.** Tenant shall have and is hereby given the right, at its sole cost and expense, to construct on the Land or within areas occupied by the Improvements, or in airspace above the Project, such additional buildings and improvements as Tenant from time to time may deem necessary or advisable; provided, however, that no such additional buildings or improvements shall be constructed without the prior written consent of the Owners of 100% of the

Priority Bonds and prior written notice to the Issuer and the Trustee. All additional buildings and improvements constructed by Tenant pursuant to the authority of this Article shall, during the Basic Term and any Additional Term, remain the property of Tenant and may be added to, altered or razed and removed by Tenant at any time during the Term hereof. Tenant covenants and agrees (i) to make all repairs and restorations, if any, required to be made to the Project because of the construction of, addition to, alteration or removal of, said additional buildings or improvements, (ii) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, (iii) to promptly and with due diligence either raze and remove from the Land, in a good, workmanlike manner; or repair, replace or restore such of said additional buildings or improvements as may from time to time be damaged by fire or other casualty, and (iv) that all additional buildings and improvements constructed by Tenant pursuant to this Article which remain in place after the termination of the Lease for any cause other than the purchase of the Improvements and the Land pursuant to Article XVI hereof, shall, upon and in the event of such termination, become the separate and absolute property of Issuer.

## ARTICLE XII

**Section 12.1 Securing of Permits and Authorizations.** Tenant shall not do or permit others under Tenant's control to do any work in or in connection with the Project or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of the Lease.

**Section 12.2 Mechanics' Liens.** Tenant shall not do or suffer anything to be done whereby the Project, or any part thereof, may be encumbered by any mechanics' or other similar lien and if, whenever and so often as any mechanics' or other similar lien is filed against the Project, or any part thereof, Tenant shall discharge the same of record within a reasonable time after the date of filing. Notice is hereby given that Issuer and the Trustee do not authorize or consent to and shall not be liable for any labor or materials furnished to Tenant or anyone claiming by, through or under Tenant upon credit, and that no mechanics' or similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of Issuer in and to the Project, or any part thereof.

**Section 12.3 Contest of Liens.** Tenant, notwithstanding the above, shall have the right to contest any such mechanics' or other similar lien if it (i) notifies Issuer and Trustee in writing of its intention so to do, and if requested by Issuer and/or the Trustee, deposits with the Trustee a surety bond issued by a surety company acceptable to Issuer as surety, in favor of Issuer or cash, in the amount of the lien claim so contested, indemnifying and protecting Issuer and Trustee from and against any liability, loss, damage, cost and expense of whatever kind or nature (including without limitation attorneys' fees and expenses) growing out of or in any way connected with said asserted

lien and the contest thereof, and (ii) diligently prosecutes such contest, at all times effectively staying or preventing any official or judicial sale of the Project or any part thereof or interest therein, under execution or otherwise, and (iii) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof.

**Section 12.4 Utilities.** All utilities and utility services used by Tenant in, on or about the Project shall be contracted for by Tenant in Tenant's own name, and Tenant shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

### **ARTICLE XIII**

**Section 13.1 Indemnity.** Tenant shall and hereby covenants and agrees to indemnify, protect, defend and save Issuer and the Trustee harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Term hereof or arising in connection with the issuance of the Bonds and the execution and delivery of the Lease, the Indenture or the Guaranty Agreement or the enforcement of any covenant, requirement or agreement contained therein or the exercise of any remedy, and upon timely written notice from the Issuer or the Trustee, the Tenant shall defend the Issuer and the Trustee in any action or proceeding brought thereon; provided, however, that nothing contained in this Section shall be construed as requiring the Tenant to indemnify the Issuer or the Trustee respectively for any claim resulting solely from its own act or omission which constitutes negligence or willful misconduct of the Issuer or the Trustee, or their respective agents and employees. Notwithstanding any other provisions herein contained, the provisions of this Section 13.1 shall constitute an agreement between the Issuer and the Tenant, and for the benefit of the Issuer and the Trustee, which shall survive the termination of the Lease whether resulting from payment of the Bonds or for any other reason.

### **ARTICLE XIV**

**Section 14.1 Access to Project.** The Issuer and the Trustee, each for itself and its duly authorized representatives and agents, reserve the right to enter the Project upon reasonable notice and at all reasonable times during usual business hours throughout the Basic Term and the Additional Term for the purpose of (i) examining and inspecting the same, (ii) performing such work made necessary by reason of Tenant's default under any of the provisions of the Lease, and (iii) while an Event of Default is continuing hereunder, for the purpose of exhibiting the Project to prospective purchasers, lessees or mortgagees. Issuer may, during the progress of said work mentioned in (ii) above, keep and store on the Project all necessary materials, supplies and equipment and shall not be liable for necessary inconvenience, annoyances, disturbances, loss of business or other damage suffered by reason of the performance of any such work or the storage of

such materials, supplies and equipment. The Owners of 100% of the Priority Bonds Outstanding and their duly authorized representatives and agents shall have the right to enter the Project upon reasonable notice and at all reasonable times during usual business hours throughout the Basic Term and the Additional Term for the purpose of examining and inspecting the same.

## ARTICLE XV

**Section 15.1 Option to Extend Term.** Tenant shall have and is hereby given the right and option, to extend the term of the Lease for the Additional Term with the written consent of Issuer provided that (i) Tenant shall give Issuer and Trustee written notice of its intention to exercise each such option at least thirty (30) days prior to the expiration of the Basic Term and (ii) Tenant is not in default hereunder in the payment of Basic Rent or Additional Rent at the time it gives Issuer and Trustee such notice or at the time the Additional Term commences. In the event Tenant exercises any of such options, the terms, covenants, conditions and provisions set forth in the Lease shall be in full force and effect and binding upon Issuer and Tenant during the Additional Term except that Tenant covenants and agrees that the Basic Rent during any extended term herein provided for shall be the sum of \$100.00 per year, payable in advance on the first Business Day of such Additional Term.

## ARTICLE XVI

**Section 16.1 Option to Purchase Project.** Subject to the provisions of this Article, Tenant shall have the right and option to purchase the Project at any time during the Term hereof and for one (1) year thereafter. Tenant shall exercise its aforesaid option by giving Issuer and Trustee written notice of Tenant's election to exercise its option and specifying the date, time and place of closing, which date (the "Closing Date") shall neither be earlier than thirty (30) days nor later than one hundred eighty (180) days after the notice is given. Tenant may not, however, exercise its said option if Tenant is in default hereunder on the Closing Date, unless all Defaults are cured upon payment of all amounts specified in Section 16.2 hereof.

**Section 16.2 Quality of Title and Purchase Price.** If said notice of election to purchase be given as aforesaid, Issuer shall and covenants and agrees to sell and convey its interests in and to the Project to Tenant on the Closing Date free and clear of all liens and encumbrances whatsoever except (i) those to which the title was subject on the date(s) of conveyance to Issuer of the Project, or to which title became subject with Tenant's written consent, or which resulted from any failure of Tenant to perform any of its covenants or obligations under the Lease, (ii) taxes and assessments, general and special, if any, (iii) Permitted Encumbrances and (iv) the rights, titles and interests of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the Project, for the price and sum as follows (which Tenant shall and covenants and agrees to pay in cash at the time of delivery of Issuer's deed or other instrument or instruments of transfer to the Project to Tenant as hereinafter provided):

(a) The full amount which is required to provide Issuer and the Trustee with funds sufficient, in accordance with the provisions of the Indenture, to pay at maturity or to redeem and pay in full (i) the principal of all of the Outstanding Bonds, (ii) all interest due thereon to date of maturity or redemption, whichever first occurs, and (iii) all costs, expenses and premiums incident to the redemption and payment of said Bonds in full, plus

(b) \$1,000.00.

Nothing in this Article shall release or discharge Tenant from its duty or obligation under the Lease to make any payment of Basic Rent or Additional Rent which, in accordance with the terms of the Lease, becomes due and payable prior to the Closing Date, or its duty and obligation to fully perform and observe all covenants and conditions herein stated to be performed and observed by Tenant prior to the Closing Date.

**Section 16.3 Closing of Purchase.** On the Closing Date Issuer shall deliver to Tenant its special warranty deed or other appropriate instrument or instruments of conveyance or assignment, properly executed and conveying the Project to Tenant free and clear of all liens and encumbrances whatsoever except as set forth in the preceding section above or conveying such other title to the Improvements as may be acceptable to Tenant, and then and there Tenant shall pay the full purchase price for the Project as follows: (a) the amount specified in clause (a) of Section 16.2 shall be paid to the Trustee who shall deposit the same in the Principal and Interest Payment Account and shall use the same to pay or redeem the Bonds and the interest thereon as provided in the Indenture, and (b) the amount specified in clause (b) of said Section 16.2 shall be paid to Issuer; provided, however, nothing herein shall require Issuer to deliver its said special warranty deed or other appropriate instrument or instruments of assignment or conveyance to Tenant until after all duties and obligations of Tenant under the Lease to the date of such delivery have been fully performed and satisfied. Upon the delivery to Tenant of Issuer's said special warranty deed or other appropriate instrument or instruments of assignment or conveyance and payment of the purchase price by Tenant, the Lease shall, ipso facto, terminate.

**Section 16.4 Effect of Failure to Complete Purchase.** If, for any reason whatsoever, the purchase of the Project by Tenant pursuant to valid notice of election to purchase given as aforesaid is not effected on the Closing Date (as the same may be extended by mutual agreement of the Issuer and the Tenant), the Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given, except that:

(a) If such purchase is not effected on the Closing Date because of the failure or refusal of Tenant to fully perform and observe all of the covenants and conditions herein contained on Tenant's part to be performed or observed to the Closing Date, Tenant shall be deemed to be in default under the Lease and Issuer and Trustee shall have such rights and Tenant shall have such duties and obligations as are stated in Article XX hereof with like effect as though written notice of default had been given and any grace period for the correction of such default had expired and said default remains unsatisfied.

(b) If such purchase is not effected on the Closing Date because on said date Issuer does not have and is unable to convey to Tenant such title to the Project as Tenant is required to accept, the Issuer shall use its best efforts to cure any such defect in its title to the Project. In the event the Issuer is unable to cure such defect in its title to the Project, Tenant shall have the right to cancel the Lease forthwith if, but only if, the principal of and interest on the Bonds all Additional Rent and all costs incident to the redemption and payment of the Bonds have been paid in full. The Tenant shall also have the right to exercise any legal or equitable remedies, in its own name or in the name of the Issuer, to obtain acceptable title to the Project.

**Section 16.5 Application of Condemnation Awards if Tenant Purchases Project.** The right of Tenant to exercise its option to purchase the Project under the provisions of this Article shall remain unimpaired notwithstanding any condemnation of title to, or the use for a limited period of, all or any part of the Project by a governmental authority other than the Issuer. If Tenant shall exercise its said options and pay the purchase prices as provided in this Article, all of the condemnation awards received by Issuer after the payment of said purchase price, less all attorneys' fees and other expenses and costs incurred by Issuer and the Trustee in connection with such condemnation shall belong and be paid to Tenant.

## **ARTICLE XVII**

### **Section 17.1 Damage and Destruction.**

(a) If, during the Basic Term, the Project is damaged or destroyed, in whole or in part, by fire or other casualty, the Tenant shall promptly notify the Issuer, the Trustee and the Owners of the Priority Bonds, in writing, as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss. While the Priority Bonds are Outstanding, the terms and provisions of the Mortgage Loan Documents shall control the disposition of insurance proceeds and the repair or replacement of the Project. Thereafter, the following terms shall apply:

(i) If the Tenant shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the Tenant shall forthwith proceed with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing. In such case, any Net Proceeds of casualty insurance received with respect to any such damage or loss to the Project shall be paid to the Trustee and shall be deposited in the Project Replacement Fund and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. Any amount remaining in the Project Replacement Fund after such rebuilding, repairing, restoring or replacing shall be deposited into the Principal and Interest Payment Account.

(ii) If the Tenant shall determine that rebuilding, repairing, restoring or replacing the Project is not practicable and desirable, any Net Proceeds of casualty insurance received with

respect to any such damage or loss to the Project shall be paid to the Trustee for deposit into the Principal and Interest Payment Account. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (a).

(b) The Tenant shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed, or is being repaired, rebuilt, restored or replaced nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent payable by the Tenant under the Lease nor of any other obligations of the Tenant under the Lease except as expressly provided in this Section.

### **Section 17.2 Condemnation.**

(a) If, during the Basic Term title to, or the temporary use of, all or any part of the Project shall be condemned by any authority exercising the power of eminent domain, the Tenant shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify the Issuer, the Trustee and the Owners of the Priority Bonds, in writing, as to the nature and extent of such condemnation and whether it is practicable and desirable to acquire or construct substitute improvements. While the Priority Bonds are outstanding, the terms and provisions of the Mortgage Loan Documents shall control the disposition of condemnation and the construction of substitute improvements. Thereafter, the following terms and provisions shall apply:

(i) If the Tenant shall determine that such substitution is practicable and desirable, the Tenant shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings shall be paid to the Trustee and shall be deposited in the Project Replacement Fund and shall be used and applied for the purpose of paying the cost of such substitution in accordance with the procedures provided in Section 5.2 for payment of Project Costs. Any amount remaining in the Project Replacement Fund after such acquisition or construction shall be deposited into the Principal and Interest Payment Account.

(ii) If the Tenant shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards received by the Tenant shall be paid into the Principal and Interest Payment Account. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (a).

(b) The Tenant shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent payable by the Tenant under the Lease nor of any other obligations hereunder except as expressly provided in this Section.

(c) The Issuer shall cooperate fully with the Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof. In no event will the Issuer voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the written consent of the Tenant; provided that nothing herein shall be deemed to adversely affect any condemnation proceedings initiated by the Issuer for its own intents and purposes.

## ARTICLE XVIII

**Section 18.1 Termination by Reason of Change of Circumstances.** If, at any time during the Basic Term, a Change of Circumstances occurs, then and in such event Tenant shall have the option to purchase the Project pursuant to Article XVI hereof or option to terminate the Lease by giving Issuer and Trustee written notice of such termination within ninety (90) days after Tenant has actual knowledge of the event giving rise to such option; provided, however, that such termination shall not become effective unless and until none of the Bonds are Outstanding.

## ARTICLE XIX

**Section 19.1 Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Issuer or the Trustee, as the case may be, may, and upon the direction of 100% of the Holders of the Outstanding Priority Bonds shall, take any one or more of the following remedial actions:

(a) By written notice to the Tenant upon acceleration of maturity of the Bonds as provided in the Indenture, the Trustee may declare the aggregate amount of all unpaid Basic Rent or Additional Rent then or thereafter required to be paid under the Lease by the Tenant to be immediately due and payable as damages from the Tenant, whereupon the same shall become immediately due and payable by the Tenant;

(b) Issuer may give Tenant written notice of intention to terminate the Lease on a date specified therein, which date shall not be earlier than ten (10) days after such notice is given and, if all Events of Default have not then been cured on the date so specified, Tenant's rights to possession of the Project shall cease, and the Lease shall thereupon be terminated, and Issuer may re-enter and take possession of the Project as of Issuer's former estate; or

(c) Without terminating the Lease, Issuer may re-enter the Project or take possession thereof pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Project without terminating the Term or the Lease, Issuer shall use reasonable diligence to relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as Issuer may deem advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project

by Issuer shall be construed as an election on Issuer's part to terminate the Lease, and no such re-entry or taking of possession by Issuer shall relieve Tenant of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or of any of its other obligations under the Lease, all of which shall survive such re-entry or taking of possession, and Tenant shall continue to pay the Basic Rent and Additional Rent provided for in the Lease until the end of the Term, whether or not the Project shall have been relet, less the net proceeds, if any, of any reletting of the Project after deducting all of Issuer's and Trustee's fees, costs, advances and expenses incurred in connection with such reletting, including without limitation, all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation of the Project for reletting.

Net proceeds of any reletting shall be paid to the Trustee and deposited in the Principal and Interest Payment Account. Having elected to re-enter or take possession of the Project pursuant to subsection (c) hereunder, Issuer may (subject, however, to any restrictions against termination of the Lease in the Indenture), by notice to Tenant given at any time thereafter while Tenant is in default in the payment of Basic Rent or Additional Rent or in the performance of any other obligation under the Lease, elect to terminate the Lease in accordance with subsection (b) hereunder. If, in accordance with any of the foregoing provisions of this Article, Issuer shall have the right to elect to re-enter and take possession of the Project, Issuer may enter and expel Tenant and those claiming through or under Tenant and remove the property and effects of both or either (forcibly if necessary) without being guilty of or liable for any manner of trespass and without prejudice to any remedies for arrears of Basic Rent or Additional Rent or preceding breach of covenant.

**Section 19.2 Survival of Obligations.** Tenant covenants and agrees with Issuer, Trustee and the Bondowners that until the Bonds and the interest thereon and redemption premium, if any, are paid in full or provision made for the payment thereof in accordance with the Indenture, its obligations under the Lease shall survive the cancellation and termination of the Lease, for any cause, and that Tenant shall continue to pay Basic Rent and Additional Rent and perform all other obligations provided for in the Lease, all at the time or times provided in the Lease.

**Section 19.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Lease or now or hereafter existing at law or in equity or by statute, subject to the provisions of the Indenture. No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein.

## ARTICLE XX

**Section 20.1 Performance of Tenant's Obligations by Issuer or Owners of Priority Bonds.** If Tenant shall fail to keep or perform any of its obligations as provided in the Lease, then Issuer, the Trustee or the Owners of 100% of the Priority Bonds Outstanding may (but shall not be obligated to do so) upon the continuance of such failure on Tenant's part for ninety (90) days after notice of such failure is given Tenant by Issuer or the Trustee and without waiving or releasing Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and Tenant shall reimburse Issuer, the Trustee or the Priority Bondholders, as the case may be, for all sums so paid by Issuer, Trustee or Priority Bondholders, and all necessary or incidental fees, advances, costs and expenses, including without limitation attorneys' fees and expenses incurred by Issuer, the Trustee or the Priority Bondholders in performing such obligations including interest at the Prime Rate plus 2% per annum, but not to exceed the interest rate prescribed by applicable law, through payment of Additional Rent. If such Additional Rent is not so paid by Tenant within ninety (90) days of demand, the Issuer, the Trustee or the Priority Bondholders, as applicable, shall have the same rights and remedies provided for in Article XIX in the case of default by Tenant in the payment of Basic Rent.

## ARTICLE XXI

**Section 21.1 Surrender of Possession.** Upon accrual of Issuer's right of re-entry as the result of an uncured Event of Default hereunder or upon the cancellation or termination of the Lease by lapse of time or otherwise, Tenant shall peacefully surrender possession of the Project to Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, Tenant shall have the right, prior to the termination of the Lease, to remove from or about the Project the buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures which Tenant owns do not constitute a part of the Project under the provisions of the Lease. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of Tenant, and the Tenant shall restore the Project to its original condition minus reasonable wear and tear. All buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures owned by Tenant and which are not so removed from or about the Project prior to the termination of the Lease shall become the separate and absolute property of Issuer.

## ARTICLE XXII

**Section 22.1 Notices.** All notices required or desired to be given hereunder shall be in writing and shall be delivered in person to the Notice Representative or mailed by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier, to the Notice Address. All notices given as aforesaid shall be deemed duly given as of the date they are received. Copies of all notices required or permitted to be sent to any party hereunder shall be sent to the

Holders of the Priority Bonds at the same time and in the same manner as the notice required or permitted to be given.

### ARTICLE XXIII

**Section 23.1 Net Lease.** The parties hereto agree (i) that the Lease is intended to be a net lease, (ii) that the payments of Basic Rent and Additional Rent are designed to provide Issuer and the Trustee with funds adequate in amount to pay all principal of and interest on the Bonds as the same become due and payable and to pay and discharge all of the other duties and obligations imposed upon, or assumed by, Tenant as set forth herein, and (iii) that to the extent that the payments of Basic Rent and Additional Rent are not adequate to provide Issuer and the Trustee with funds sufficient for the purposes aforesaid, Tenant shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money as may from time to time be required for such purposes.

**Section 23.2 Funds Held by Trustee After Payment of Bonds.** If, after the principal of and interest on the Bonds and all costs incident to the payment of Bonds have been paid in full, the Trustee holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, except as otherwise provided in the Lease and the Indenture and after payment therefrom to Issuer of any sums of money then due and owing by Tenant, be the absolute property of and be paid over forthwith to Tenant.

### ARTICLE XXIV

**Section 24.1 Rights and Remedies.** The rights and remedies reserved by Issuer and Tenant hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Issuer and Tenant shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of the Lease, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 24.2 Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall be effective unless in writing. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

**Section 24.3 Parties Shall Not Unreasonably Withhold Consents and Approvals.** Except as otherwise specifically provided, wherever in the Lease it is provided that Issuer shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, Issuer shall not unreasonably or arbitrarily refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules. Wherever in the Lease it is provided that Tenant shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, Tenant shall not unreasonably or arbitrarily refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules, nor will Tenant unreasonably, arbitrarily or unnecessarily delay giving such approvals or consents.

#### **ARTICLE XXV**

**Section 25.1 Quiet Enjoyment and Possession.** Issuer covenants that so long as Tenant shall not be in default under the Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Project during the Term hereof.

#### **ARTICLE XXVI**

**Section 26.1 Investment Tax Credit; Depreciation.** Tenant shall be entitled to claim the full benefit of (i) any investment credit against federal or state income tax allowable with respect to expenditures of the character contemplated hereby under any federal or state income tax laws now or from time to time hereafter in effect, and (ii) any deduction for depreciation with respect to the Project from federal or state income taxes. Issuer agrees that it will upon Tenant's request execute all such elections, returns or other documents which may be reasonably necessary or required to more fully assure the availability of such benefits to Tenant.

#### **ARTICLE XXVII**

**Section 27.1 Amendments.** The Lease may be amended, changed or modified by an agreement in writing executed by Issuer and Tenant, in accordance with the provisions of Article XII of the Indenture.

**Section 27.2 Granting of Easements.** If no Event of Default under the Lease shall have happened and be continuing, Tenant may, upon receipt of prior written approval of the Issuer and the Holders of 100% of the Outstanding Priority Bonds, at any time or times, (a) grant easements, licenses and other rights or privileges in the nature of easements with respect to any property included in the Project, free from any rights of Issuer or the Bondowners, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as Tenant shall determine, and Issuer agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to

confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by Issuer and Trustee of: (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by the Authorized Tenant Representative requesting such instrument and (iii) a certificate executed by Tenant stating (aa) that such grant or release is not detrimental to the proper conduct of the business of Tenant, and (bb) that such grant or release will not impair the effective use or interfere with the efficient and economical operation of the Project and will not materially adversely affect the security of the Bondowners. If the instrument of grant shall so provide, any such easement or right and the rights of such other parties thereunder shall be superior to the rights of Issuer, Trustee and the Bondowners and shall not be affected by any termination of the Lease or default on the part of Tenant hereunder. If no Event of Default shall have happened and be continuing, any payments or other consideration received by Tenant for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of Tenant, but, in the event of the termination of the Lease or continuing Event of Default, all rights then existing of Tenant with respect to or under such grant shall inure to the benefit of and be exercisable by Issuer.

**Section 27.3 Security Interests.** Issuer and Tenant agree to execute and deliver all instruments (including financing statements and statements of continuation thereof) reasonably requested by the Trustee as necessary for perfection of and continuance of the security interest of Issuer and the Trustee in and to the Project. The Trustee, as the Issuer's assignee, shall file or cause to be filed all such instruments required to be so filed and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding.

The Issuer shall cause all appropriate financing statements and other security instruments as are requested by the Bondowner be recorded and filed in such manner and such places as may be required by law in order to fully preserve and protect the security of the Bondowners and the rights of the Trustee hereunder. The Trustee shall cause all appropriate continuation statements of financing statements initially recorded to be recorded and filed in such manner and in such places as may be required by law to continue the effectiveness of such financing statements.

**Section 27.4 Construction and Enforcement.** The Lease shall be construed and enforced in accordance with the laws of the State. The provisions of the Lease shall be applied and interpreted in accordance with the rules of interpretation set forth in the Indenture. Wherever in the Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation according to its terms.

**Section 27.5 Invalidity of Provisions of Lease.** If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

**Section 27.6 Covenants Binding on Successors and Assigns.** The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

**Section 27.7 Section Headings.** The section headings hereof are for the convenience of reference only and shall not be treated as a part of the Lease or as affecting the true meaning of the provisions hereof. The reference to section numbers herein or in the Indenture shall be deemed to refer to the numbers preceding each section.

**Section 27.8 Execution of Counterparts.** This Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 27.9 Ongoing, Special Conditions.** The Tenant acknowledges that the consideration to the Issuer for entering into this Lease and related documents, and for issuing the 2006 Bonds, includes, in addition to performance of the requirements and obligations hereinabove set forth, Tenant's performance of certain ongoing requirements of the Issuer, as follows:

A. Tenant agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and its use or occupancy of the Project under this Lease. Tenant agrees to comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, et seq.; the Code of the City of Wichita Section 2.12.950; and, any laws, amendments or regulations promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently existing or hereafter enacted, which pertains to civil rights and equal employment opportunity.

B. Tenant agrees that, during the term of this Lease, it will continuously maintain the average wage paid to employees of Tenant at a level (1) equal to or greater than the average wage paid by businesses in the Wichita Metropolitan Statistical Area with Tenant's NAICS classification; or alternatively, (2) greater than the average wage for all jobs in the Wichita Metropolitan Statistical Area excluding wages paid by businesses classified in NAICS Sector 336.

C. Tenant agrees that, during the term of this Lease, it will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the Issuer, and Tenant will annually file an Equal Employment Opportunity/Affirmative Action Plan with the Issuer.

D. Tenant agrees that, during the term of this Lease, in addition to performing Tenant's obligations to pay Impositions relating to the Project or its interest therein pursuant to Article VI hereof, Tenant will (subject to any lawful right to contest the same) timely pay all other ad valorem property taxes levied against Tenant's real or personal property in Sedgwick County, Kansas.

E. Tenant agrees that it will complete its capital investment of approximately \$14,000,000 in the Project prior to submission of the Certificate of Completion required by Section 5.3 of this Lease.

F. Tenant agrees that, throughout the term of this Lease, it will comply with all applicable governmental laws, rules and regulations.

G. Tenant agrees that during the term of this Lease, it will cooperate with any reasonable and lawful annual compliance audit procedure(s) the Issuer may adopt to monitor compliance with conditions, including any annual reports required of the Tenant and any inspection of the Tenant's premises or interviews with the Tenant's staff.

**Section 27.10 Effect of Breach of Section 27.9; Remedies.** Tenant acknowledges that in the event of Tenant's or Subtenant's noncompliance with any of its obligations or agreements under the foregoing Section 27.9, the Issuer will not have received the social and economic development benefits expected in connection with its entry into this Lease and related documents and its issuance of the 2006 Bonds, and the resulting loss to the Issuer will be difficult to measure. In such event, the Tenant shall be required to pay to the Issuer, as liquidated damages, an amount equal to:

A. The amount of additional Kansas sales and use tax which Tenant or Subtenant would have been required to bear (either directly, or as an increased cost of construction contracts) on personal property and services obtained for the Project, if such property and services had been obtained with funds of the Tenant or Subtenant rather than with proceeds of the 2006 Bonds, plus

B. The amount of ad valorem property taxes which Tenant would have been required to pay but for the provisions of Section 6.5 of this Lease.

No delay or omission by the Issuer to enforce its right to the payment of liquidated damages as provided for herein shall impair such right, nor shall any such delay or omission be construed to be a waiver of such right. The parties agree that any breach by Tenant of obligations and agreements arising solely under Section 27.9 shall not constitute an Event of Default under this Lease.

*[remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed these presents and have caused the same to be dated as of the day and year first above written.

CITY OF WICHITA, KANSAS



By: *Carlos Mayans*  
Carlos Mayans, Mayor

ATTEST:  
By: *Karen Sublett, CMC*  
Karen Sublett, City Clerk

"ISSUER"

ACKNOWLEDGMENT

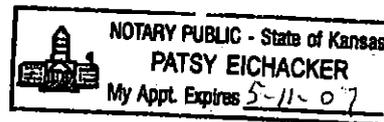
STATE OF KANSAS            )  
  ) ss:  
SEDGWICK COUNTY         )

BE IT REMEMBERED that on this 18 day of December, 2006, before me, a notary public in and for said County and State, came Carlos Mayans, Mayor of the City of Wichita, Kansas, a municipal corporation of the State of Kansas, and Karen Sublett, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

*Patsy Eichacker*  
Notary Public in and for said County and State

My Appointment Expires: \_\_\_\_\_



OLD TOWN LODGING, LLC

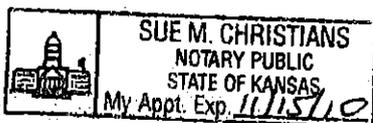
By: James E. Korroch  
Name: James E. Korroch  
Title: Manager

"TENANT"

STATE OF KANSAS        )  
                                  ) ss:  
SEDGWICK COUNTY        )

BE IT REMEMBERED that on this 16 day of December, 2006, before me, a notary public in and for said County and State, came James E. Korroch, Manager of Old Town Lodging, LLC, a Kansas limited liability company, on behalf and acknowledged to me that he executed the same for the purposes therein expressed, acting for and on behalf of said limited liability company, in his capacity as Manager.

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



Sue M. Christians

Notary Public in and for said  
County and State

My Appointment Expires: 11/15/10

SCHEDULE I

SCHEDULE I TO THE TRUST INDENTURE OF THE CITY OF WICHITA, KANSAS, AND UMB BANK, N.A., AS TRUSTEE, DATED AS OF DECEMBER 1, 2006 AND TO THE LEASE DATED AS OF DECEMBER 1, 2006 BY AND BETWEEN SAID CITY AND OLD TOWN LODGING, LLC.

PROPERTY SUBJECT TO LEASE

(a) THE LAND: The following described real property located in Sedgwick County, Kansas, to wit:

Parcel 1:

Lots 19, 20, 21, 22, 23 and 24, except the west 10 feet thereof, together with the vacated west 10 feet of Mosley Avenue adjoining said lots on the east, Block A, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

ALSO KNOWN AS:

That part of Lots 19, 20, 21, 22, 23, 24 and vacated Mosley Avenue, Block A, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas, described as beginning 10 feet east of the southwest corner of said Lot 24; thence N 89°52'45" E along the south line of said Lot 24, 140 feet to a point 10 feet east of the southeast corner of said Lot 24; thence N 00°00'00" W parallel to the east line of said lots 300 feet; thence S 89°52'52" W, along the north line of said Lot 19 extended, 140 feet to a point 10 feet east of the northwest corner of said Lot 19; thence S 00°01'11" E parallel to the west line of said Lots, 300 feet to the point of beginning.

Parcel 2:

Lots 1, 2, and 3, except the north 0.73 feet of Lot 3; together with the west half of vacated alley abutting said property on the east, Block B, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

ALSO KNOWN AS:

That part of Lots 1, 2, 3 and vacated alley abutting on east, Block B, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas, described as beginning at the southwest corner of said Lot 1; thence N 89°52'57" E along the south line of said Lot 1, 145.5 feet to the center line of said vacated alley; thence N 00°00'19" W along said centerline, 149.22 feet; thence S 89°52'21" W, 145.5 feet to the west line of said Lot 3; thence S 00°00'00" E along the west line of said Lots, 149.22 feet to the point of beginning.

(b) **THE IMPROVEMENTS:** All buildings and improvements now or hereafter purchased, constructed, located or installed on the Land and paid for with 2006 Bond Proceeds pursuant to said Lease, constituting the "Improvements" as referred to in said Lease and said Indenture, and more specifically described as

A 129-room hotel to be operated as a Courtyard by Marriott.

The property described in paragraphs (A) and (B) of this Schedule I, together with any alterations or additional improvements properly deemed a part of the Project pursuant to and in accordance with the provisions of Sections 10.1 and 11.1 of the Lease, constitute the "Project" as referred to in both the Lease and the Indenture.

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "First Amendment") is made this \_\_\_\_ day of November, 2011, by and between City of Wichita, Kansas, a municipal corporation of the State of Kansas ("Issuer" or "City") and Old Town Lodging, LLC, a Kansas limited liability company ("Tenant").

### WITNESSETH:

WHEREAS, Issuer as lessor and Tenant as lessee entered into a Lease dated December 1, 2006 a Notice of Lease of which was filed for record on December 28, 2006 as Document No. FLM-PG: 28845674 with the Sedgwick County, Kansas Register of Deeds (collectively, the "Lease"); and

WHEREAS, Pursuant to an Assignment of Lease filed for record on December 28, 2006 as Document No. FLM-PG: 28845675 with the Sedgwick County, Kansas Register of Deeds (the "Assignment of Lease") Issuer assigned its interest in the Lease to UMB Bank, N.A., Kansas City, Missouri ("Trustee") pursuant to the terms of the Indenture by and between Issuer and Trustee to secure Issuer's obligations under the Indenture; and

WHEREAS, Pursuant to that certain Amended and Restated Loan Agreement of even date herewith or otherwise to be entered into (as hereafter amended, supplemented, refinanced or otherwise modified from time to time, the "Loan Agreement") among Old Town Lodging, LLC, as "Borrower" thereunder, and Wells Fargo Bank, National Association, as "Lender" thereunder and as successor in interest to the interest of Nationwide Life Insurance Company in the Existing Loans (as defined in the Loan Agreement), such parties have agreed to amend and restate in their entirety the terms and conditions of the Existing Loan Agreement (as defined in the Loan Agreement) and the Existing Loans, *inter alia*, to extend the maturity of the Existing Loans to November [\_\_\_], 2014 (as such maturity date may be further extended to November \_\_, 2015 and November \_\_, 2016 subject to the terms of the Loan Agreement) and Lender agreed to make an additional loan that will be consolidated with the Existing Loans, all of which as assigned, amended, restated and extended, collectively is referred to herein as, the "Loan"); and

**WHEREAS**, immediately prior to the effectiveness of the Loan Agreement, Lender purchased from Nationwide Life Insurance Company all of the right, title and interest of Nationwide Life Insurance Company in the Existing Loans, the Existing Loan Agreement, the Existing Notes (as defined in the Loan Agreement), the Existing Other Agreements (as defined in the Loan Agreement), the Bonds and the Bond Documents (as defined in the Loan Agreement); and

**WHEREAS**, under the provisions of the Loan Agreement and to secure Tenant's obligations to Lender, including, without limitation, Tenant's obligation to repay the Loan, Tenant is required to grant Lender a first lien mortgage encumbering Tenant's leasehold interest in the Lease; and

**WHEREAS**, Issuer and Tenant hereby desire to amend the Lease, *inter alia*, (i) to add new provisions and modify existing provisions as necessary to make the Lease a financeable lease incorporating terms required by Lender or otherwise generally recognized among financial institutions as are necessary or typical in such transactions and leases where a tenant grants a lender a mortgage lien on its leasehold, (ii) to satisfy Lender's requirements in respect of the Lease as a part of the conditions precedent to Lender entering into the Loan Agreement and consummating the transactions contemplated under the Loan Agreement and (iii) to demonstrate and unequivocally evidence Issuer's consent and approval of Tenant entering into the Loan Agreement, granting Lender a mortgage on Tenant's interest in the Lease and otherwise consummating the transactions contemplated under the Loan Agreement; and

**WHEREAS**, in addition, Trustee is executing this First Amendment for the purposes of (i) demonstrating its acknowledgement of and consent to the transactions contemplated in this First Amendment and (ii) evidencing its agreement that the Lease shall be amended as set forth in this First Amendment.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, Issuer and Tenant do hereby covenant and agree as follows:

1. Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Lease.
2. From and after the date Lender purchases the interest of Nationwide Life Insurance Company, Issuer agrees to acknowledge Lender as the successor in interest to the rights of Nationwide Life Insurance Company under the Lease.
3. The following definitions set forth in Article I of the Lease hereby are deleted and in place and stead thereof the following new definitions hereby are substituted in Article I of the Lease:

**"Mortgage"** shall mean the Construction Mortgage, Security Agreement and Fixture Filing dated as of November 28, 2005, which was filed for record on November 29, 2005 as Document No. FLM-PG: 28736609 with the Sedgwick County, Kansas Register of Deeds, as

amended by a First Amendment to Construction Mortgage and Assignment of Leases and Rents filed for record on June 12, 2006 as Document No. FLM-PG 28788983 with the Sedgwick County, Kansas Register of Deeds and a Second Amendment to Construction Mortgage and Assignment of Leases and Rents filed for record on December 28, 2006 as Document No. FLM-PG: 28845671 with the Sedgwick County, Kansas Register of Deeds as amended and restated by that certain Open-End Mortgage of Real Property, Security Agreement of Personal Property, Assignment of Rents and Profits and Fixture Filing – Amendment and Restatement dated as of the \_\_\_ day of November, 2011, by Borrower in favor of Lender.

**“Mortgagee”** shall mean Lender as successor in interest to Nationwide Life Insurance Company, as mortgagee under the Mortgage and Lender’s successors and assigns.

4. The following definitions set forth in Article I of the Lease hereby are amended to add the following language in each of such definitions in Article I of the Lease:

**“Notice Address”** shall include the following:

- (5) With respect to Mortgagee as mortgagee under the Mortgage and as Owner of the Series A, 2006 Bonds:

Wells Fargo Bank, National Association  
Winston-Salem Loan Center  
One West Fourth Street, 3rd Floor  
Winston-Salem, North Carolina 27101  
Attention: Manager (AU 64277; Loan Number 1005073)

With a copy to:

Wells Fargo Bank, National Association  
Hospitality Finance Group (AU# 64277)  
2030 Main Street, Suite 500  
Irvine, California 92614  
Attention: Sherrie Courtney-Sanders, Vice President  
(or such other, subsequent address as Mortgagee and Owner of the Series A, 2006 Bonds may provide by notice)

**“Notice Representative”** shall include the following:

- (5) With respect to Mortgagee as mortgagee under the Mortgage and as Owner of the Series A, 2006 Bonds, those representatives of Mortgagee as indicated in the definition of Notice Address set forth above.

**“Permitted Encumbrances”** shall include the following:

- (e) Such further liens, pledges security interests and agreements as Borrower may execute in favor of Lender.

5. Sections 6.5(a), (b) and (c) hereby are deleted and in place and stead thereof, the following Section 6.5(a) and Section 6.5(b) hereby are substituted in Article VI of the Lease:

**Section 6.5 Ad Valorem Taxes.**

(a) The parties acknowledge that under the existing provisions of K.S.A. 79 201a, as amended, it is their intention that the Project constructed or purchased with the proceeds of the 2006 Bonds (exclusive of any retail enterprise identified under standard industrial classification codes major groups 52 through 59, inclusive) shall be entitled to exemption from ad valorem taxation for a period of ten (10) calendar years after the calendar year in which the 2006 Bonds are issued, provided proper application is made therefor. Issuer covenants that, so long as any of the 2006 Bonds are Outstanding and except as otherwise allowed herein, it will not voluntarily take any action intended to cause or induce the levy or assessment of ad valorem taxes on the Improvements for a period of ten (10) years. Issuer further covenants that it will cooperate with Tenant to make all necessary filings regarding the application for such ad valorem tax exemption on or before March 1 in the calendar year following the calendar year in which the 2006 Bonds were issued, and to renew said application from time to time to maintain such ad valorem tax exemption in full force and effect, in accordance with K.S.A. 79 210 et seq. and the regulations of the State Department of Revenue. Notwithstanding any of the foregoing provisions, if Tenant fails to demonstrate a good faith effort to achieve its proposed employment goals or its Equal Opportunity/Affirmative Action goals Issuer may revoke the tax abatement by either imposing payments in lieu of taxes (any of which Tenant hereby agrees to pay) or by declining to make the annual exemption filing with the County Appraiser's Office. Any portion of the Improvements financed with special assessment funding for façade improvements will not be eligible for property tax abatement.

(b) The parties hereto acknowledge their understanding that under the existing provisions of K.S.A. 79 201a, as amended, the Improvements, including, but not limited to, the property constructed or purchased with the proceeds of the 2006 Bonds shall be entitled to exemption from ad valorem taxation for the periods above described without regard to whether such property is located in an environmental redevelopment project area created under K.S.A. 12 1771a. Notwithstanding the parties' understanding, nothing in this Lease shall be deemed to limit the Issuer's authority to create any such areas pursuant to K.S.A. 12 1771a, nor the Issuer's authority to create redevelopment project areas pursuant to, K.S.A. 12 1770 et seq. generally

6. The Lease hereby is further amended to include the following:

**ARTICLE XXVIII**

**MORTGAGES OF TENANT'S INTEREST**

Section 28.1. Tenant, and its successors and assigns, shall have the unrestricted right to mortgage and pledge this Lease, subject, however, to the limitations of this Section 28.1. Any such mortgage or pledge shall be subject and subordinate to the rights of Issuer hereunder.

Section 28.2. No holder of a mortgage on this Lease shall have the rights or benefits mentioned in this Article, nor shall the provisions of this Article be binding upon Issuer, unless and until the name and address of the mortgagee shall have been delivered to Issuer, notwithstanding any other form of notice, actual or constructive.

Section 28.3. If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Article, then so long as any such mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Trustee as assignee of Issuer, upon serving upon Tenant any notice of default or any notice of an Event of Default pursuant to the provisions of Article I hereof, Article XIX hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon the holder of such mortgage, at the address provided for in paragraph (g) of this Section, and no notice by Issuer to Tenant hereunder shall be deemed to have been duly given unless and until a copy thereof has been so served.

(b) Any holder of such mortgage, in case Tenant shall be in default hereunder, shall, within the period and otherwise as herein provided, have the right to remedy such default, or cause the same to be remedied, and Issuer shall accept such performance by or at the instance of such holder as if the same had been made by Tenant.

(c) For the purposes of this Article, no Event of Default shall be deemed to exist under Article I hereof or Article XIX hereof in respect of the performance of work required to be performed, or of facts to be done, or of conditions to be remedied, if steps shall, in good faith, have been commenced within the time permitted therefore to rectify the same and shall be prosecuted to completion with diligence and continuity.

(d) Anything herein contained to the contrary notwithstanding, upon the occurrence of a default or an Event of Default (inclusive of the occurrence of any of the events specified in paragraph (b), (c) or (d) of Section 28.3 hereof), other than an Event of Default due to a default in the payment of money, Issuer shall take no action to effect a termination of this Lease without first giving to the holder of such mortgage written notice thereof and a reasonable time thereafter within which either (i) to obtain possession of the mortgaged property (including possession by a receiver) or (ii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Tenant's interest under this Lease with diligence. Such holder upon obtaining possession or acquiring Tenant's interest under this Lease shall be required promptly to cure all defaults then reasonably susceptible of being cured by such holder. Provided, however, that: (i) such holder shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (ii) nothing herein contained shall preclude Issuer, subject to the provisions of this Article, from exercising any rights or remedies under this Lease with respect to any other default by Tenant during the pendency of such foreclosure proceedings; and (iii) such holder, shall agree with Issuer in writing to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such holder. Any default by Tenant, not reasonably susceptible of being cured by such holder shall be deemed to have been waived by Issuer upon

completion of such foreclosure proceedings or upon such acquisition of Tenant's interest in this Lease, except that any of such Events of Default which are reasonably susceptible of being cured after such completion and acquisition shall then be cured with reasonable diligence. Such holder, or his designee, or other purchaser in foreclosure proceedings may become the legal owner and holder of this Lease through such foreclosure proceedings or by assignment of this lease in lieu of foreclosure.

(e) In the event of the termination of this Lease prior to the expiration of the term, except by eminent domain, as provided in Section 17.2 hereof, Trustee as assignee of Issuer shall serve upon the holder of such mortgage written notice that the Lease has been terminated together with a statement of any and all sums which would at the time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Trustee as assignee of Issuer. Such holder shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

Upon the written request of the holder of such mortgage, within thirty (30) days after service of such notice that the Lease has been terminated, Issuer shall enter into a new lease of the Project with such holder, or his designee, as follows:

Such new lease shall be entered into at the reasonable cost of the tenant thereunder, shall be effective as at the date of termination of this Lease, and shall be for the remainder of the term of this Lease and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal, rights to extend and options to purchase. Such new lease shall require the tenant to perform any unfulfilled obligation of Tenant under this Lease which is reasonably susceptible of being performed by such tenant. Upon the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Issuer in connection with such defaults and termination, the recovery of possession of said premises, and the preparation, execution and delivery of such new lease. Upon the execution of such new lease, Issuer shall allow to the tenant named therein and such tenant shall be entitled to an adjustment in an amount equal to the net income derived by Issuer from the demised premises during the period from the date of termination of this Lease to the date of execution of such new lease.

(f) If by reason of its failure either to exercise any option to extend under Article XV hereof, or for any other reasons whatsoever, Tenant shall not become entitled to renew this Lease for any extension or renewal term provided for in said Article XV, Issuer shall serve upon the holder of such mortgage written notice thereof and such holder shall have the option upon written request served upon Issuer to obtain from Issuer a new lease of the demised premises for such extension or renewal term in accordance with and upon the following terms and conditions:

Such written request shall be served upon Issuer not later than sixty (60) days after the service of the aforementioned notice by Issuer on such holder, and within thirty

**(30) days after the service of such written request, Issuer and the holder of such mortgage, or such holder's designee, shall enter into a new lease of the Project as follows:**

**Such new lease shall be entered into at the reasonable cost and expense of the tenant thereunder, shall be effective as at the date of termination of the then current term of this Lease, and shall be for the renewal term next succeeding the then current term of this Lease, and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal, rights to extend and options to purchase. Such new lease shall require tenant to perform any unfulfilled obligation of Tenant under this Lease which is reasonably susceptible of being performed by such tenant. Upon the execution of such new lease the tenant therein named shall pay any and all sums remaining unpaid under the Lease then expiring, then unpaid, plus the reasonable expenses incurred by Issuer in connection with the preparation, execution and delivery of such new lease.**

**(g) Any notice or other communication which Trustee as assignee of Issuer shall desire or is required to give to or serve upon the holder of a mortgage on this Lease shall be in writing and shall be served by registered mail, addressed to such holder at his address as set forth in such mortgage, or in the last assignment thereof delivered to Issuer, or at such other address as shall be designated by such holder by notice in writing given to Issuer by registered mail.**

**Any notice or other communication which the holder of a mortgage on this Lease shall desire or is required to give to or serve upon Issuer shall be deemed to have been duly given or served if sent in duplicate by registered mail addressed to Issuer at Issuer's address as set forth in Article I of this Lease or at such other addresses as shall be designated by Issuer by notice in writing given to such holder by registered mail.**

**(h) Effective upon the commencement of the term of any new lease executed pursuant to paragraph (e) or paragraph (f) of this Section, all subleases shall be assigned and transferred without recourse by Issuer to the tenant under such new lease, and all moneys on deposit with Issuer or Trustee which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease.**

**(i) Anything herein contained to the contrary notwithstanding, the provisions of this Article shall inure only to the benefit of the holder of a leasehold mortgage which shall be a first lien. If the holders of more than one such leasehold mortgage shall make written request upon Issuer for a new lease in accordance with the provisions of paragraph (e) or paragraph (f) of this Section, the new lease shall be entered into pursuant to the request of the holder whose leasehold mortgage shall be prior in lien thereto and thereupon the written requests for a new lease of each holder of a leasehold mortgage junior in line shall be and be deemed to be void and of no force or effect. If the parties shall not agree on which leasehold is prior in line, such dispute shall be determined by First American Title Insurance Company, or its successor, and such determination shall bind the parties.**

(j) No agreement between Issuer and Tenant modifying, cancelling or surrendering this Lease shall be effective without the prior written consent of the leasehold mortgagee.

(k) No union of the interests of Issuer and Tenant herein shall result in a merger of this Lease in the fee interest.

Section 28.4. So long as Lender shall be the holder of a mortgage on this Lease, Lender may, in lieu of Trustee, hold and disburse any funds which such Trustee would have been entitled to hold and disburse, but upon and subject nevertheless to all the provisions hereof applicable thereto.

Section 28.5. If any leasehold mortgagee shall acquire title to Tenant's interest in this Lease, by foreclosure of a mortgage thereon or by assignment in lieu of foreclosure or by an assignment from a designee or wholly owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Article, such mortgagee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Tenant's part to be performed and observed from and after the date of such assignment, provided that the assignee from such mortgagee shall have assumed such lease in accordance with Section 8.1 hereof and shall have complied otherwise with said Section.

Section 28.6. Tenant covenants it will not treat the lease as terminated by any election made under Section 365(h) of the Bankruptcy Code of 1978 or under any similar law or right of any nature, and hereby assigns to the leasehold mortgagee any right to acquiesce in any such termination.

5. Upon full execution and delivery by Issuer, Tenant and Trustee, this First Amendment shall be filed for record with the Sedgwick County, Kansas Register of Deeds.

6. Except as specifically amended hereby, the Lease shall remain unmodified and in full force and effect and hereby is ratified and confirmed. In the event of any conflict with the original Lease, the terms and provisions of this First Amendment control.



STATE OF KANSAS )  
 ) SS.  
COUNTY OF SEDGEWICK )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Carl Brewer, the Mayor of the CITY OF WICHITA, KANSAS, a municipal corporation existing under the laws of the State of Kansas, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Mayor, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such officer of said corporation, as his own free and voluntary act and as the free and voluntary act of the CITY OF WICHITA, KANSAS, a municipal corporation existing under the laws of the State of Kansas, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of November, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF KANSAS )  
 ) SS.  
COUNTY OF SEDGEWICK )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Karen Sublett, the City Clerk of the CITY OF WICHITA, KANSAS, a municipal corporation existing under the laws of the State of Kansas, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such City Clerk, appeared before me this day in person and acknowledged that she signed and delivered said instrument as such officer of said corporation, as her own free and voluntary act and as the free and voluntary act of the CITY OF WICHITA, KANSAS, a municipal corporation existing under the laws of the State of Kansas, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of November, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires:

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary E. Rebenstorf, City Attorney

OLD TOWN LODGING, LLC

By: RB Wichita CY Holdings LLC, a Delaware limited liability company, its Sole Member

By: RB Wichita CY Investment Holdings LLC, a Delaware limited liability company, its Sole Member

By: RockBridge Real Estate Fund III LLC, a Delaware limited liability company, its Sole Member

By: RockBridge Capital, LLC, an Ohio limited liability company, its Manager

By: [Signature]  
Name: KENNETH J. KREBS, ESQ.  
Title: EXECUTIVE VP/GENERAL COUNSEL

STATE OF OHIO )  
COUNTY OF Franklin ) SS.

I, Christopher J. Dusseau a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kenneth J. Krebs, the Executive VP/General Counsel of RockBridge Capital, LLC, an Ohio limited liability company, which is the Manager of RockBridge Real Estate Fund III LLC, a Delaware limited liability company, which is the sole member of RB Wichita CY Investment Holdings LLC, a Delaware limited liability company, which is the sole member RB Wichita CY Holdings LLC, a Delaware limited liability company, which is the sole member of OLD TOWN LODGING, LLC, a Kansas limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Kenneth J. Krebs, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such officer of said limited liability company, as his/her own free and voluntary act and as the free and voluntary act of RockBridge Capital, LLC, an Ohio limited liability company, and as the free and voluntary act of OLD TOWN LODGING, LLC, a Kansas limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18<sup>th</sup> day of November, 2011.

[Signature]  
Notary Public

My Commission Expires: N/A



CHRISTOPHER J. DUSSEAU  
ATTORNEY AT LAW  
Notary Public, State of Ohio  
My Commission Has No Expiration Date  
Section 147.03 ORC

ACKNOWLEDGEMENT, CONSENT AND CONFIRMATION OF TRUSTEE

I, the undersigned, Bonnie Mosher, a duly authorized, qualified and acting Vice President of UMB Bank, N.A., Kansas City, Missouri, as Trustee pursuant to the Trust Indenture dated December 1, 2006 entered into in connection with the issuance, by the City of Wichita, Kansas (the "City"), of Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC Project) and Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC Project) and as holder, by way of assignment from the City, of the lessor's interest in the Lease dated December 1, 2006 (the "Lease") by and between City of Wichita, Kansas (as original lessor) and Old Town Lodging, LLC (as lessee), hereby acknowledge and consent to the execution, delivery and recordation, of the First Amendment to Lease (the "First Amendment") attached hereto and, hereby confirm and agree that it is the intent of the undersigned as holder of the lessor's interest in the Lease, that the Lease shall be amended as provided in the First Amendment after such execution, delivery and recordation.

UMB Bank, N.A., Kansas City, Missouri, Trustee:

By: Bonnie Mosher

Print Name: Bonnie Mosher  
Title: Vice President

STATE OF KANSAS )  
 ) SS.  
COUNTY OF SEDGWICK )

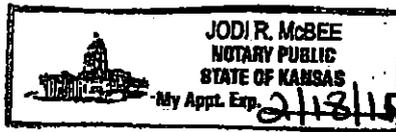
I, Jodi R. McBee, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bonnie Mosher, Vice President of UMB BANK, N.A., Kansas City, Missouri, a national banking association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Bonnie Mosher, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as such officer of said national association, as his/her own free and voluntary act and as the free and voluntary act of UMB BANK, N.A., a national banking association for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of November, 2011.

Jodi R. McBee  
Notary Public

My Commission Expires:

CLEVELAND/1240549.5  
11/02/11



CLEVELAND/1240549.5  
11/02/11

## Schedule II

### **Non-Subordinated Items**

1. Any restriction or encumbrance impacting or affecting the current or future use of property in connection with the operation of a gambling facility which consists of multi-game casino-style gambling on the property.
2. Any Imposition levied by the Issuer pursuant to K.S.A. 12-6a01 or similar law which levy creates a special assessment against the Land for public improvements by which the Land is especially benefitted.
3. Façade Easement recorded December 28, 2005 as Document No. FLM-PG 28744500 of the Official Records of Sedgwick County, Kansas.
4. An easement for Right-of-Way, recorded August 2, 2006 as Document No. FLM-PG 28804111, of the Official Records of Sedgwick County, Kansas.  
In Favor of: ONEOK, Inc. DBA Kansas Gas Service Company  
Affects: a portion of subject property

**Second Reading Ordinances for June 9, 2015 (first read on June 2, 2015)**

**A. Public Hearing and Approval of a Façade Improvement Project and Issuance of Industrial Revenue Bonds 518 and 520 South Commerce.**

ORDINANCE NO. 50-020

AN ORDINANCE LEVYING AND ASSESSING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF PROPERTY LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS (FAÇADE IMPROVEMENTS – 518 SOUTH COMMERCE IMPROVEMENT DISTRICT).

**B. Reduction of Sidewlak Repair Special Property Tax Assessment for 1945 South Parkwood. (District III)**

ORDINANCE NO. 50-021

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE IMPROVEMENT OF AND PROVIDING A TAX LEVY FOR THE COST OF CONSTRUCTION OF SIDEWALKS IN THE CITY OF WICHITA, KANSAS, CONTAINED AN ERROR IN SECTION 2. SECTION 2 SHOULD HAVE READ AS FOLLOWS.

**C. SUB2014-00038 Plat of Sweetbriar Second Addition Located on the Northwest Corner of 21<sup>st</sup> Street North and Amidon. (District VI)**

ORDINANCE NO. 50-022

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.

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Mayor and City Council

**SUBJECT:** PUD2015-00003 – Zone Change From TF-3 Two-Family Residential, B Multi-Family Residential, GO General Office and GC General Commercial to the Planned Unit Development (PUD#45) District on Property Located East of South Clifton Avenue and South of East Morris (Lincoln) Street (3700 East Lincoln) (District III)

**INITIATED BY:** Metropolitan Area Planning Department

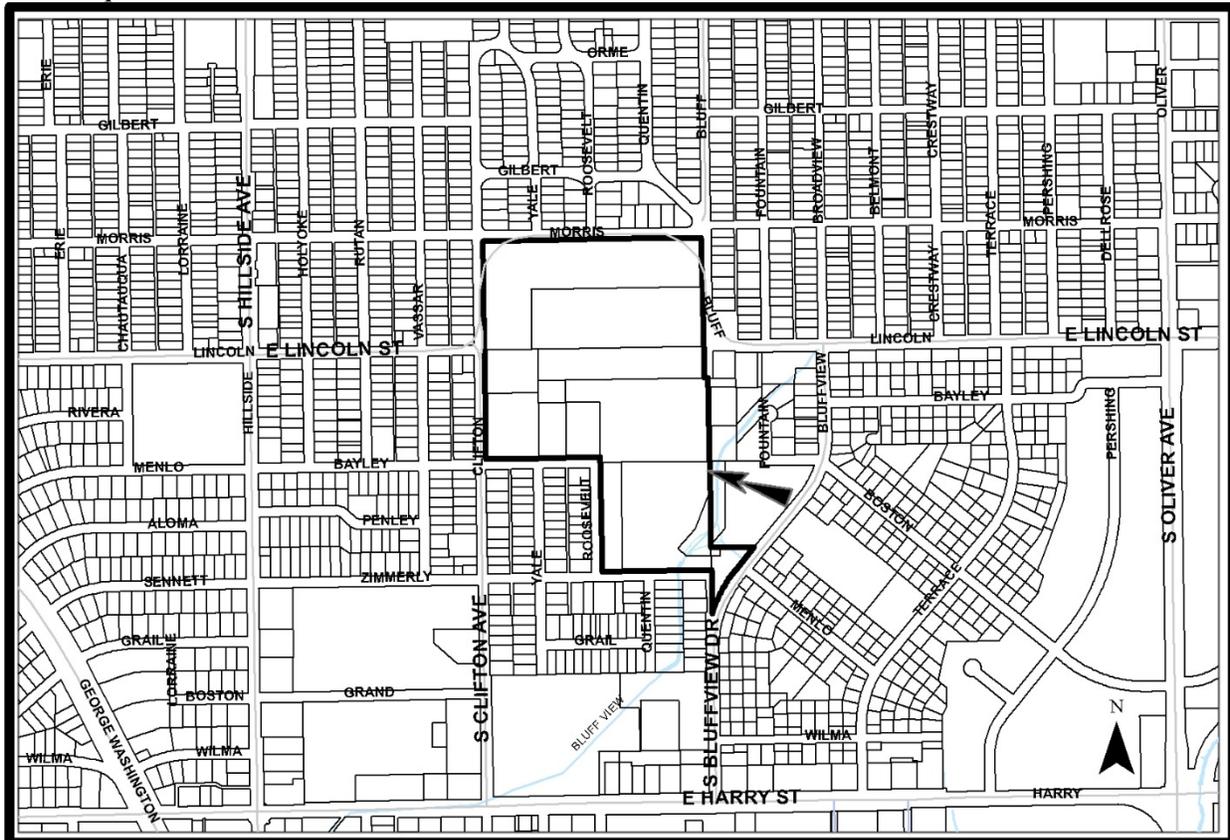
**AGENDA:** Planning (Consent)

---

**MAPC Recommendation:** The MAPC recommended approval of the request (11-0-1).

**DAB Recommendation:** District Advisory Board III recommended approval of the request (6-0).

**MAPD Staff Recommendation:** Metropolitan Area Planning Department staff recommended approval of the request.



**Background:** The application area is generally located south of East Morris Street, east of South Clifton Avenue and South Roosevelt Avenue, north of East Bayley Street and East Zimmerly Street and west of Bluffview Drive and Bluff Avenue (one-half mile north of East Harry Street and one-quarter mile east of South Hillside Avenue). The application area is currently zoned B Multi-Family Residential (B), Two-Family Residential (TF-3), General Office (GO) and General Commercial (GC), and is developed with facilities associated with the Sisters of St. Joseph religious order, such as: chapel, group living quarters, cemetery, helipad, and offices. It is believed the first structures located on the site were built circa 1915 and the site has been used by the Sisters of St. Joseph from the beginning. The site contains 49.3 acres, some of which is platted.

The applicant is requesting a zone change to the Planned Unit Development (PUD) #45, which would permit the following uses on Parcel 1: single-family, two-family, multi-family, general group residence, assisted living, nursing facility, church/place of worship, community assembly, general day care, hospital, medical service, general office, heliport, second hand store as an accessory use to a church/place of worship, vocational school, private cemetery, mausoleum or columbarium, retail sales limited to the sale of products principally produced on-site, sales of religious merchandise accessory the church/place of worship, and other uses customarily associated with a religious institution. The proposed PUD has only one parcel.

The applicant is proposing the following development standards: 1) a total gross floor area of 751,628 square feet (35 percent); 2) Parking per code except parking for multi-family use shall be one space per unit, group residence one space per bedroom and non-residential uses at one space per 500 square feet of building area; 3) Setbacks vary from 35 feet to 20 feet; 4) A drainage plan shall be submitted for review and approval and guarantees shall be provided at the time of platting; 5) Sign standards are to be per the GO district of the Sign Code except that individual signs may be up to 100 square feet. No LED, billboard or off-site signs shall be permitted; 6) Uses are as described in the preceding paragraph; 7) Access shall be as platted or as indicated on the PUD; and 8) Landscaping shall be per Unified Zoning Code for institutional uses (Article IV, Section IV-B.3.d(2)). Existing landscaping shall be considered to count towards the interior side and rear yard screening requirements. Screening around the perimeter shall not be required.

Surrounding properties are principally zoned Two-Family Residential (TF-3). Land to the east is also zoned B Multi-Family Residential (B). Most of the surrounding properties are developed with single-family home; however, some may be two-family. Land to the east of Bluffview Drive is a park.

**Analysis:** District Advisory Board III reviewed the application on May 6, 2015, and voted 6-0 to approve the request subject to the recommended conditions of approval. Two citizens were present to speak. Both citizens were primarily interested in assurances that they were not going to be drawn into paying for improvements necessitated by the zone change.

The Metropolitan Area Planning Commission (MAPC) reviewed the request on May 7, 2015. Two citizens were present at the MAPC meeting to speak to the application. Only one of the two people spoke of their concerns regarding the application. The citizen stated he was concerned about a high volume of vehicular and pedestrian cut-through traffic traveling through his neighborhood. The speaker indicated that folks going to and from the Hilltop Neighborhood use East Zimmerly Street, east of South Roosevelt Street, to access a driveway that goes into the nursing home facility's parking (located in the southeastern corner of the application area); then cut through the nursing home's parking lot to the facility's long driveway that leads to South Bluffview Drive. In his opinion the amount of traffic traveling that route is excessive and he indicated the driveway from the nursing home facility to East Zimmerly Street should be emergency access only or closed. South Roosevelt Street is unpaved and it generates dust. He also expressed concerns regarding lack of enforcement of housing and other code regulations in the larger area.

In response to the citizen's comments, the MAPC made a motion to approve the request (11-0-1) but modified staff's recommendation to require platting for only that part of the site that is not currently platted. The MAPC motion requires platting/replatting of the entire site whenever a plat is filed for any

part of the unplatted portions of the application. Approximately the northern 814 feet of the site is currently unplatted. The remainder of the site is covered by four different plats.

The MAPC approved the request subject to the development standards indicated on the approved PUD and the following conditions:

1. "Prior to the issuance of building permits within the unplatted portions of the subject property, the entire area of the PUD shall be replatted. Areas of the subject property currently platted may be issued building permits without replatting."
2. Uses are those permitted by the approved PUD, and are subject to the development standards contained in the approved PUD.
3. All applicable permits, licenses, inspections or change in use shall be obtained prior to occupancy.

Development standard number 1 listed above is intended to clarify that building permits may be issued for the portions of the site that are platted without the requirement to replat; however, building permits may not be issued for portions of the site that are unplatted until the entire site has been replatted. If a plat is filed, the plat must cover the entire site. (A plat for the entire property has been submitted, SUB2015-00029, and is scheduled for Subdivision Committee review on May 28, 2015.)

There have not been any protests filed; therefore, the application may be approved by the City Council with a simple majority vote.

**Financial Considerations:** Approval of this request will not create any financial obligations for the City.

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

**Recommendation/Actions:** It is recommended that the City Council adopt the findings of the MAPC and approve the requested Planned Unit Development, PUD#45, subject to the recommended conditions of approval (simple majority vote required), and place the ordinance on first reading.

**Attachments:** PUD plan, MAPC minutes, DAB memo and ordinance.

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. PUD2015-00003

Zone change request from TF-3 Two-Family Residential (TF-3), B Multi-Family (B), GO General Office (GO) and GC General Commercial (GC) to Planned Unit Development (PUD) #45 on property located on the The Southeast Quarter of the Northwest Quarter of Section 26, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, except that portion platted as Longview Terrace, an Addition to Wichita, Kansas, Sedgwick County, Kansas, and except that portion platted as Brown - Jennings Replat of part of Longview Terrace Addition to Wichita, Kansas, Sedgwick County, Kansas, and except that part dedicated for street purposes in Book Misc. 342, Page 576, together with that portion of vacated Bluff Street and Lincoln Street adjoining subject property evidenced by the Vacation Order filed on Doc#/FLM-PG: 28952460; TOGETHER WITH a tract described as Commencing 285 feet East of the Northwest corner of the Northeast Quarter of the Southwest Quarter of Section 26, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence South 662 feet; thence East 1040 feet; thence North 662 feet; thence West 1040 feet to the place of beginning; except that part platted as Sisters of St. Joseph Second Addition to Wichita, Sedgwick County, Kansas; and except that part platted as Sisters of St. Joseph Fourth Addition to Wichita, Sedgwick County, Kansas; and except that part platted as Sisters of St. Joseph 6th Addition, Wichita, Sedgwick County, Kansas, together with that portion of vacated Bluff Street and Lincoln Street adjoining subject property evidenced by the Vacation Order filed on Doc#/FLM-PG: 28952460; TOGETHER WITH Lot 1, Block 1, Sisters of St. Joseph Second Addition to Wichita, Sedgwick County, Kansas; TOGETHER WITH Lot 1, Block A, Sisters of St. Joseph Fourth Addition to Wichita, Sedgwick County, Kansas; TOGETHER WITH Lot 1, Block A and Reserve A, Sisters of St. Joseph 5th Addition, Wichita, Sedgwick County, Kansas; TOGETHER WITH Lots 1 and 2, Block A, Sisters of St. Joseph 6th Addition, Wichita, Sedgwick County, Kansas; TOGETHER WITH The Southeast Quarter of the Northeast Quarter of the Southwest Quarter of Section 26, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, except the West 30 feet thereof and except the South 30 feet thereof dedicated for street; and except that part platted as Sisters of St. Joseph 5th Addition, Wichita, Sedgwick County, Kansas; TOGETHER WITH a tract of land in the Southeast Quarter of Section 26, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas more particularly described as follows: That part of vacated odd Lots 1 through 47, inclusive, on vacated Fees Avenue, together with those parts of said vacated Fees Avenue, vacated Henry Street, and vacated Lincoln Street, all in vacated Duffs Subdivision of Lot 4 in Duffs Subdivision of the SE ¼ of Sec. 26, Twp. 27-S, R1E lying west of and abutting a line 160.00 feet normally distant east of and parallel with the west line of the SE ¼ of said Sec. 26, together with that portion of vacated Bluff Street and Lincoln Street adjoining subject property evidenced by the Vacation Order filed on Doc#/FLM-PG: 28952460.

SECTION 2. That upon the taking effect of this ordinance, the above zoning change 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 16th day of June, 2015.

\_\_\_\_\_  
Jeff Longwell - Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

Approved as to form: \_\_\_\_\_  
Jennifer Magana, City Attorney and Director of Law



**INTEROFFICE  
MEMORANDUM**

---

**TO:** MAPC  
**FROM:** Case Bell, Community Liaison  
**SUBJECT:** PUD2015-03  
**DATE:** May 6, 2015

**Dale Miller, Planning**, presented on a request by the Creation of the Sisters of St. Joseph for a Planned Unit Development to permit a multi-use facility that supports the mission and activities of church, place of worship or religious order located South of East Morris Street, east of South Clifton Avenue and South Roosevelt Avenue, north of East Bayley Street and East Zimmerly Street and west of Bluffview Drive (one-half mile north of East Harry Street and one-quarter mile east of South Hillside Avenue). ). The applicant is requesting a zone change to the Planned Unit Development (PUD) #45 which would permit the following uses on Parcel 1: Single-family, two-family, multi-family, general group residence, assisted living, nursing facility, church/place of worship, community assembly, general day care, hospital, medical service, general office, heliport, second hand store as an accessory use to a church/place of worship, vocational school, private cemetery, mausoleum or columbarium, retail sales limited to the sale of products principally produced on-site, sales of religious merchandise accessory the church/place of worship, and other uses customarily associated with a religious institution. The proposed PUD has only one parcel.

**DAB? What's going to be built? A:** There will be nothing new built except the old dormitories torn down and rebuilt with another purpose but with almost exactly the same footprint.

**Officer Whyte:** The Sisters of Saint Joseph are feeding 1500 people a night through the mobile Lord's Diner

**DAB? Would you ever need to come back for any variances? A:** A PUD is like a custom zoning district with little flexibility going forward so they have tried to cover all of their bases in what's allowed by the PUD.

**DAB? What happens if the property changes hands in the future? A:** The PUD is only for qualifying organizations, in this case religious, if not it wouldn't be applicable to the new owners.

**Public? Will there be any new sewer or water put in on the property? A:** Sewer and water are fairly modern and if there are any changes the residents around there would not be charged as a benefit district.

**The DAB III members voted 6-0 to recommend approval of the request subject to the three listed conditions.**

**EXCERPT MINUTES OF THE MAY 7, 2015 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION HEARING**

MCKAY recused himself from the item.

**Case No.: PUD2015-00003** - Sisters of St. Joseph (Sr. Pam young)/Baughman Company, P.A. (Russ Ewy) and Congregation of St. Joseph (Edward Sutoris) request a City zone change request to consolidate the zoning on the subject property and to permit the expansion of the principle use on property described as:

The Southeast Quarter of the Northwest Quarter of Section 26, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, except that portion platted as Longview Terrace, an Addition to Wichita, Kansas, Sedgwick County, Kansas, and except that portion platted as Brown - Jennings Replat of part of Longview Terrace Addition to Wichita, Kansas, Sedgwick County, Kansas, and except that part dedicated for street purposes in Book Misc. 342, Page 576, together with that portion of vacated Bluff Street and Lincoln Street adjoining subject property evidenced by the Vacation Order filed on Doc#/FLM-PG: 28952460; TOGETHER WITH a tract described as Commencing 285 feet East of the Northwest corner of the Northeast Quarter of the Southwest Quarter of Section 26, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence South 662 feet; thence East 1040 feet; thence North 662 feet; thence West 1040 feet to the place of beginning; except that part platted as Sisters of St. Joseph Second Addition to Wichita, Sedgwick County, Kansas; and except that part platted as Sisters of St. Joseph Fourth Addition to Wichita, Sedgwick County, Kansas; and except that part platted as Sisters of St. Joseph 6th Addition, Wichita, Sedgwick County, Kansas, together with that portion of vacated Bluff Street and Lincoln Street adjoining subject property evidenced by the Vacation Order filed on Doc#/FLM-PG: 28952460; TOGETHER WITH Lot 1, Block 1, Sisters of St. Joseph Second Addition to Wichita, Sedgwick County, Kansas; TOGETHER WITH Lot 1, Block A, Sisters of St. Joseph Fourth Addition to Wichita, Sedgwick County, Kansas;

TOGETHER WITH Lot 1, Block A and Reserve A, Sisters of St. Joseph 5th Addition, Wichita, Sedgwick County, Kansas; TOGETHER WITH Lots 1 and 2, Block A, Sisters of St. Joseph 6th Addition, Wichita, Sedgwick County, Kansas;

TOGETHER WITH The Southeast Quarter of the Northeast Quarter of the Southwest Quarter of Section 26, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, except the West 30 feet thereof and except the South 30 feet thereof dedicated for street; and except that part platted as Sisters of St. Joseph 5th Addition, Wichita, Sedgwick County, Kansas;

TOGETHER WITH a tract of land in the Southeast Quarter of Section 26, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas more particularly described as follows: That part of vacated odd Lots 1 through 47, inclusive, on vacated Fees Avenue, together with those parts of said vacated Fees Avenue, vacated Henry

Street, and vacated Lincoln Street, all in vacated Duffs Subdivision of Lot 4 in Duffs Subdivision of the SE ¼ of Sec. 26, Twp. 27-S, R1E lying west of and abutting a line 160.00 feet normally distant east of and parallel with the west line of the SE ¼ of said Sec. 26, together with that portion of vacated Bluff Street and Lincoln Street adjoining subject property evidenced by the Vacation Order filed on Doc#/FLM-PG: 28952460.

**BACKGROUND:** The application area is generally located south of East Morris Street, east of South Clifton Avenue and South Roosevelt Avenue, north of East Bayley Street and East Zimmerly Street and west of Bluffview Drive and Bluff Avenue (one-half mile north of East Harry Street and one-quarter mile east of South Hillside Avenue). The application area is currently zoned B Multi-Family Residential (B), Two-Family Residential (TF-3), General Office (GO) and General Commercial (GC), and is developed with facilities associated with the Sisters of St. Joseph religious order, such as: chapel, group living quarters, cemetery helipad, and offices. It is believed the first structures located on the site were built circa 1915 and the site has been used by the Sisters of St. Joseph from the beginning. The site contains 49.3 acres, some of which is platted.

The applicant is requesting a zone change to the Planned Unit Development (PUD) #45 which would permit the following uses on Parcel 1: Single-family, two-family, multi-family, general group residence, assisted living, nursing facility, church/place of worship, community assembly, general day care, hospital, medical service, general office, heliport, second hand store as an accessory use to a church/place of worship, vocational school, private cemetery, mausoleum or columbarium, retail sales limited to the sale of products principally produced on-site, sales of religious merchandise accessory the church/place of worship, and other uses customarily associated with a religious institution. The proposed PUD has only one parcel.

The applicant is proposing the following development standards: 1) a total gross floor area of 751,628 square feet (35 percent). 2) Parking per code except parking for multi-family use shall be one space per unit, group residence one space per bedroom and non-residential uses at one space per 500 square feet of building area. 3) Setbacks vary from 35 feet to 20 feet. 4) A drainage plan shall be submitted for review and approval and guarantees shall be provided at the time of platting. 5) Sign standards are to be per the GO district of the Sign Code except that individual signs may be up to 100 square feet. No LED, billboard or off-site signs shall be permitted. 6) Uses are as described in the preceding paragraph. 7) Access shall be as platted or as indicated on the PUD. 8) Landscaping shall be per Unified Zoning Code for institutional uses (Article IV, Section IV-B.3.d(2)). Existing landscaping shall be considered to count towards the interior side and rear yard screening requirements. Screening around the perimeter shall not be required.

Surrounding properties are principally zoned Two-Family Residential (TF-3). Land to the east is also zoned B Multi-Family Residential (B). Most of the surrounding properties are developed with single-family homes, however, some may be two-family. Land to the east of Bluffview Drive is also a park.

**CASE HISTORY:** Case number ZON2002-00008 granted B zoning. SUB2002-00054 was the Sisters of St. Joseph 5<sup>th</sup> Addition. ZON2004-00008 granted GO zoning and was perfected by SUB2004-00030, the Sisters of St. Joseph 6<sup>th</sup> Addition.

**ADJACENT ZONING AND LAND USE:**

North: TF-3; single-family residential  
South: TF-3; single-family residential  
East: TF-3 and B; single-family residential, park  
West: TF-3; single-family residential

**PUBLIC SERVICES:** The site is served by all the usual municipal services or they are available for extension. Comments concerning the following streets apply only to those portions of the streets that abut the application area. Roosevelt Avenue is a two-lane sand and gravel street with 60 feet of full right-of-way. East Bayley Street is a two-lane paved street with 60 feet of full right-of-way. East Zimmerly Street is a two-lane paved street with 60 feet of full right-of-way. East Zimmerly Street has not been installed for the segment located between South Bluff Avenue and Quentin Avenue. Bluffview Drive has 70 feet of full right-of-way and is permitted one driveway. South Clifton Avenue located south of Lincoln is a paved two-lane street with 60 feet of full right-of-way; north of Lincoln Street Clifton Avenue is a paved four-lane facility. The formal entrance to the existing site located where Lincoln Street and Clifton Avenue intersect. Other access points are located on Bluffview Drive, Zimmerly Street, Bayley Street and Lincoln Street/Bluff Avenue. Morris Street is a four-lane paved street with 60 feet of right-of-way. Bluff Avenue is also a four-lane paved street with 60 feet of right-of-way. Two citizens mentioned that the public streets bordering the application area probably needed resurfacing and that there should be a review of the area's drainage facilities.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide depicts this site as appropriate for "major institutional." This category includes facilities of a significant size and scale or operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospitals and medical treatment facilities.

**RECOMMENDATION:** Based upon the information available at the time the staff report was prepared it is recommended that the request be approved, subject to the following conditions:

1. Subject to platting the unplatted portions of the application area prior to the issuance of building permits.
2. Uses are those permitted by the approved PUD, and are subject to the development standards contained in the approved PUD.
3. All applicable permits, licenses, inspections or change in use shall be obtained prior to occupancy.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding properties are principally zoned Two-Family Residential (TF-3). Land to the east is also zoned B Multi-Family Residential (B). Most of the surrounding properties are developed with single-family homes,

however, some may be two-family. Land to the east of Bluffview Drive is also a park. The character of the larger area is a long established residential area containing a long established religious order's facilities.

2. The suitability of the subject property for the uses to which it has been restricted: The application area is currently zoned B Multi-Family Residential (B), Two-Family Residential (TF-3), General Office (GO) and General Commercial (GC), and currently is developed with facilities associated with the Sisters of St. Joseph religious order, such as: chapel, group living quarters, cemetery helipad, and offices. The site could continue to be used as currently zoned; however, the proposed PUD consolidates the site's four zoning districts into one zoning district, the PUD. The proposed PUD allows primarily for the expansion or improvement of existing uses and services provided by, or for, the Sisters. The proposed PUD is a more suitable zoning than the site's current four districts.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed PUD should not detrimentally impact nearby property owners. The proposed restrictions and development standards are designed to provide compatible land uses on the application area and within the larger neighborhood. Essentially the proposed PUD does not significantly change or add new uses to the site but facilitates the delivery of improved or enhanced services to and by the Sisters.
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 the applicant to enhance and expand the services provided to and by the Sisters.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide depicts this site as appropriate for "major institutional." This category includes facilities of a significant size and scale or operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospitals and medical treatment facilities.
6. Impact of the proposed development on community facilities: None identified.

**DALE MILLER**, Planning Staff presented the Staff Report. He indicated that most of the phone calls he received, due in part to the huge ownership list, were people who were concerned that somehow their own property was being rezoned or that their property was being pulled into some sort of improvement project where they would be assessed for roads, sanitary sewer and that type of thing. He added that some people thought this was an offer to buy their property. He said once he got those issues clarified, almost everyone he talked to wasn't concerned about the proposal.

**RICHARDSON** asked about access control in the southeast corner.

**MILLER** indicated that most of the property is platted; however, some of that was vacated. He said the primary entrance is off of Lincoln. He said there are other access locations including off of Bluffview in the southeast corner.

**RICHARDSON** clarified that in terms of access control the applicant is not proposing anything different other than what is there now.

**MILLER** said as far as access control, the proposed PUD is not changing what they currently have today or what the applicant is allowed to do. He said if the Planning Commission felt access control was needed to make the use work that could be added as a condition of approval.

**DAILEY** asked what happens if the property is sold.

**MILLER** said the use would still be restricted to only what is approved in the PUD.

**RUSS EWY, BAUGHMAN COMPANY, 315 ELLIS, AGENT FOR THE APPLICANT** said as far as access control is concerned, there is a hodgepodge of zoning and plats ranging from back in the 1950's. He said the campus has been established for over 100 years so the Planning Commission can imagine some of the antiquated easements, utilities service sites and infrastructure that serve the site. He briefly reviewed the site plan noting other access points, stand alone buildings utilized by Via Christie and other plots which he was not sure were platted with access controls. He said they envision no additional access points; however, he added that once the site gets replatted, that is when the access control points will be established. He said the PUD drawing will then be changed to reflect the new platted subdivision. He said communal living and multi-family residential would all be permitted. He said what they reported at last night's DAB meeting was that they were "gutting an old house" and bringing it up to standards.

**RICHARDSON** said the Staff Report refers to the unplatted portion, however, did he hear the agent saying that they plan on replatting the entire property.

**EWY** said he doesn't want to speak for staff but he believes technically staff was requiring the applicant to plat those portions of the property that were not platted. He said the applicant is going to voluntarily replat the entire 50 acre campus because they feel like drainage and utility infrastructure are all interrelated.

**RICHARDSON** asked would it be acceptable to the applicant if the approval was subject to replatting the entire property.

**EWY** said if the Planning Commission feels it is necessary to modify that condition the applicant is acceptable to that. He briefly pointed out the platted and unplatted portions (mostly the northern portion of the property) of the campus on the aerial map.

**FOSTER** mentioned a typographical error on provision #2 of the PUD regarding the number of parking spaces.

**GARY BENOIT, 1102 SOUTH YALE** said their big concern is the access point off of East Zimmerly at the end of the block. He said Zimmerly runs east and west and they have horrible issues with traffic going between their neighborhood and the old hilltop manor area. He said they have major issues with gangs and drugs coming through there. He said the gate is capable of closing and it was the neighbors

understanding that it was supposed to be closed except for medical emergencies. He said there is also a bridge at the creek and there is a lot of foot traffic through there which is bad enough. He said if the gate was closed that would slow down a lot of traffic. He said they have contacted the City numerous times to try to get speed bumps and stops signs put in to stop the non-stop traffic that “flies” through their neighborhood. He said this is a problem because they have children in the neighborhood.

**EWY** said during the platting phase they would be more than happy to look at that for the neighborhood. He said they received a number of calls regarding paving petitions in the neighborhood because there are some unimproved streets. He said they feel like that is an existing use not impacted by this particular zone change applicant, once they move on to the platting phase they will be able to take a look at that and see what they are able to do. He said they will need to work with the tenant in that part of the development and see what they can do about managing access out onto Zimmerly. He explained that the Sisters own the property but do lease some areas out.

**DENNIS** asked when the property would be platted.

**EWY** said several different time lines were discussed including filing the plat within the next one or two filing deadlines.

**DENNIS** asked that the neighbor who spoke today be notified of the platting hearing.

**EWY** said they have no problem notifying them.

**NEUGENT** clarified that one of the areas already platted is the one the neighbors are asking be looked at in terms of access control. She wanted to verify that under the current staff recommendation, if the applicant/agent changed their minds they would not be required to plat that portion.

**EWY** said that was correct.

**RICHARDSON** said he drove through the area yesterday and noted that the curved road from Bluffview has speed bumps. He said that road is being used as a shortcut to get east of the property.

**GOOLSBY** noted that a number of Commissioners were concerned about the controlled access issue along Zimmerly. He asked the agent if they were willing to do something more than just contacting the neighbors when the plat comes to Subdivision.

**EWY** replied that it was his opinion that it was premature to look at that right now. He said the areas where the concerns were noted have been recently platted. He said they are now dealing with the outcome of those designs. He said they will have to become more knowledgeable about the purpose of the gate along Zimmerly, and how it relates to Traffic Engineering comments when that portion was platted. He said he was not shirking the issue, but it was difficult to provide an answer at this stage of the game.

**GOOLSBY** asked the Commission if they wanted to make a recommendation that when the area is platted that existing areas also be replatted.

**J. JOHNSON** said he was going to make a **MOTION** that the whole site be platted.

**DIRECTOR SCHLEGEL** said he didn't see any reason that the Commission couldn't stipulate that under the zoning request. He said he did not believe there was anything in the UZC or Subdivision Regulations that would prevent that.

**NEUGENT** seconded the **MOTION**.

**JEFF VANZANDT, ASSISTANT CITY ATTORNEY** said he did not know of anything in the UZC or Subdivision Regulations that prohibits requiring the entire property to be replatted.

**EWY** said they are more than happy to replat; however, he said they have several development time lines including rehabilitation of the older portions of the mount to include new building construction over the next 18 months which is part of the medium to long range part of the PUD. He said an immediate need after the zoning is approved is allowing certain social organizations to come in and utilize portions of existing buildings for their public and social service outreach programs. He said they would like for the platted portions of the property to move forward as quickly as possible once the PUD is approved and becomes official which is once the zoning ordinance is published and that won't occur until the plat is recorded. He said they are in a pinch, not because they don't want to replat the entire property, but because they would like to have some people be able to utilize the areas that are already platted.

**GOOLSBY** commented that the agent/applicant is volunteering to plat the entire site but there is no guarantee.

**WARREN** asked what does requiring platting do to the PUD process and what is the time frame.

**MILLER** explained if the Planning Commission approved this PUD subject to replatting, the zoning will not be published until the plat is recorded.

**J. JOHNSON** clarified that it sounds like some of the uses the applicant wants require that the PUD be in place and if so, which portions.

**EWY** said that was correct and mentioned the bulk of the mount sits on TF-3 zoning that is grandfathered in and wouldn't be allowed to be used by a third party. He said there may be some offices associated with that use that are not permitted outright unless they are ancillary to the Sisters of St. Joseph themselves. He said those uses will all have to be in accordance with the modern UZC.

**GOOLSBY** suggested starting the platting process within six months.

**DIRECTOR SCHLEGEL** asked Commissioner Johnson what was his motivation in requiring that the entire property be replatted; was it to make sure the applicant addresses the access issues along Zimmerly?

**J. JOHNSON** responded yes.

There was considerable discussion concerning platting and replatting of the property; requirements for immediate development of portions of the property; having Traffic Engineering address the conditions along Zimmerly and the possibility of replatting the property in portions.

**RICHARDSON** said his concern was not what the Sisters were going to do with the property but what might happen if it is abandoned and there are no access controls on the whole parcel.

**DIRECTOR SCHLEGEL** clarified that the applicant/agent intended to replat the entire property in pieces and parts.

**EWY** said no they intend to plat the entire property all at once. He added that their time frame meets or exceeds 6 months because they intend to be building within one year.

**PHIL MEYER, BAUGHMAN COMPANY, 315 ELLIS** indicated they have been working on this for quite some time. He said originally they were going to have the plat already done because they want to start the remodeling development within 60 days and the property needs to be platted in order to pull building permits. He said if the Commission requires platting of the entire property as part of the zone change then they can't get the building permits until the platting is done. He said when they received the Staff Report that said they had to plat before pulling building permits, they slowed down the platting process. He said they will file a plat within the next 30-90 days.

**GOOLSBY** asked if they would be okay with the stipulation that they must replat the entire property within six months.

**MEYER** said yes, but that would keep them from pulling permits and that is their concern. He commented that the drive onto Zimmerly was a Fire Department requirement and they are not sure if they can get the gate closed because they do not know the history on it. He said Mennonite Housing operates the senior living facility. He said maybe they can work with the City and pull some conditional permits because they don't want to delay the services that are going to happen at the site. He said he also wanted to go on record to state that it is truly the sisters desire that this property serve the community for another 100 years. He said their intent is that this property always house charitable organizations that serve the community. He said they are not looking to sell the property to a developer.

**DENNIS** suggested approving the request subject to the staff recommendation with the provision that in the event any portion of the property is platted, that the entire property be platted.

**J. JOHNSON** withdrew his first motion, with the permission of the second **NEUGENT**.

**MOTION:** To approve subject to Staff recommendation with the provision that in the event any portion of the property is platted, that the entire property be platted.

**J. JOHNSON** moved, **NEUGENT** seconded the motion, and it carried (11-0-1).  
**MCKAY** – Abstained.

City of Wichita  
City Council Meeting  
June 9, 2015

**TO:** Wichita Airport Authority

**SUBJECT:** Multi Business Services, Corp.  
Specialty Customer Services Concessions Agreement  
Wichita Dwight D. Eisenhower National Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

---

**Recommendation:** Approve the agreement.

**Background:** Earlier this year, Requests for Proposals (RFP) for Specialty Customer Services Concessions were sought from experienced airport concessionaires qualified to provide the following services to the travelling public under one agreement: vending machines for canned/bottled drinks and pre-packaged snacks in both the terminal and the Rental Car Center, massage chairs, shoeshine, TSA prohibited item mail-back service, foreign currency exchange, Travelers' insurance, notary public, FedEx/UPS/DHL drop-off, copy/fax/scan/print service, Western Union wire transfers, and Traveler's check issuance. Purchasing sent the RFP to parties which had expressed interest in these services, as well as advertised in the local area and on the City's website. One proposal was received from Multi Business Services, Corp. (MBS), the current state-certified Airport Concession Disadvantaged Business Enterprise (ACDBE) operator in the existing terminal. MBS has been operating concessions and providing various services on the Airport since 1990.

**Analysis:** MBS is desirous of entering into an agreement to provide the above-mentioned services in the new terminal. Additional services may be considered on a case-by-case basis should customer demand indicate a need, and the services are not in conflict with other terminal concessionaires. The term of this agreement is a period of five years, effective on opening day of the new terminal.

**Financial Considerations:** MBS will pay the Wichita Airport Authority (WAA) 10 percent of gross revenues collected from sales and services. The revenue to the WAA will be based on the amount of activity generated by the above-mentioned sales and services. Since this is a new type of an agreement at the Airport, there is no historical basis for estimating the revenue.

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

**Recommendations/Actions:** It is recommended that the WAA approve the agreement and authorize the necessary signatures.

**Attachments:** Agreement.

Property shall vest in the AUTHORITY which may retain such Personal Property for its own use. In the alternative, the AUTHORITY may cause the removal of all or any portion of such Personal Property at the sole risk and expense of the CONCESSIONAIRE.

## **19. PERSONAL PROPERTY**

For purposes of this Agreement, Personal Property shall mean any property, trade fixtures, furnishings and equipment which are placed upon or within the Premises in such a manner that are not permanently affixed and can be readily removed without damage to the Premises and without substantially changing the character of the facilities and Improvements thereon, and that are the removable property that CONCESSIONAIRE places upon or within the Premises for use in the operation of a Specialty Customer Services Concessions. All point-of-sale equipment, moveable furnishings, signs, tables, chairs, appliances, safes, display racks, and any other non-affixed property, shall be deemed to be the Personal Property of the CONCESSIONAIRE.

Any Personal Property of CONCESSIONAIRE or others placed in or upon the Premises shall be at the sole risk of the CONCESSIONAIRE, and AUTHORITY shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the CONCESSIONAIRE waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage.

The parties agrees that all Personal Property owned and placed upon or within the Premises by the CONCESSIONAIRE shall be removed by the CONCESSIONAIRE in accordance with Section 18 of this Agreement at the termination or expiration of this Agreement subject to any valid lien which AUTHORITY may have on that Personal Property for unpaid rents, expenses or fees; provided the CONCESSIONAIRE shall not then be in default in performance of the covenants hereof.

## 20. TAXES

CONCESSIONAIRE agrees to pay all present and future taxes or, in lieu of taxes, special assessments now or hereafter levied, assessed, or passed-through: (1) upon the Premises and facilities; (2) upon Personal Property owned or possessed by CONCESSIONAIRE and situated upon or within the Premises; and (3) upon CONCESSIONAIRE'S interest in or use of the Premises. CONCESSIONAIRE shall defend, indemnify and save AUTHORITY and the City harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

CONCESSIONAIRE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation of the Premises. CONCESSIONAIRE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. CONCESSIONAIRE shall keep current all federal, State and local licenses, operating certificates and permits required for the conduct of its operations. CONCESSIONAIRE represents and warrants to AUTHORITY that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate CONCESSIONAIRE's operation in accordance with the terms of this Agreement, and CONCESSIONAIRE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

CONCESSIONAIRE shall pay all lawful taxes and assessments which, during the Term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the Premises or upon any taxable interest of CONCESSIONAIRE acquired in this Agreement, or any taxable possessory right which CONCESSIONAIRE may have in or to the Premises, including any Improvements or facilities located on the Premises. CONCESSIONAIRE shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by CONCESSIONAIRE in and about said Premises. Nothing in this Section shall prevent CONCESSIONAIRE from contesting the legality, validity or application of any such tax or assessment to the full extent CONCESSIONAIRE may be lawfully entitled so to do.

## **21. MISCELLANEOUS COVENANTS**

CONCESSIONAIRE shall observe and comply with any and all present and future requirements of the constituted public authorities and with all Federal, State, or local statutes, ordinances, regulations and standard rules applicable to CONCESSIONAIRE or its use of the Premises, including by way of example but not of limitation, all general rules and regulations promulgated from time to time by the Director in connection with the administration of the Airport.

CONCESSIONAIRE shall bear all operating expenses, including but not limited to: employees' salaries, taxes, licenses and fees required by governmental agencies.

CONCESSIONAIRE hereby agrees to make no claims or file or cause to be filed any legal or equitable actions against AUTHORITY or the City for any kind of damages which result from the operation of the Airport, including noise or sound shock waves due to aircraft use of said Airport's facilities.

## **22. INDEMNITY AND INSURANCE BY CONCESSIONAIRE**

### **22.01 - Indemnity**

CONCESSIONAIRE hereby agrees to release, to defend, to indemnify and to save harmless the AUTHORITY and the City of Wichita, Kansas, and their officers, agents and employees, (i) from and against any and all loss of or damage to property, or injuries to or death of any person or persons, as well as (ii) from and against any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever (including, without limiting the generality of the foregoing, Workers Compensation and any assessments resulting from civil or regulatory penalties), of or by anyone whomever in matters resulting from or arising out of, or alleged to have resulted from or to have arisen out of, directly or indirectly, CONCESSIONAIRE'S operations or activities under or in connection with this Agreement, or CONCESSIONAIRE'S use and occupancy of any portion of the Airport, and including, without limiting the generality of the foregoing, acts and omissions of CONCESSIONAIRE'S officers, employees, representatives, Sublessees, suppliers, customers, contractors or agents. Provided, however, CONCESSIONAIRE shall not be liable for any loss occasioned by the sole negligence or misconduct of the AUTHORITY, The City of Wichita, Kansas or their officers, agents, and employees. AUTHORITY covenants to give CONCESSIONAIRE prompt notice of any claims. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

In the event, however, the certificates of insurance which are provided by CONCESSIONAIRE as described otherwise in this Section are void of any mention of coverage for its obligations to indemnify, CONCESSIONAIRE irrefutably covenants and agrees that CONCESSIONAIRE has the maximum allowed insurance for its obligations to indemnify and AUTHORITY may rely on said covenant. The coverage for indemnification given by CONCESSIONAIRE under this Agreement shall not in any way limit CONCESSIONAIRE'S indemnification obligations hereunder. The minimum insurance requirements set forth below shall not be deemed to limit the obligations of CONCESSIONAIRE hereunder.

Should CONCESSIONAIRE, its employees, Sublessees, subcontractors, suppliers, agents, customers, and/or representatives cause any violations of federal, State or local law, regulation or ordinance, and should AUTHORITY be cited for a fine or penalty for such violation, CONCESSIONAIRE agrees to reimburse AUTHORITY for any monetary fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the CONCESSIONAIRE from contesting the legality, validity or application of such fine or penalty to the full extent CONCESSIONAIRE may lawfully be entitled, nor require AUTHORITY to pursue such a contest on CONCESSIONAIRE's behalf.

#### **22.02 - Liability Insurance**

CONCESSIONAIRE shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company licensed to do business in the State of Kansas.

Insurance certificates shall be issued on a standard ACORD form or such other documentation as may be acceptable to AUTHORITY in its discretion and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the AUTHORITY, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the AUTHORITY prior to occupancy but failure to provide approved certificates shall not delay Opening Day for purposes of Concession Fees or rent accrual. AUTHORITY retains the right to require changes in the character, coverages and amounts of coverage commensurate with changes in the CONCESSIONAIRE'S use of the Premises.

The failure of AUTHORITY to reject the CONCESSIONAIRE'S proffered insurance shall not be deemed to constitute an acceptance by the AUTHORITY of deficient insurance coverage. If the CONCESSIONAIRE fails to procure or maintain any of the specified coverages the AUTHORITY has the right, but not the obligation, to secure the coverage and charge the cost to the CONCESSIONAIRE along with a 20% administrative fee.

The CONCESSIONAIRE shall be responsible for determining the types and limits of insurance coverage required by any approved Sublessee. At a minimum, such Sublessee shall carry Workers' Compensation, general liability (minimum of \$1,000,000 per occurrence). CONCESSIONAIRE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the Sublessee's general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the CONCESSIONAIRE's obligations or liability under this Agreement or as a matter of law.

Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by AUTHORITY to be the lowest insured amounts acceptable under this Agreement. The CONCESSIONAIRE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the CONCESSIONAIRE's determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

Insurance shall include the following terms, conditions and minimum limits:

a) WORKERS' COMPENSATION

CONCESSIONAIRE shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises and elsewhere at the Airport, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage.

b) COMMERCIAL GENERAL LIABILITY

CONCESSIONAIRE shall maintain Commercial General Liability Insurance on an occurrence form. Minimum limits, as outlined herein, shall be:

Each Occurrence	\$1,000,000 Combined Single Limit for bodily injury, property damage and other liability loss. Coverage thereunder shall include contractual liability, personal injury,
-----------------	--

owners' and contractors' protection, fire legal, products/completed operations, and broad form property damage coverage.

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds. The policy shall also provide coverage for CONCESSIONAIRE's contractual obligations created in this Agreement.

c) UMBRELLA/EXCESS LIABILITY COVERAGE

The CONCESSIONAIRE shall provide minimum Umbrella/Excess liability limits (excess of all coverages other than Workers' Compensation) of:

Each Occurrence Limit \$1,000,000  
Annual Aggregate Limit \$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds covered under this umbrella/excess liability coverage.

CONCESSIONAIRE agrees that in the event of future changes in the law or upon notice by the AUTHORITY, the minimum levels of insurance required by this Section may be increased within the bounds of commercial reasonableness.

CONCESSIONAIRE agrees, prior to the commencement of this Agreement, to provide AUTHORITY with copies of certificates, and if requested, of all policies evidencing that such insurance is in full force and effect, and stating the terms thereof. This Agreement shall not commence until policies of insurance satisfactory to AUTHORITY are supplied by CONCESSIONAIRE. CONCESSIONAIRE shall provide AUTHORITY updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing twelve (12) month period. Failure to maintain satisfactory insurance policies in force shall constitute grounds for cancellation of this Agreement as set forth in Section 24, Termination By AUTHORITY In Event Of Default.

CONCESSIONAIRE shall be solely responsible for obtaining insurance policies that provide coverage for losses of CONCESSIONAIRE-owned property. Authority shall not be required to provide such insurance coverage or be responsible for payment of CONCESSIONAIRE's cost for such insurance.

### **22.03 - Subrogation of Insurance**

AUTHORITY hereby waives any and all rights of recovery against CONCESSIONAIRE for or arising out of damage or destruction of the Terminal, or the demised Premises, or any other property of AUTHORITY, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of CONCESSIONAIRE, its Sublessees, agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of AUTHORITY coverage.

CONCESSIONAIRE hereby waives any and all rights of recovery against AUTHORITY for or arising out of damage to or destruction of any property of CONCESSIONAIRE from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of AUTHORITY, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

### **22.04 - Loss of Personal Property**

Any personal property of CONCESSIONAIRE or third parties placed in or upon the Premises shall be at the sole risk of the CONCESSIONAIRE, and AUTHORITY shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the CONCESSIONAIRE waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage unless such loss or damage is the result of the AUTHORITY's negligence.

## **23. INDEPENDENCE OF AGREEMENT**

It is understood and agreed that nothing herein is intended or should be construed in any way as creating or establishing the relationship of co-partners between the parties hereto or of creating a joint venture or as establishing CONCESSIONAIRE as the agent, representative, or employee of the Authority for any purpose or in any manner whatsoever.

## **24. TERMINATION BY AUTHORITY IN EVENT OF DEFAULT**

### **24.01 AUTHORITY'S Termination Rights**

- a) In the event that CONCESSIONAIRE shall fail to perform, keep and observe any of the terms, covenants or conditions made an obligation of the CONCESSIONAIRE in this Agreement, AUTHORITY may give written notice to CONCESSIONAIRE to correct such condition or default; and, if CONCESSIONAIRE shall not correct such condition or default within thirty (30) days after such notice, AUTHORITY may terminate this Agreement by giving ten (10) Days notice and the Term hereby demised shall thereupon cease and expire at the end of such ten (10) Days in the same manner and effect as if it were the expiration of the Term. No default on the part of the CONCESSIONAIRE shall be deemed to continue so long as CONCESSIONAIRE shall have promptly taken action to correct the same and shall be diligently prosecuting such action. In any case where AUTHORITY shall be entitled hereunder to terminate this Agreement, AUTHORITY may, as an alternative to termination of the Agreement, perform the obligation imposed under this Agreement for the account of and at the expense of the CONCESSIONAIRE and the same shall be paid by CONCESSIONAIRE as additional rent within thirty (30) Days following the date of receipt by CONCESSIONAIRE of an invoice for the expense.
  
- b) AUTHORITY may terminate this Agreement and all of its obligations hereunder by giving CONCESSIONAIRE ten (10) Days written notice upon or after filing by CONCESSIONAIRE of a voluntary petition in bankruptcy.
  
- c) AUTHORITY may terminate this Agreement and all of its obligations hereunder by giving CONCESSIONAIRE sixty (60) Days written notice upon or after failure of CONCESSIONAIRE to vacate or set aside the following:
  - (1) If involuntary proceedings in bankruptcy be instituted against the CONCESSIONAIRE; or
  - (2) If a court shall take jurisdiction of CONCESSIONAIRE pursuant to proceedings brought under the provisions of any Federal Reorganization Act; or
  - (3) If receiver of CONCESSIONAIRE'S assets be appointed.

- d) AUTHORITY may terminate this Agreement and all of its obligations hereunder by giving CONCESSIONAIRE written notice upon the happening of either or both the following events:
- (1) If CONCESSIONAIRE shall voluntarily abandon and discontinue the conduct and operation of its service on Airport Property for a continuous period of thirty (30) Days;
  - (2) If CONCESSIONAIRE shall abandon any of the Premises for a continuous period of thirty (30) Days at any one time, except when such abandonment be caused by fire, earthquake, war, strike or other calamity beyond CONCESSIONAIRE'S control.
- e) AUTHORITY may terminate this Agreement and all of its obligations hereunder by giving CONCESSIONAIRE ten (10) Days written notice upon or after failure to comply with terms and conditions of Section 26 hereof.

#### **24.02 - No Waiver**

No waiver of default by AUTHORITY of any of the terms, covenants, or conditions hereof to be performed, kept or observed by CONCESSIONAIRE shall be construed to be or act as a waiver of any subsequent default of the terms, covenants, and conditions herein contained to be performed, kept and observed by CONCESSIONAIRE. The acceptance of rental and/or compensation by AUTHORITY for any period or periods after default of any of the terms, conditions, or covenants herein contained to be performed, kept and observed by CONCESSIONAIRE shall not be deemed a waiver of any right on the part of the AUTHORITY to cancel this Agreement for failure by CONCESSIONAIRE to perform, keep, or observe any of the terms, covenants, or conditions of this Agreement.

### **25. TERMINATION BY CONCESSIONAIRE IN THE EVENT OF DEFAULT**

The CONCESSIONAIRE, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving AUTHORITY written notice in the event of default by AUTHORITY under this Agreement continuing for more than sixty (60) days after the AUTHORITY's receipt of written notice of such event of default and opportunity to cure from the CONCESSIONAIRE, upon or after the happening of any one of the following events:

- a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Premises or any major part thereof for Premises purposes and the remaining in full force of such permanent injunction for a period of at least one hundred eighty (180) Days.
- b) Inability of the CONCESSIONAIRE to use, for a period in excess of one hundred eighty (180) Days, the Premises or any part of the Premises because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy.
- c) AUTHORITY shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of AUTHORITY are to be performed, kept or observed:
  - 1) CONCESSIONAIRE may give AUTHORITY written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) Days after receipt of such notice by AUTHORITY, CONCESSIONAIRE may terminate this Agreement and the Term hereof shall cease and expire at the end of such sixty (60) Days in the same manner and to the same effect as if it were the expiration of the Term, unless such condition or default cannot reasonably be corrected within the 60-day period and AUTHORITY has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the 30-Day extension then in effect;
- d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the CONCESSIONAIRE for a period of one hundred eighty (180) days from operating on and within the facility.

- e) In the event of destruction of the facilities, Improvements, or the demised Premises as more fully described in Section 42, Damage Or Destruction.

## **26. WAIVER OF STATUTORY NOTICE**

In the event AUTHORITY exercises its option to terminate this Agreement upon the happenings of any or all of the events set forth in Section 24, "Termination by AUTHORITY in Event of Default," any notice of termination given pursuant to the provisions of said Section 24 shall be sufficient to cancel and terminate this Agreement; and, upon such termination, CONCESSIONAIRE hereby agrees that it shall forthwith surrender possession of the demised Premises to the AUTHORITY. In this connection, CONCESSIONAIRE hereby expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by AUTHORITY under any provisions of the laws of the State of Kansas, including, but not limited to, notices required to be given under any section of the Kansas Statutes.

## **27. TRANSFER OF OWNERSHIP**

As of the Commencement Date of this Agreement and thereafter throughout the Term, an equity transfer of a majority or more of the interest of CONCESSIONAIRE without the prior written approval of AUTHORITY, which shall not be unreasonably withheld, shall constitute a material breach of this Agreement for which AUTHORITY may terminate the same under the provisions of Section 24 hereof. Moreover, at least ninety (90) Days prior to any contemplated ownership transfer, CONCESSIONAIRE shall submit a written request to AUTHORITY showing good and sufficient financial worth and adequate experience in the operation of Specialty Customer Services Concessions on the part of the contemplated purchaser or purchasers and evidencing the intent of such contemplated purchaser or purchasers to expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations and agreements contained in this Agreement.

## 28. ASSIGNMENT AND SUBLETTING

This Agreement is entered into by CONCESSIONAIRE through the competitive public solicitation which includes essential and exacting specifications, and insofar as this Agreement is a service agreement that relies upon the past performance, personal integrity, trust, financial worth and unique expertise of the CONCESSIONAIRE to operate a sound Specialty Customer Services Concessions that provides service to the public, and insofar as this Agreement provides for the AUTHORITY to extend financial accommodation for the benefit of the CONCESSIONAIRE, the CONCESSIONAIRE shall not, without the prior written consent of AUTHORITY, assign or sublet any portion of the Premises; provided that if an assignment or sublease is approved by AUTHORITY, the term of any such assignment or sublease shall not extend beyond the Term of this Agreement. In the event of any conflicts between the terms and conditions of this Agreement and those of a sublease or assignment, the terms and conditions of this Agreement shall control.

Except as specifically provided above, CONCESSIONAIRE shall not assign this Agreement or any interest therein by an operation of law, process or proceeding of any Court or otherwise, or sublet the Premises or any portion thereof and/or the operation or maintenance of the Premises without first obtaining the prior written approval of the AUTHORITY; moreover, at least ninety (90) Days prior to any contemplated assignment of this Agreement by any operation of law, process or proceeding of any Court or otherwise, CONCESSIONAIRE shall submit a written request to the AUTHORITY, and CONCESSIONAIRE shall submit evidence showing good and sufficient financial worth and adequate experience in the operation of news and gift facilities on the part of the contemplated assignee. In any event, no assignment shall be made or shall be effective unless CONCESSIONAIRE shall not be in default on any of the terms, provisions, covenants and conditions herein contained. Further, in no event shall any assignment be effective, regardless of any submissions to the AUTHORITY, without the prior written approval of the AUTHORITY. The party to whom such assignment is made shall expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations and agreements contained in this Agreement.

In the event of any approved assignment, CONCESSIONAIRE shall remain liable to AUTHORITY to pay to AUTHORITY any portion of the Concession Fees and other payments provided for herein upon failure of the assignee to pay the same when due; moreover, no subleasing shall release the CONCESSIONAIRE from its obligations to pay all Concession Fees and other amounts due hereunder or release CONCESSIONAIRE from any of the terms, covenants or conditions herein contained on the part of the CONCESSIONAIRE to be

performed, kept and observed. Further, in the event of an approved assignment or subleasing, neither assignee nor its Sublessee shall assign or sublet any portion of the Premises except with the prior approval of AUTHORITY and CONCESSIONAIRE herein, and any sublease or assignment by CONCESSIONAIRE shall contain a clause to this effect.

In the event of an approved assignment, the assignee shall provide the AUTHORITY with a letter of credit or performance bond pursuant to the requirements of the Agreement. Upon receipt of such required acceptable letter of credit or performance bond by the AUTHORITY, the AUTHORITY may thereupon return the assignor's letter of credit or permit performance bond cancellation. Provided, however, in the event of default by the assignee, wherein the Agreement reverts back to the assignor, in accordance with the above referenced paragraph of this Section, then and in that event the assignor shall provide the AUTHORITY with a required, acceptable letter of credit or performance bond.

CONCESSIONAIRE will not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial operation, aviation or otherwise, on the Premises without having first received the prior written consent of AUTHORITY, such consent not to be unreasonably withheld or unduly delayed and granted only under the following conditions:

- a) Any arrangements must be in the form of a written instrument and must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. CONCESSIONAIRE shall submit a copy of such proposed instrument at the time of requesting consent of AUTHORITY.
- b) All subleases must comply with this Agreement, and will be reviewed for compliance by AUTHORITY to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by AUTHORITY.
- c) CONCESSIONAIRE must keep current records on file and available for AUTHORITY's inspection that describe the nature and document the legitimacy of the Sublessee's business, including all current municipal, State, or local licenses or permits required for the conduct of Sublessee's business.

- d) CONCESSIONAIRE hereby agrees that it shall incorporate language acceptable to AUTHORITY into all of its sublease agreements, placing on any Sublessee and that Sublessee's affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind CONCESSIONAIRE and its use of the Premises through this Agreement. CONCESSIONAIRE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure Sublessee's operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the Sublessee shall never obtain rights in the Premises greater than those held by CONCESSIONAIRE under this Agreement, as amended. Any Sublessee shall be specifically subject to eviction from the Premises as a result of termination, cancellation, or expiration of this Agreement, irrespective of Sublessee's state of compliance with the terms of its sublease.
  
- e) CONCESSIONAIRE shall at all times during the term(s) of approved sublease(s), remain responsible to AUTHORITY for the compliance of its Sublessees with the terms and conditions of any approved sublease and with this Agreement. AUTHORITY may look to CONCESSIONAIRE directly to satisfy any failure of Sublessee to comply with these documents.
  
- f) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the AUTHORITY shall be required for each sublease permit or subcontract executed by the CONCESSIONAIRE.

## 29. NONDISCRIMINATION

The CONCESSIONAIRE shall comply with all the following nondiscrimination provisions to the extent that CONCESSIONAIRE'S activities shall be subject to the same:

### **29.01 Nondiscrimination in Employment**

The CONCESSIONAIRE agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, ancestry, age or disability. The CONCESSIONAIRE shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability. Such actions shall include, but not be limited to, the following: employment, promotion demotion or transfer, recruitment, advertising, lay-off or termination, and selection for training, including apprenticeship. The CONCESSIONAIRE, and any Sublessee, hereby agrees to post, in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this Section.

### **29.02 Facilities Nondiscrimination**

A. CONCESSIONAIRE shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of sex, age, race, creed, ancestry, color, national origin, or disability, provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by CONCESSIONAIRE solely to its employees, customers, clients, guests, and invitees; and CONCESSIONAIRE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

- (1) Noncompliance with any nondiscrimination provision imposed by law related to the accommodations and/or services provided under this Agreement, or noncompliance with any nondiscrimination within this Agreement, shall constitute a material breach of this Agreement and, in the event of such noncompliance, AUTHORITY shall have the right to terminate this Agreement and the estate hereby created without liability therefore, or at the election of AUTHORITY or the United States, either or both said Governments, shall have the right to judicially enforce said provision.

- (2) CONCESSIONAIRE agrees to insert the above in any leases, agreements, or contracts, etc. by which said CONCESSIONAIRE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises.

### **29.03 - Affirmative Action Program**

CONCESSIONAIRE assures that it shall undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person on the grounds of race, creed, color, national origin, ancestry, age, sex, or disability, be excluded from participation in any employment activities covered by 14 CFR Part 152, Subpart E. CONCESSIONAIRE 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. CONCESSIONAIRE assures that its covered suborganizations and subcontractors shall give assurances to CONCESSIONAIRE that they similarly shall undertake affirmative action programs and that they shall require assurances from their suborganizations and subcontractors, as required by 14 CFR Part 152, Subpart E, to the same effect.

### **29.04 - ACDBE Program**

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, apply to this concession. It is the policy of the Wichita Airport Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this Agreement. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of four and half percent (4.5%) of annual gross receipts has been established for this concession. The CONCESSIONAIRE shall meet this goal or document and demonstrate good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the concession specific goal for ACDBE participation in the performance of this concession. The CONCESSIONAIRE is placed on notice that during the Term of this Agreement, FAA may require and approve new ACDBE goals for the AUTHORITY, which these changes may be made under the authority of the Director, without requiring formal amendment to the Agreement. If this occurs, new proof of compliance or proof of good faith efforts shall be required of the CONCESSIONAIRE as a material contract term.

The CONCESSIONAIRE is a qualified ACDBE. If, by approved equity transfer assignment, this status will change, and the CONCESSIONAIRE shall be required to submit the following information: (1) the names and addresses, and copies of certifications of ACDBE firms and suppliers that shall participate in the concession, (2) A description of the work that each ACDBE shall perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it

submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime CONCESSIONAIRE's commitment; and (6) If the contract goal is not met, CONCESSIONAIRE shall provide competent, written evidence of good faith efforts, diligently undertaken. Additionally, CONCESSIONAIRE acknowledges that enforcement provisions will be adhered to as documented in Attachment 3 of the Wichita Airport Authority ACDBE Program.

The CONCESSIONAIRE shall be required to replace an ACDBE concessionaire that is unable to perform successfully by another ACDBE concessionaire, if the remaining Term of this Agreement makes this feasible. In the event that such action is not feasible, the CONCESSIONAIRE shall be required to make good faith efforts during the remaining Term of this Agreement to encourage ACDBEs to compete for purchases and/or leases of goods and services to be made by the CONCESSIONAIRE.

The CONCESSIONAIRE is placed on notice that during the Term of this Agreement, FAA may require and approve new ACDBE language or provisions. Changes will be made under the authority of the Director, without requiring formal amendment to the Agreement to implement these FAA requirements.

### **30. NON-INTERFERENCE WITH AIRPORT OPERATIONS**

CONCESSIONAIRE covenants and agrees that it shall not allow any condition on the Airport, nor permit the conduct of any activity on such premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall CONCESSIONAIRE use or permit the Airport to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard to the general public, or to AUTHORITY's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

CONCESSIONAIRE covenants and agrees that it shall not allow any condition on the Airport, nor permit the conduct of any activity on such Airport, which shall materially or adversely affect, infringe upon, block or interrupt the operations or business activity of other airport tenant leaseholds.

### **31. COOPERATION WITH AIRPORT DEVELOPMENT**

CONCESSIONAIRE understands and agrees that AUTHORITY may pursue Airport development, Improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. CONCESSIONAIRE agrees to work cooperatively and in good faith with the AUTHORITY and other tenants and contractors in development, improvement and maintenance activities to minimize any disruptions. If requested by the AUTHORITY, CONCESSIONAIRE shall cooperate with and assist the AUTHORITY to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. AUTHORITY may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to CONCESSIONAIRE. AUTHORITY may temporarily close the runway, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Provided that exercise by AUTHORITY of any such Airport development, improvement, or maintenance shall be without expense to the CONCESSIONAIRE and shall not unreasonably or materially interfere with CONCESSIONAIRE's use of the Premises, and shall not delay CONCESSIONAIRE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

### **32. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES**

Unless otherwise permitted under Section 19, title/ownership to the Premises, and to all existing structures, fixtures, facilities and Improvements, or future structures, fixtures, facilities and Improvements constructed and permanently affixed to the Premises shall be, and shall remain, exclusively with AUTHORITY. Such structures, fixtures, facilities and Improvements shall include, but may not be limited to permanently affixed shelves, cabinets, counters, light fixtures, conduit, wiring and cabling, pipes and plumbing fixtures, and all other property of every kind and nature which is permanently affixed.

CONCESSIONAIRE shall, without cost to AUTHORITY, furnish and install all non-affixed furniture, movable partitions, decorations, accessories, equipment and tools, and all other Personal Property on the Premises necessary to conduct its business, which shall retain its status as Personal Property even though temporarily placed within or upon the Premises. Title/ownership to non-affixed Personal Property shall remain with CONCESSIONAIRE.

### 33. LIENS

CONCESSIONAIRE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any Improvements thereon. Should any lien be placed on the Premises or any Improvements thereon, CONCESSIONAIRE shall cause to be removed any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation performed by or on behalf of CONCESSIONAIRE or any of its contractors or subcontractors upon CONCESSIONAIRE's Premises or arising out of or because of the performance of any work or labor to it at said Premises or the furnishing of any materials to it for use at said Premises. Should any such lien be made or filed, CONCESSIONAIRE shall bond against or discharge the same within thirty (30) days after actual notice of the same from any source, whether from AUTHORITY or otherwise, and provide written proof of discharge or bonding to AUTHORITY within that time. CONCESSIONAIRE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of Tenant Improvements on the Premises, such Tenant Improvements accrue to the AUTHORITY and that it has no equity interest in the Premises which can support a mortgage lien. CONCESSIONAIRE shall not mortgage or pledge as collateral its leasehold interest herein without the prior written consent of the AUTHORITY. CONCESSIONAIRE acknowledges that all Improvements to the Premises are for its benefits solely, and are not made at the request of the AUTHORITY or for the benefit of the AUTHORITY, regardless of AUTHORITY's approval of such Improvements.

AUTHORITY may consent, upon CONCESSIONAIRE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of CONCESSIONAIRE's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of CONCESSIONAIRE's rights to collect and receive rents and charges from approved users, operators, sub-concessionaires and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the AUTHORITY as required under Section 28, Assignment And Subletting. Upon CONCESSIONAIRE's written consent, AUTHORITY agrees to give lender(s) notice of any default or cancellation of the Agreement, and allow lender(s) the same opportunity as the CONCESSIONAIRE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the CONCESSIONAIRE of its obligations under this Agreement.

### **34. RULES AND REGULATIONS**

CONCESSIONAIRE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the AUTHORITY or the City, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations, or orders of any governmental authority, federal or State, which are now in force or which may hereafter be promulgated, lawfully exercising authority over the Airport or CONCESSIONAIRE 's operations conducted hereunder.

AUTHORITY shall not be liable to CONCESSIONAIRE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall CONCESSIONAIRE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with CONCESSIONAIRE 's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 25, Termination By CONCESSIONAIRE In The Event Of Default.

AUTHORITY shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, AUTHORITY shall not be liable to CONCESSIONAIRE for any violation or non-observance of such rules and regulations by any other tenant, operator or concessionaire at the Airport.

### **35. ENCROACHERS, TRESSPASSERS AND OTHER THIRD PARTY HAZARDS**

CONCESSIONAIRE shall lawfully remove, or cause to be removed by AUTHORITY or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, State or local government, or who are not on the Premises for legitimate purposes.

## **36. SECURITY SYSTEMS**

AUTHORITY may at its sole discretion, install, operate and maintain a security monitoring system in non-exclusive use areas of the interior and exterior facilities. AUTHORITY may at its sole discretion install, operate and maintain a computer controlled access system at certain Exclusive Use or non-Exclusive Use door access points. The purpose of said security systems is for the provision of safety and security to the general public, Airport employees, tenants and permittees and their employees and invitees, primarily within non-exclusive common use areas. The AUTHORITY shall install, operate and maintain security systems in the interior and exterior of the Terminal. The purpose of these security systems is for the provision of safety and security to the general public, airport employees, tenants, their employees and invitees. CONCESSIONAIRE may not rely on the surveillance cameras and access control systems owned and operated by the AUTHORITY for purposes of risk management or private security from property loss or theft.

CONCESSIONAIRE may, at its sole option, install, operate and maintain private security systems on the Premises, however, any such private security systems installed and operated by the CONCESSIONAIRE shall not block, hinder, interfere, over-ride or obstruct any security system of the AUTHORITY.

## **37. SECURITY**

CONCESSIONAIRE shall comply with all applicable regulations relating to Airport security. AUTHORITY shall be held harmless for any and all breaches of the Federal Aviation Administration or Transportation Security Administration's policies and regulations and AUTHORITY's security rules or regulations caused by the CONCESSIONAIRE, its agents or employees, or that occur on the CONCESSIONAIRE'S Premises except to the extent caused by AUTHORITY. In the event the Federal Aviation Administration or the Transportation Security Administration imposes a fine or penalty for any such security violation, whether such fine or penalty is assessed to the AUTHORITY or the CONCESSIONAIRE or their agents or employees, the penalty shall be paid by the CONCESSIONAIRE, provided, however, that nothing herein shall prevent CONCESSIONAIRE from contesting the legality, validity or application of such fine or penalty to the full extent CONCESSIONAIRE may be lawfully entitled so to do.

## **38. AIRPORT SECURITY PROGRAM COMPLIANCE**

CONCESSIONAIRE must obtain Airport Security Identification and Access Media (I.D. Media) for its employees, subcontractors, Sublessees, 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 forth under this Section. With respect to the issuance, maintenance, and administration of I.D. Media, the CONCESSIONAIRE shall pay or cause to be paid to the AUTHORITY all charges as may be established from time to time by the AUTHORITY. Such costs may include, but are not limited to: (i) the initial issuance of I.D. Media; (ii) the replacement of lost or stolen I.D. Media; (iii) administrative costs with respect to those I.D. Media not returned to the AUTHORITY.

Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Police and Fire Division, at 2193 Air Cargo Road within twenty-four (24) hours after expiration, suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement. The CONCESSIONAIRE shall be responsible for requesting the issuance of I.D. Media to employees or other authorized representatives of the CONCESSIONAIRE who require access to secured areas on the Airport due to operational need and necessity. In addition, CONCESSIONAIRE shall be responsible for the immediate reporting of all lost or stolen I.D. Media and the immediate return of the I.D. Media of CONCESSIONAIRE's personnel transferred from the Airport, or separated from the employ of CONCESSIONAIRE.

CONCESSIONAIRE warrants that it will at all times maintain the integrity of the Airport Security Program and comply with all applicable regulations of the Federal Aviation Administration ("FAA") and Transportation Security Administration ("TSA"), 49 CFR Parts 1500, 1542, 1544, 1546, 1548, and 1550 as amended or promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access for which CONCESSIONAIRE is responsible. The AUTHORITY shall have the right to require the CONCESSIONAIRE to conduct background investigations and to furnish certain data on such employees or other persons before the issuance of I.D. Media, which data may include the fingerprinting of any and all of its employees, subcontractors, suppliers, agents, and/or representatives. CONCESSIONAIRE also hereby agrees that it shall be responsible for any and all of the actions on the Premises of its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. CONCESSIONAIRE hereby agrees that it will immediately

implement any and all security changes that are directed either directly or indirectly by the TSA, FAA, or AUTHORITY. CONCESSIONAIRE further agrees to correct any security deficiency or other deficiency as may be determined as such by the AUTHORITY, the Department of Transportation (“DOT”), the FAA, or the TSA, or any other federal or state agency with jurisdiction. In the event CONCESSIONAIRE fails to remedy any such deficiency, the AUTHORITY may do so at the sole cost and expense of CONCESSIONAIRE. The AUTHORITY reserves the right to take whatever action is necessary to correct and remedy any security deficiency or other deficiency. When the AUTHORITY takes actions to remedy deficiencies of any kind, it shall be done in a reasonable and cost-conscious manner.

Should CONCESSIONAIRE, its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives cause any security violations, and should AUTHORITY be cited for a civil fine or penalty for such security violation, CONCESSIONAIRE agrees to reimburse AUTHORITY for any monetary civil fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the CONCESSIONAIRE from contesting the legality, validity or application of such fine or penalty to the full extent CONCESSIONAIRE may be lawfully entitled, nor require AUTHORITY to pursue such a contest on CONCESSIONAIRE’S behalf. CONCESSIONAIRE may have I.D. Media/access privileges immediately suspended and/or revoked by 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.

The CONCESSIONAIRE agrees that information concerning the location, type, nature, capabilities, application and use of the AUTHORITY’S security system is considered Sensitive Security Information (SSI) as defined by TSR 1520, and shall restrict the distribution, disclosure and availability of SSI only to persons with a need to know. All requests for SSI by persons not directly employed by the CONCESSIONAIRE, and deemed to have a need to know shall be referred to AUTHORITY for consideration and determination of whether such information is legal and appropriate for dissemination.

Before the CONCESSIONAIRE shall permit any employee, subcontractor, Sublessees, supplier, agents, customer, invitee, and/or representative to operate a motor vehicle of any kind or type on the AOA of Dwight D. Eisenhower National Airport (unless such employee is escorted by a AUTHORITY-approved escort), the CONCESSIONAIRE shall ensure that all such vehicle operators have completed required AOA access and driver training, possess a current, valid, and appropriate Kansas driver’s license, appropriate Airport issued I.D. Media, and a Vehicle Ramp Permit. CONCESSIONAIRE company vehicles prominently displaying a permanently affixed company name and/or logo on vehicles and equipment are excluded from the requirement of displaying a Vehicle Ramp Permit.

The CONCESSIONAIRE agrees that its vehicles, cargo, product deliveries, and other personal property are subject to being inspected and searched when entering, exiting and while on the AOA.

## **39. GENERAL PROVISIONS**

### **39.01 - Facility Development**

AUTHORITY reserves the right to further develop or improve the landing area or any other area, building or other Improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment regardless of the desires or view of CONCESSIONAIRE and without interference or hindrance by CONCESSIONAIRE. Further, AUTHORITY retains the absolute right to maintain, repair, develop and expand or replace utilities, ramps, taxiways, runways, streets, roadways, sidewalks, any other Airport facility, Airport Improvement or on Airport Property free from any and all liability to CONCESSIONAIRE for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development, expansion or replacement.

### **39.02 - Maintenance, Repair, Direction and Control**

AUTHORITY reserves the right, but is not obligated to exercise the right, 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 CONCESSIONAIRE in this regard. These areas shall include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that AUTHORITY shall not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

### **39.03 - Operation of Airport by the United States of America**

This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

#### **39.04 - 14 CFR Part 77 of Federal Aviation Regulations**

CONCESSIONAIRE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Airport. CONCESSIONAIRE by accepting this Agreement expressly agrees for itself, its successors and assigns that it shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport which shall exceed such maximum height as may be stipulated by AUTHORITY. Applicable laws, codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by AUTHORITY. In the event the aforesaid covenants are breached, AUTHORITY reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of CONCESSIONAIRE and without liability to AUTHORITY.

#### **39.05 - Airspace**

There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of AUTHORITY shall result from the exercise of this right.

#### **39.06 - Easement for Flight**

CONCESSIONAIRE releases AUTHORITY from any present or future liability whatsoever and covenants not to sue AUTHORITY for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or Airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that AUTHORITY shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating Airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. AUTHORITY reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said

Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, Airport or Airport-related operations at or otherwise associated with use of the Airport. CONCESSIONAIRE accepts the Premises subject to the risks and activities hereinabove described.

### **39.07 - Airport Hazards**

CONCESSIONAIRE by accepting this Agreement agrees for itself, its successors and assignees, that it shall not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. If during the Term of this Agreement the condition is breached, AUTHORITY reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of CONCESSIONAIRE without liability to AUTHORITY of any kind.

### **39.08 - Airport Rules and Regulations, Policies, and Standard Operating Procedures**

AUTHORITY shall have the right to adopt, amend and enforce reasonable Airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any Improvements within the present or future boundaries of the Airport, which CONCESSIONAIRE agrees to observe and obey.

### **39.09 - Federal Aviation Administration Requirements**

AUTHORITY and CONCESSIONAIRE agree that the requirements of the Federal Aviation Administration (“FAA”) set out below are approved by both parties, and if applicable, CONCESSIONAIRE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

(a) The CONCESSIONAIRE, 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 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 CONCESSIONAIRE 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 CONCESSIONAIRE, 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 the use of said facilities, (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the CONCESSIONAIRE 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 CONCESSIONAIRE assures that it shall undertake an affirmative action program if 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 CONCESSIONAIRE 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 CONCESSIONAIRE assures that it shall require that its covered suborganizations provide assurances to the CONCESSIONAIRE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) 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) CONCESSIONAIRE 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; PROVIDED, that CONCESSIONAIRE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) AUTHORITY reserves the right (but shall not be obligated to CONCESSIONAIRE) 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 CONCESSIONAIRE 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 CONCESSIONAIRE, 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 CONCESSIONAIRE 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) Rights granted by this Agreement shall 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.

### **39.10 - 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.

### **39.11 - Non-Waiver of Rights**

No waiver or default by either party of any of the terms, warranties, 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, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

### **39.12 - Captions**

The captions/headings of the 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.

### **39.13 - Severability and Invalid Provisions**

In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the AUTHORITY or the CONCESSIONAIRE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this Agreement.

### **39.14 - Waiver of Claims**

CONCESSIONAIRE hereby waives any claim against AUTHORITY and its officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

### **39.15 - Incorporation of Exhibits**

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

### **39.16 - Incorporation of Required Provisions**

The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

### **39.17 - Non-Liability of Agents and Employees**

No member, officer, agent or employee of either party to this Agreement 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.

**39.18 - 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.

**39.19 - Time of Essence**

Time is of the essence in this Agreement.

**39.20 - Relationship of the Parties**

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

**39.21 - Interpretation**

AUTHORITY and CONCESSIONAIRE hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

**39.22 - Kansas Laws to Govern**

This Agreement is created in the State of Kansas 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, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

**39.23 - Force Majeure**

Neither the AUTHORITY nor the CONCESSIONAIRE shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, acts of terrorism or the results therefrom, or any other circumstances for which it is not responsible or which is not within its control.

## **40. THIRD PARTY RIGHTS**

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

## **41. QUIET ENJOYMENT**

AUTHORITY agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of CONCESSIONAIRE to be performed in this Agreement, CONCESSIONAIRE shall have the right to peaceably occupy and enjoy the Premises, subject however, to the GENERAL PROVISIONS contained in Section 39.

## **42. DAMAGE OR DESTRUCTION**

In the event that facilities or Improvements on the Premises are damaged or destroyed in whole or in part by any peril or casualty during the Term of this Agreement, this Agreement shall remain in full force and effect and CONCESSIONAIRE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as CONCESSIONAIRE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be applied to cover the cost of such repairs or restoration. Provided the damage or destruction was not caused in whole or in part by CONCESSIONAIRE'S actions or inactions, from the date of such casualty until such area is so repaired (including if such area is not repaired), the MAG otherwise due hereunder shall abate in amounts proportional to the loss of available Concessions Facilities Space; provided, however, that if an area shall be so slightly injured in any such casualty as not to be rendered unfit for normal usage, the MAG related thereto shall not cease or be abated during any repair period.

In the event the Improvements are damaged or destroyed in whole or in part by any peril or casualty not resulting in whole or in part from the actions of the CONCESSIONAIRE during the Term of this Agreement, and such damage, destruction or loss exceeds fifty five percent (55%) of

the value of the property as it existed prior to the casualty loss, CONCESSIONAIRE shall have the election, indicated by written notice given to AUTHORITY within 180 days after the occurrence of such event, not to repair, restore, rebuild or replace the Improvements. Upon such election by CONCESSIONAIRE, this Agreement shall be terminated effective as of the date such notice is given by CONCESSIONAIRE, and neither party shall have any further rights or obligations pursuant to this Agreement other than CONCESSIONAIRE'S obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents or invitees to the extent not covered by insurance proceeds. All of the insurance proceeds shall be paid to CONCESSIONAIRE and AUTHORITY as their interests may appear. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged Improvements from the Premises before such distribution.

### **43. CONDEMNATION**

If, during the Term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, CONCESSIONAIRE shall, within fifteen (15) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify AUTHORITY in writing as to the nature and extent of such condemnation and whether it is practicable for CONCESSIONAIRE to acquire or construct substitute Improvements.

If CONCESSIONAIRE shall determine that such substitution is practicable and desirable and AUTHORITY shall agree thereto, CONCESSIONAIRE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute Improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Term of this Agreement remaining and the fair market value of each party's interest at the time the proceeds are received.

If CONCESSIONAIRE shall determine that it is not practicable and desirable to acquire or construct substitute Improvements, any net proceeds shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Term of this Agreement remaining, and the fair market value of each party's interest at the time the proceeds are received.

AUTHORITY shall cooperate fully with CONCESSIONAIRE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event shall CONCESSIONAIRE or AUTHORITY voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other party to this Agreement.

#### **44. MODIFICATIONS FOR GRANTING FAA FUNDS**

In the event that the AUTHORITY determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and CONCESSIONAIRE 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 by the AUTHORITY to fully comply with federal grant assurances and directives and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of CONCESSIONAIRE hereunder.

#### **45. INTENTION OF PARTIES**

This Agreement is intended solely for the benefit of AUTHORITY and CONCESSIONAIRE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by AUTHORITY is solely for the benefit of AUTHORITY and CONCESSIONAIRE.

#### **46. INCORPORATION OF PROPOSAL DOCUMENTS**

To the extent that the terms and provisions of the Request for Proposals (“RFP”) and the Operator’s Proposal thereof are not in conflict with the provisions of this Agreement, such terms and provisions are made a part hereof as Exhibit “B”(incorporated by reference), and shall be fully binding on both parties as if fully set out herein. In the event of any conflict between the provisions of this Agreement and those of the RFP and/or Operator’s Proposal, said provisions

shall be given effect in the following order: (1) this Agreement; (2) the RFP; and (3) the Operator's Proposal in response to the RFP.

#### **47. ENTIRE AGREEMENT**

This Agreement supersedes and cancels all previous agreements for the Premises generally described under Section 2, between AUTHORITY and CONCESSIONAIRE or any other party, and all amendments, supplemental agreements, or renewals thereto. The parties understand and agree that this instrument contains the entire Agreement between them. 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 expressed in this Agreement, 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.

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.

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.

#### **48. MODIFICATION**

This Agreement shall not be modified or amended unless in writing with formality equal to this Agreement, executed by the CONCESSIONAIRE and AUTHORITY on a date subsequent to the execution of this Agreement.

**49. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY  
AUTHORITY**

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement by AUTHORITY, the same shall be performed by the Director, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director, and from time to time, may be withdrawn or modified by notice from AUTHORITY to CONCESSIONAIRE.

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

ATTEST:

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By \_\_\_\_\_  
Karen Sublett, City Clerk

By \_\_\_\_\_  
Jeff Longwell, President  
"AUTHORITY"

By \_\_\_\_\_  
Victor D. White, Director of Airports

ATTEST:

MULTI BUSINESS CORPORATION

By \_\_\_\_\_

By \_\_\_\_\_  
Steve Habtemariam, President  
"CONCESSIONAIRE"

APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_

Jennifer Magana,  
City Attorney and Director of Law

**EXHIBITS:**

Exhibit A... ..Premises

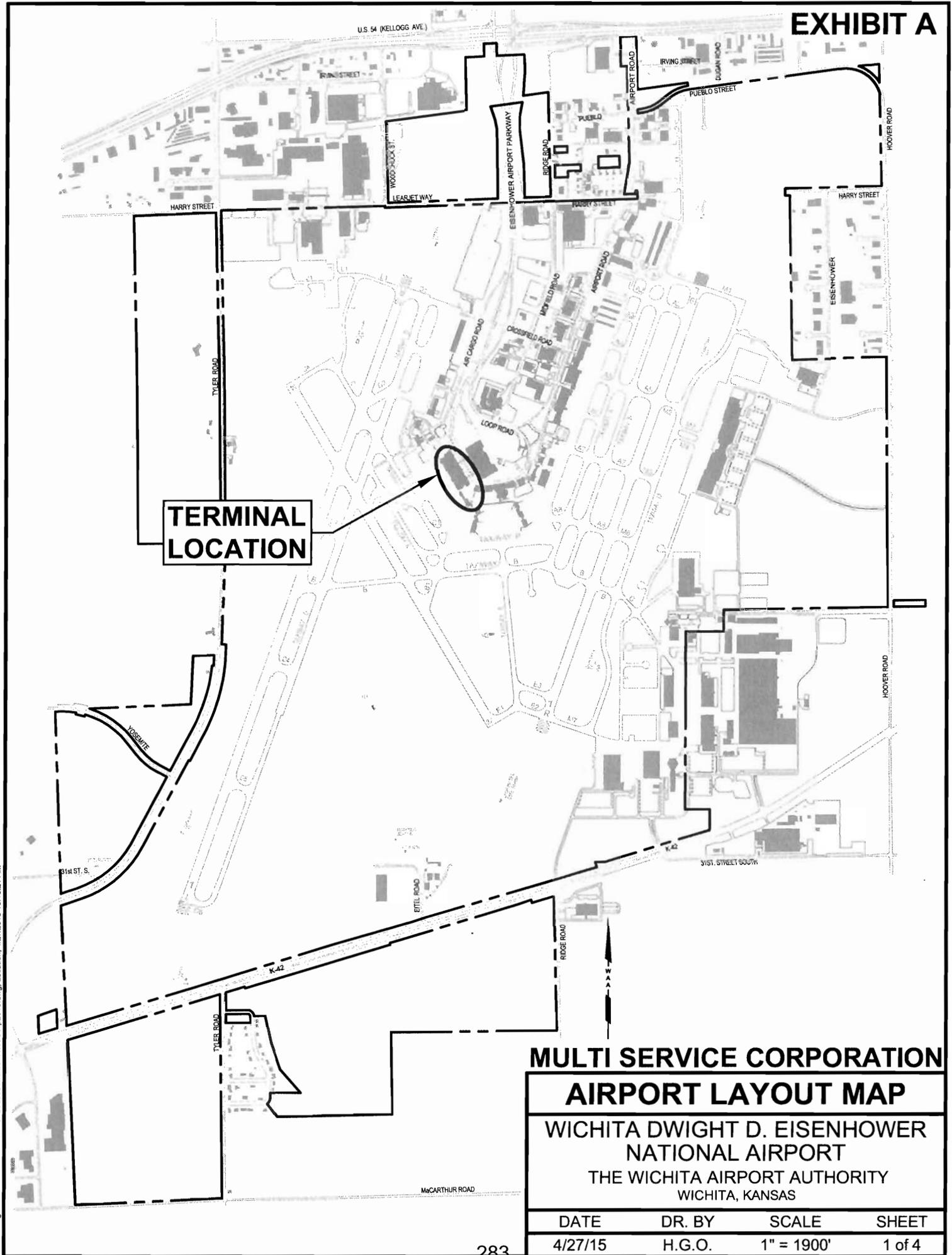
Exhibit B.....Gross Revenue Report

Exhibit C.....Tenant Construction and Alteration Process Manual

(Incorporated by reference)

Exhibit D.....Approved Product Lists

U.S. 54 (KELLOGG AVE.)



**TERMINAL  
LOCATION**

**MULTI SERVICE CORPORATION  
AIRPORT LAYOUT MAP**

WICHITA DWIGHT D. EISENHOWER  
NATIONAL AIRPORT  
THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

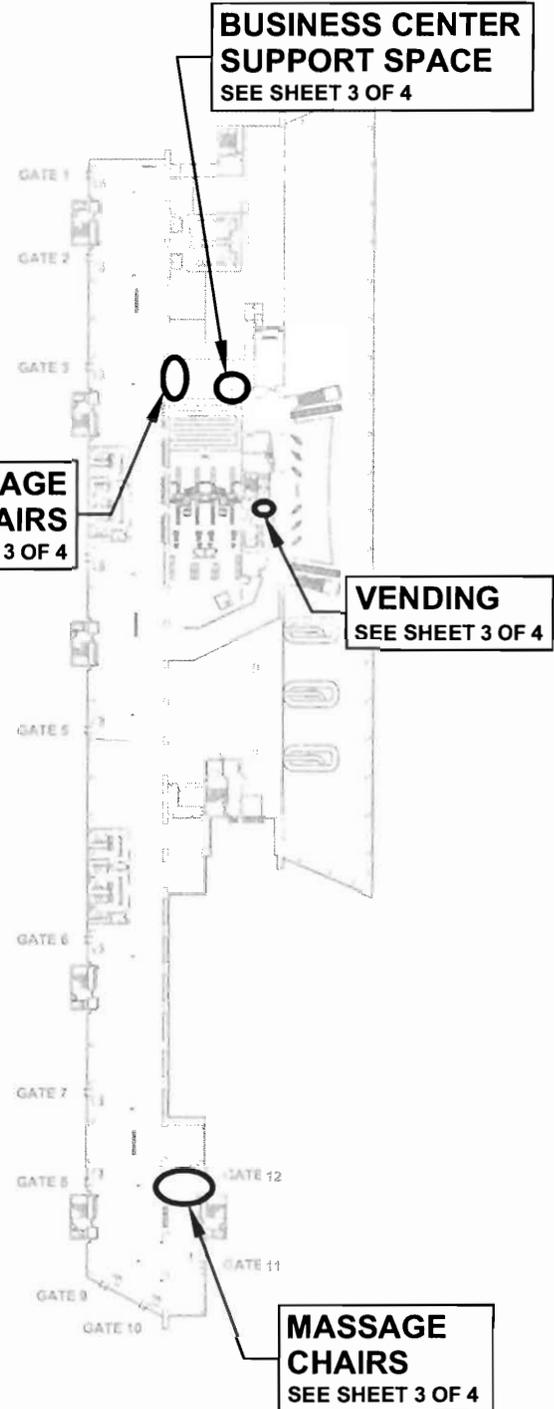
DATE	DR. BY	SCALE	SHEET
4/27/15	H.G.O.	1" = 1900'	1 of 4

# EXHIBIT A



**VENDING**  
SEE SHEET 3 OF 4

**1ST FLOOR**



**BUSINESS CENTER  
SUPPORT SPACE**  
SEE SHEET 3 OF 4

**MESSAGE  
CHAIRS**  
SEE SHEET 3 OF 4

**VENDING**  
SEE SHEET 3 OF 4

**MESSAGE  
CHAIRS**  
SEE SHEET 3 OF 4

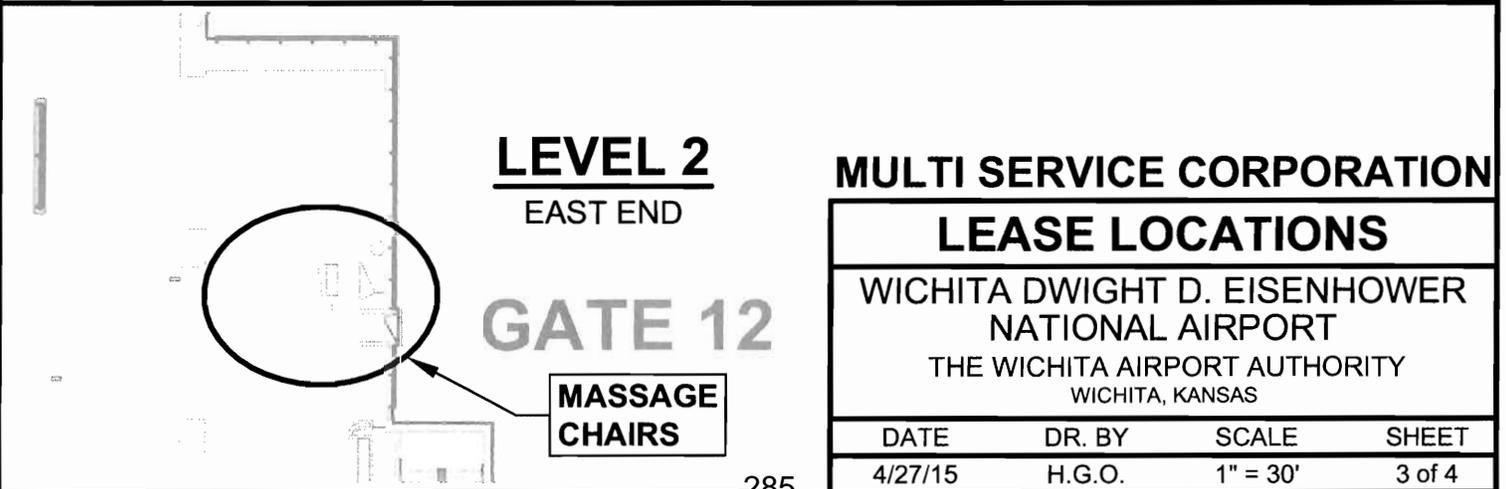
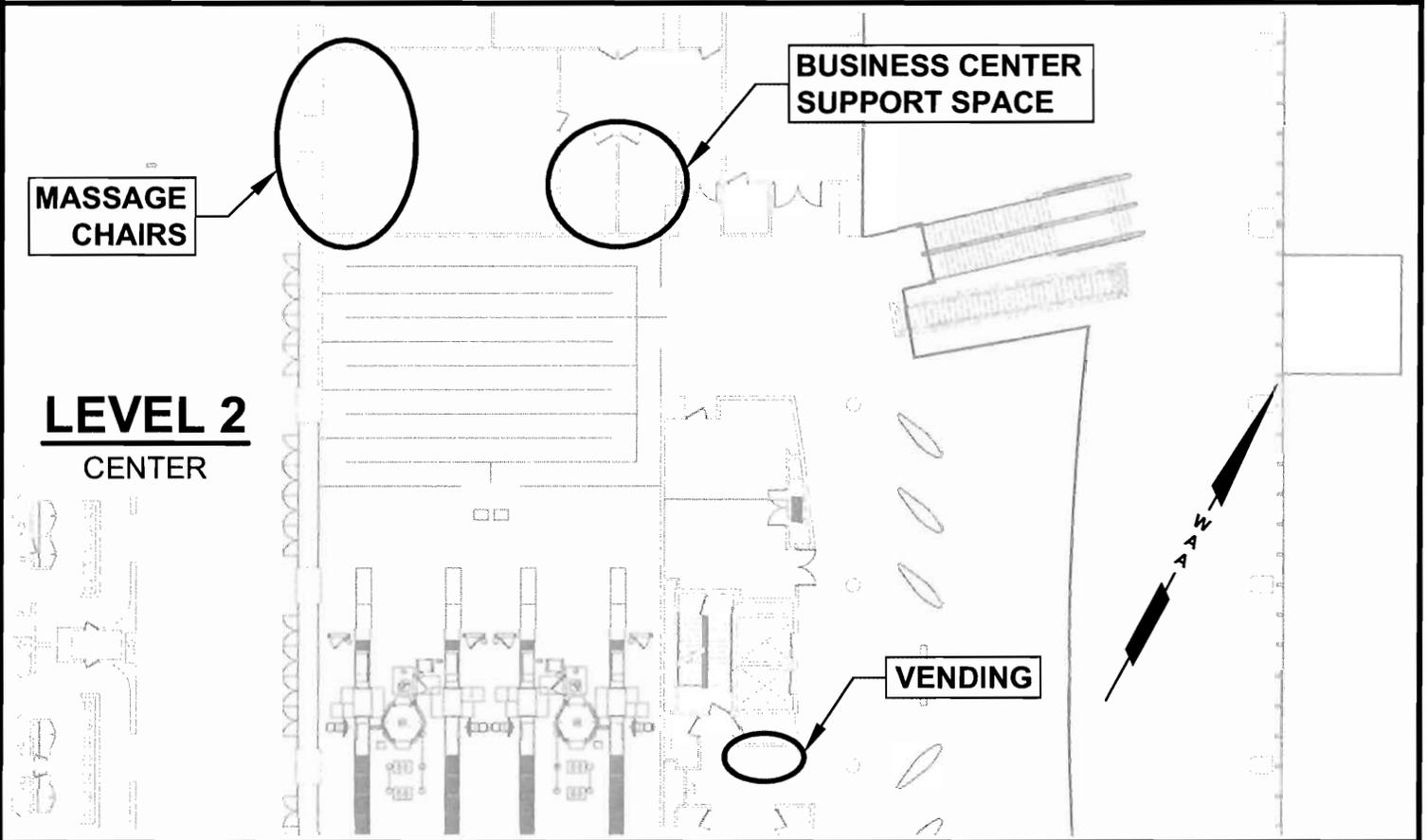
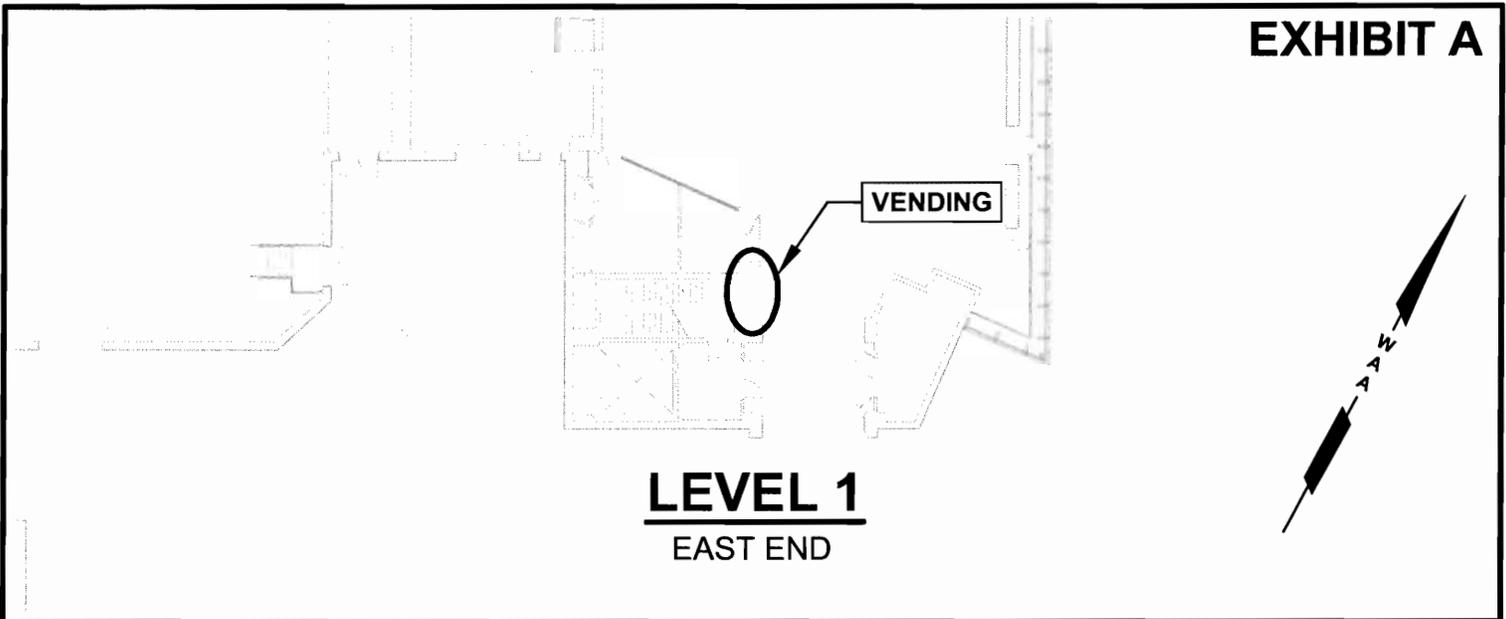
**2ND FLOOR**

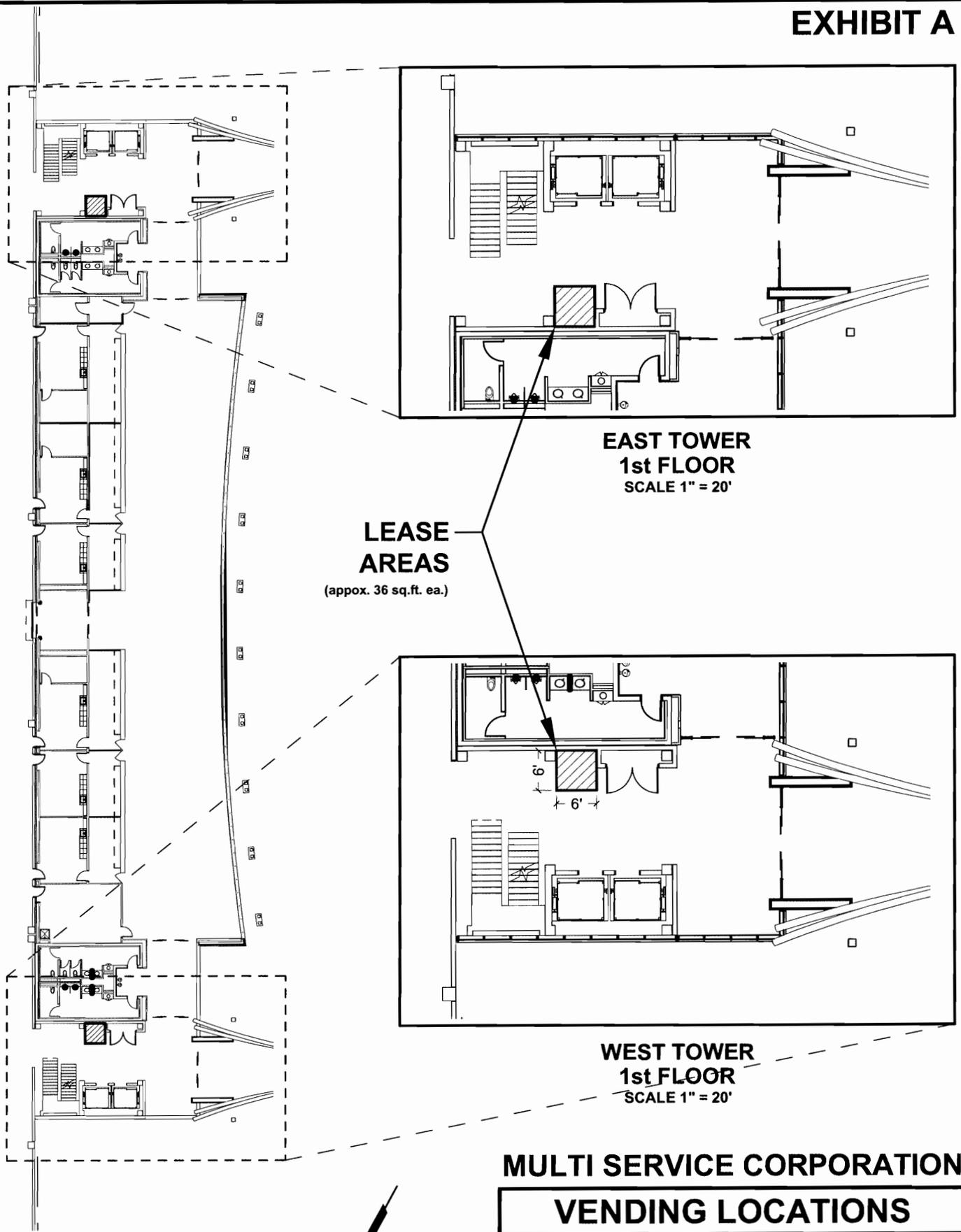


## MULTI SERVICE CORPORATION TERMINAL LAYOUT

WICHITA DWIGHT D. EISENHOWER  
NATIONAL AIRPORT  
THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
4/27/15	H.G.O.	1" = 150'	2 of 4





**LEASE AREAS**  
(approx. 36 sq.ft. ea.)

**EAST TOWER**  
**1st FLOOR**  
SCALE 1" = 20'

**WEST TOWER**  
**1st FLOOR**  
SCALE 1" = 20'

**1st FLOOR LAYOUT**  
SCALE 1" = 40'

**MULTI SERVICE CORPORATION**  
**VENDING LOCATIONS**

WICHITA MID-CONTINENT AIRPORT  
THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
4/26/15		As Noted	4 of 4

D:\Drawings\213-Terminal\214-NEW TERMINAL Under Construction\Packages\Package 10\_Parking\_Garage\Received Drawings\Bid Set 100%\Received 3-27-13 AutoCAD 1st Floor parking\READY-RETURN EXCLUSIVE USE ALLOCATION LOTS\_2014a Leases.dwg, Multi Service, 4/26/2015 11:23:53 PM



<u>Vending Inventory and price list</u>	
<u>Snacks and Beverages</u>	
Carbonated Soda	<b><i>\$1.25-\$3.00</i></b>
Juice	<b><i>\$2.50-\$3.50</i></b>
Energy	<b><i>\$2.25-\$4.00</i></b>
Sport	<b><i>\$2.25-\$4.00</i></b>
Coffee (assorted k-cup)	<b><i>\$1.25-\$3.00</i></b>
Tea	<b><i>\$1.25-\$3.00</i></b>
Water	<b><i>\$2.50-\$3.50</i></b>
Salty Snacks (chips crackers pretzels)	<b><i>\$1.25-\$5.25</i></b>
Assorted mints and Gum	<b><i>\$1.25-\$3.00</i></b>
Sweet Snacks (cookies, choc covered snack)	<b><i>\$1.25-\$5.25</i></b>
Oatmeal	<b><i>\$2.50-\$3.00</i></b>
Pre packaged cold food	<b><i>\$3.50-\$7.99</i></b>
Healthy Alternatives (fruit , yogurt etc)	<b><i>\$1.25-\$7.99</i></b>
Meal Replacement (protein shake, bar)	<b><i>\$3.25-\$8.99</i></b>

Wichita, Kansas  
June 8, 2015  
10:00 a.m., Monday  
Conference Room, 12<sup>th</sup> Floor

MINUTES - BOARD OF BIDS AND CONTRACTS\*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Accountant, Finance, representing the Director of Finance, Elizabeth Goltry, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Zack Daniel Fellow representing the City Manager's Office and Janis Edwards, Deputy City Clerk.

Minutes of the regular meeting dated June 1, 2015, were read and on motion approved.

Bids were opened June 5, 2015, pursuant to advertisements published on:

**WICHITA AIRPORT AUTHORITY/ENGINEERING DIVISION: Existing Terminal Demolition/Reconstruction Apron Phase 4 (Part B).**

Bids rejected

The Purchasing Division recommended that the contracts be rejected as outlined above.

On motion the Board of Bids recommended that the contracts be rejected as outlined above.

On motion the Board of Bids adjourned.

---

Marty Strayer, Administrative Assistant  
Department of Public Works

---

Janis Edwards, CMC  
Deputy City Clerk

**FORMAL BID REPORT**

**TO:** Robert Layton, City Manager

**DATE:** June 8, 2015

**WICHITA AIRPORT AUTHORITY BIDS – VICTOR WHITE, DIRECTOR OF AIRPORTS**

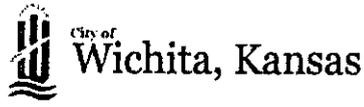
**June 5, 2015**

Existing Terminal Demolition and Reconstruction of Terminal Apron Phase 4 (Part B) – Wichita Airport  
Authority/Engineering Division **(All Bids Rejected)**

**ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.**



Melinda A. Walker  
Purchasing Manager



**BID RESULTS**

[Registration](#)      [Solicitations](#)      [Document Inquiry](#)      [Login](#) - [Help](#)

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

**Vendor Group Line**  
**Solicitation:** Existg Terminal Demo/Reconst Apron Ph      **Close Date/Time:** 6/5/2015 1:00 PM CST  
 FB540085      4B

**Solicitation Type:** Formal Bid      **Return to the Bid List**  
**Award Method:** Aggregate Cost  
**Department:** Airport Engineering      **Responses:** 2

Vendors	Complete	Bid Total	City Comments
KEY CONSTRUCTION INC	Partial	\$20,658,889.73	Corrected Total
UTILITY CONTRACTORS INC	Partial	\$22,981,000.00	Reject All Bids 06/09/2015 Wichita Airport Authority/Engineering Division

NO BIDS WITHIN ENGINEERS ESTIMATE

[Top of the Page](#)

