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City Council Agenda

**City Council Chambers
214 SE 8th Street
Topeka, Kansas 66603**

December 11, 2007
6:00 PM

City Manager: Norton N. Bonaparte, Jr.

Mayor: William W. Bunten

Councilmembers

Lana Kennedy	District No. 1	Deborah Swank	District No. 6
John Alcala	District No. 2	Brett Blackburn	District No. 7
Sylvia E. Ortiz	District No. 3	Jeff Preisner	District No. 8
Jack Woelfel	District No. 4	Richard Harmon	District No. 9
Bill Haynes	District No. 5		

Addressing the Council: No person shall address the Council during a Council Meeting, unless they have notified the City Clerk by 5:00 P.M. on the day of any Council Meeting of their desire to speak on a specific matter on the published meeting agenda or during the public comment portion of the Council Meeting. This limitation shall not apply to items added during the course of a meeting. The Council does not take action with respect to any subject not on the agenda unless added to the agenda by a two-thirds vote of the Council

Persons addressing the City Council will be limited to four (4) minutes of public address on a particular agenda item. Debate, question/answer dialogue or discussion between Councilmembers will not be counted towards the four (4) minute time limitation. The Chair may extend time with the unanimous consent of the Council or the Council by affirmative vote of five (5) members may extend the four (4) minute limitation.

Persons will be limited to addressing the City Council one (1) time on a particular matter unless otherwise allowed by an affirmative vote of five (5) members of the City Council.

Citizens wishing to offer Public Comment may sign up by phoning the City Clerk's office at 368-3940.

(Agendas are available on Thursday afternoon in the City Clerk's office, 215 SE 7th – Room 166 and on the City's web site at <http://www.topeka.org>)

INVOCATION:

PLEDGE OF ALLEGIANCE:

- 1. **PROCLAMATIONS:**
"None scheduled at this time."
- 2. **PRESENTATIONS:**
"None scheduled at this time."
- 3. **ROLL CALL:**
- 4. **CONSENT AGENDA:**

A. Communication - Downtown Business Improvement District Advisory Board

A COMMUNICATION recommending the re-appointment of Jim Parrish to the Downtown Business Improvement District Advisory Board for a term that would expire on December 31, 2009. *(Downtown Business Representative)*

B. Communication - Downtown Business Improvement District Advisory Board

A COMMUNICATION recommending the re-appointment of Gary Yager to the Downtown Business Improvement District Advisory Board for a term that would expire on December 31, 2009. *(Downtown Business Representative)*

C. Communication - Downtown Business Improvement District Advisory Board

A COMMUNICATION recommending the re-appointment of Rick Jackson to the Downtown Business Improvement District Advisory Board for a term that would expire on December 31, 2009. *(Downtown Business Representative)*

D. Communication - Downtown Business Improvement District Advisory Board

A COMMUNICATION recommending the re-appointment of Ed Carmona to the Downtown Business Improvement District Advisory Board for a term that would expire on December 31, 2009. *(Downtown Business Representative)*

E. Communication - Topeka Housing Authority Board of Commissioners

A COMMUNICATION recommending the re-appointment of Frank Ybarra to the Topeka Housing Authority Board of Commissioners for a term that would expire on December 31, 2011. *(Council District No. 8)*

F. MINUTES of the regular meeting of December 4, 2007

G. APPLICATIONS:

5. PUBLIC HEARINGS:

A. Public Hearing and Ordinance - 2007 Operating Budget Amendments

 [ATTACHMENTS](#)

A PUBLIC HEARING for the purpose of hearing and answering objections of taxpayers relating to the proposed amended use of 2007 Operating Budget funds.

AN APPROPRIATION ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the adopted operating budget for the City of Topeka, for the year 2007, and appropriating the amounts for the purpose as set forth therein. First and Final Reading.

(The amendment would authorize transfers of monies from the General Improvement Fund to Capital Projects Funds; and from the Half-Cent Sales Tax Fund to the Bond and Interest Fund. It would also authorize the transfer of up to \$120,000 from the General Fund to the Zoo Fund as a supplement to current revenues for the Zoo Fund.)

6. UNFINISHED BUSINESS:

A. Ordinance - Administrative Hearings for Enforcement and Abatement of Violations

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 112-71 concerning administrative hearings and specifically repealing said original section. Final Reading.

(Establishes an administrative hearing process to address housing code violations.)

B. Project Budget and Ordinance - College Hill Redevelopment District Project No. T861000.00 (HTE 862591)

 [ATTACHMENTS](#)

A PROJECT BUDGET in the amount of \$346,216 and **AN ORDINANCE** introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-861000.00 (HTE 862590), which provides for an additional public parking lot benefiting the College Hill Redevelopment District, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka. Final Reading. *(Council District No. 6)*

(Approval would allow for the construction of 50 additional parking spaces to benefit the College Hill Redevelopment District at SW 16th and Lane Streets.)

7. NEW BUSINESS:

A. Communication - College Hill Redevelopment District Project No. T861000.00 - Washburn-Lane Parkway L.L.C. Developer Agreement

 [ATTACHMENTS](#)

A COMMUNICATION approving the Developer Agreement between the City of Topeka and Washburn-Lane Parkway Renovations, L.L.C., for Project No. T-861000.00 (HTE 862590) and specifically authorizing the City Manager to execute the agreement. *(Council District No. 6)*

(Approval would provide for the construction of 50 additional parking spaces to benefit the College Hill Redevelopment District at SW 16th and Lane Streets.)

B. Communication - College Hill Redevelopment District Improvement Project No. T-861000.00 - Washburn-Lane Parkway L.L.C. Professional Services Agreement

 [ATTACHMENTS](#)

A COMMUNICATION approving an Agreement for Professional Services between the City of Topeka and the Washburn-Lane Parkway Renovations, L.L.C., for Improvement Project No. T-861000.00 (HTE 862590) and specifically authorizing the City Manager to execute the agreement. *(Council District No. 6)*

(Approval would provide for the construction of 50 additional parking spaces to benefit the College Hill Redevelopment District at SW 16th and Lane Streets.)

C. Communication - City of Topeka Street Section Teamsters Local 696 - Labor Agreement

 [ATTACHMENTS](#)

A COMMUNICATION authorizing the City Manager to execute a three-year labor agreement between the City of Topeka and Street Section Teamsters Local No. 696.

(The agreement would be effective retroactive to January 1, 2007 and consist of new Competency Pay Plan (CPP) initial skill level placements, out-year Cost of Living Allowances (COLAs), step increases, and other substantive changes.)

D. Ordinance - Weekly Expenditures - November 19-25, 2007

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of November 19, 2007, through November 25, 2007, and enumerating said expenditures therein. First and Final Reading.

8. ZONING:

A. Ordinance - Fidelity State Bank and Trust Company (Z07/25)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 901 SW Topeka Boulevard from "O&I-2" Office and Institutional District TO "C-2" Commercial District. Final Reading. *(Z07/25) (Council District No. 1) (Planning Commission*

recommended approval 5-2-0.) (Planning Department recommended disapproval.)

(Approval would allow development of the property for neighborhood commercial use.)

B. Ordinance - K-Air, Inc (Z07/26)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 518 and 522 SW 39th Street and property located at the southwest corner of SW Topeka Boulevard and SW 39th Street from “R-1” Single Family Dwelling District TO “C-4” Commercial District. **Final Reading.** (Z07/26) (Council District No. 5) (Planning Commission recommended approval by a vote of 7-0-0.) (Planning Department recommended approval.)

(Approval of the rezoning and corresponding plat would allow the property to develop for an automobile sales lot in conjunction with the vacant properties to the north.)

9. FIRST READINGS:

A. Ordinance - Garfield Community Center Improvement Project No. 30268-00

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30268-00, which provides for a new air conditioning system for the gymnasium at Garfield Community Center, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka. **First Reading.** (Council District No. 2)

(Approval of \$105,300 would provide for the design and construction of a new high efficiency air conditioning system within the gymnasium at Garfield Community Center located at 1600 NE Quincy.)

B. Ordinance - Kansas Medical Mutual Insurance Co., et al (V07E/16)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of a 20-foot utility easement in the Original Town of Topeka and located west of 1021 SW Tyler Street, City of Topeka, Shawnee County, Kansas. **First Reading.** (V07E/16) (Council District No. 1)

(Approval would vacate a 3-foot portion of a utility easement covering the vacated alley for the expansion of an office building.)

C. Ordinance - Little Property Services, Inc. (HL07/07)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as an historic landmark and presently zoned “C-5” Downtown Commercial District and located at 716 and 720 SW Jackson Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. **First Reading.** (HL07/07) (Council District No. 1) (Planning Commission recommended approval by a vote of 6-0-0.) (Landmarks Commission recommended approval by a vote of 6-0-0.) (Planning Department recommended approval.)

(Approval would add historic landmark overlay zoning to the property located at 716 and 720 SW Jackson Street.)

D. Ordinance - Shawnee County Historical Society (HL07/08)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as an historic landmark and presently zoned “M-2” Multiple-Family Dwelling District and located at 1118 SE Madison Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. **First Reading.** (HL07/08) (Council District No. 3) (Planning Commission recommended this proposal be approved by a vote of 6-0-0.) (Landmarks Commission recommended this request be approved by a vote of 5-1-0.) (Planning Department recommended approval.)

(Approval would add historic landmark overlay zoning to the property located at 1118 SE Madison Street.)

10. MISCELLANEOUS:

-

11. PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL:

-

12. PUBLIC COMMENT:

-

13. ADJOURNMENT:

-



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

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DATE: December 11, 2007

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

"None scheduled at this time."

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

"None scheduled at this time."

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 16, 2007

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DATE: December 11, 2007

CONTACT PERSON: Celeste Benton **DOCUMENT #:**

SECOND PARTY/SUBJECT: Downtown Business Improvement District Advisory Board **PROJECT #:**

CATEGORY/SUBCATEGORY 006 Communication / 003 Requests

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION recommending the re-appointment of Jim Parrish to the Downtown Business Improvement District Advisory Board for a term that would expire on December 31, 2009. *(Downtown Business Representative)*

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the re-appointment of Jim Parrish, 3632 SE Tomahawk Dr., to the Downtown Business Improvement District Advisory Board for a two year term that will end December 31, 2009. There is no official attendance policy. Mr. Parrish has attended all meetings.

This is a statutory board wherein the Mayor nominates and Council approves. Statutory boards are not required to submit Statements of Substantial Interest.

There is no city residency requirement only the requirement that nominees be representatives of the businesses located within the district.

BACKGROUND:

KSA 12-1781 et seq. The board submits to the council a recommendation of programs and services to be performed within the district and submits a proposed schedule of fees for assessment on the businesses in the district and may recommend consideration of changes in the boundaries of the district.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

No Attachments Available

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DATE: December 11, 2007

CONTACT PERSON: Celeste Benton **DOCUMENT #:**

SECOND PARTY/SUBJECT: Downtown Business Improvement District Advisory Board **PROJECT #:**

CATEGORY/SUBCATEGORY 006 Communication / 003 Requests

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION recommending the re-appointment of Gary Yager to the Downtown Business Improvement District Advisory Board for a term that would expire on December 31, 2009. *(Downtown Business Representative)*

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the re-appointment of Gary Yager, 3521 SW Lincolnshire Rd., to the Downtown Business Improvement District Advisory Board for a two year term that will end December 31, 2009. There is no official attendance policy. Mr. Yager has missed two meetings.

This is a statutory board wherein the Mayor nominates and Council approves. Statutory boards are not required to submit Statements of Substantial Interest.

Members of the board are required to be representatives of the businesses located within the district.

BACKGROUND:

KSA 12-1781 et seq. The board submits to the council a recommendation of programs and services to be performed within the district and submits a proposed schedule of fees for assessment on the businesses in the district and may recommend consideration of changes in the boundaries of the district.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

No Attachments Available

Item #7



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214 SE 8th Street
Topeka, Kansas 66603

November 16, 2007

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DATE: December 11, 2007

CONTACT PERSON: Celeste Benton **DOCUMENT #:**

SECOND PARTY/SUBJECT: Downtown Business Improvement District Advisory Board **PROJECT #:**

CATEGORY/SUBCATEGORY 006 Communication / 003 Requests

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION recommending the re-appointment of Rick Jackson to the Downtown Business Improvement District Advisory Board for a term that would expire on December 31, 2009. *(Downtown Business Representative)*

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the re-appointment of Rick Jackson, 3511 SW Wanamaker Ct., to the Downtown Business Improvement District Advisory Board for a two year term that will end December 31, 2009. There is no official attendance policy. Mr. Jackson has missed five meetings.

This is a statutory board wherein the Mayor nominates and Council approves. Statutory boards are not required to submit Statements of Substantial Interest.

Members of the board are required to be representatives of the businesses located within the district.

BACKGROUND:

KSA 12-1781 et seq. The board submits to the council a recommendation of programs and services to be performed within the district and submits a proposed schedule of fees for assessment on the businesses in the district and may recommend consideration of changes in the boundaries of the district.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

No Attachments Available

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214 SE 8th Street
Topeka, Kansas 66603

November 16, 2007

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DATE: December 11, 2007
CONTACT PERSON: Celeste Benton
SECOND PARTY/SUBJECT: Downtown Business Improvement District Advisory Board
CATEGORY/SUBCATEGORY: 006 Communication / 003 Requests
CIP PROJECT: No
ACTION OF COUNCIL:
DOCUMENT #:
PROJECT #:
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION recommending the re-appointment of Ed Carmona to the Downtown Business Improvement District Advisory Board for a term that would expire on December 31, 2009. *(Downtown Business Representative)*

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the re-appointment of Ed Carmona, 2621 SE Eveningtide Way, to the Downtown Business Improvement District Advisory Board for a two year term that will end December 31, 2009. There is no official attendance policy. Mr. Carmona has missed two meetings.

This is a statutory board wherein the Mayor nominates and Council approves. Statutory boards are not required to submit Statements of Substantial Interest.

Members of the board are required to be representatives of the businesses located within the district.

BACKGROUND:

KSA 12-1781 et seq. The board submits to the council a recommendation of programs and services to be performed within the district and submits a proposed schedule of fees for assessment on the businesses in the district and may recommend consideration of changes in the boundaries of the district.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

No Attachments Available

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214 SE 8th Street
Topeka, Kansas 66603

November 16, 2007

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DATE: December 11, 2007

CONTACT PERSON: Celeste Benton **DOCUMENT #:**

SECOND PARTY/SUBJECT: Topeka Housing Authority **PROJECT #:**
Board of Commissioners

CATEGORY/SUBCATEGORY 006 Communication / 003 Requests

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION recommending the re-appointment of Frank Ybarra to the Topeka Housing Authority Board of Commissioners for a term that would expire on December 31, 2011. *(Council District No. 8)*

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the re-appointment of Frank Ybarra, 2616 SW Bingham Ct., to the Topeka Housing Authority Board of Commissioners, for a four year term that will end December 31, 2011.

This is a statutory board in which the Mayor nominates and the Council approves nominees. There is no official attendance policy. Mr. Ybarra has missed two meetings.

Members of statutory boards are not required to file a Statement of Substantial Interest.

BACKGROUND:

KSA 17-2341 The Topeka Housing Authority Board of Commissioners plan and study the public housing needs of the city and is the governing board of the Topeka Housing Authority.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

No Attachments Available



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SECOND PARTY/SUBJECT:

PROJECT #:

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CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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**Council Chambers
214 SE 8th Street
Topeka, Kansas 66603**

November 28, 2007

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DATE: December 11, 2007
CONTACT PERSON: Jim Langford
SECOND PARTY/SUBJECT:
CATEGORY/SUBCATEGORY 004 Budgets or Appropriations / 001 Operating Budget - City
CIP PROJECT: No
ACTION OF COUNCIL:
DOCUMENT #:
PROJECT #:
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A PUBLIC HEARING for the purpose of hearing and answering objections of taxpayers relating to the proposed amended use of 2007 Operating Budget funds.

AN APPROPRIATION ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the adopted operating budget for the City of Topeka, for the year 2007, and appropriating the amounts for the purpose as set forth therein. First and Final Reading.

(The amendment would authorize transfers of monies from the General Improvement Fund to Capital Projects Funds; and from the Half-Cent Sales Tax Fund to the Bond and Interest Fund. It would also authorize the transfer of up to \$120,000 from the General Fund to the Zoo Fund as a supplement to current revenues for the Zoo Fund.)

POLICY ISSUE:

Cities are authorized by K.S.A. 79-2929a to amend budgets to spend money not in the original budget. The additional expenditures cannot be financed by additional tax levy. The policy issue is whether to expend the monies as proposed.

STAFF RECOMMENDATION:

Adopt the Ordinance.

BACKGROUND:

The proposed amendment would make technical corrections to reflect transfers from the General Improvement Fund to capital project funds for projects approved by the City Council. The projects include \$50,000 for Zoo Sidewalk Repair; \$50,000 for the 50-50 Sidewalk Program; and \$200,000 for Rehabilitation and Repair of City Facilities.

The amendment would correctly show as a transfer the \$4,389,518 that was transferred from the Half-Cent Sales Tax Fund to the Bond and Interest Fund for payment of debt service on the Topeka Boulevard Bridge Revenue Bond.

The amendment would also transfer up to \$120,000 from the General Fund to the Zoo Fund, so the Zoo Fund will not end the year in deficit. The transfer would provide adequate revenue to offset expenditures from the Zoo Fund.

BUDGETARY IMPACT:

The transfers from the General Improvement Fund and the Half-Cent Sales Tax Fund would have no impact as these

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expenditures were budgeted for, but not shown as transfers in the original budget.

The transfer from the General Fund to the Zoo Fund will be made from the General Fund contingency. It will increase revenue for the Zoo Fund, not authorize additional expenditures. It will not impact the approved expenditure limit for either fund.

SOURCE OF FUNDING:

General Improvement Fund; Half-Cent Sales Tax Fund; and General Fund.

ATTACHMENTS:

[Ordinance to Amend 2007 Budget](#)

[Certificate to Amend w/ Transfers and Fund Summaries](#)

[Public Hearing Notice](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN APPROPRIATION ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. , amending the adopted operating budget for the City of Topeka, for the year 2007, and appropriating the amounts for the purpose as set forth therein and repealing City of Topeka Ordinance No. 18942.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. *Budget incorporated by reference as a part of this ordinance.* The amended operating budget for the City of Topeka, Kansas, for the year 2007 as set forth in a 10 page document in the format prescribed by the Director of Accounts and Reports of the Kansas Department of Administration, as required by law, which has been published in a summary format together with a notice of public hearing, is hereby incorporated by reference as a part of this ordinance with the same force and effect as if it were set forth herein in its entirety.

Section 2. *Budget approved and adopted.* The amended operating budget, as described and incorporated by reference in Section 1 above, is hereby approved and adopted as the amended operating budget for the year 2007.

Section 3. *Funds appropriated by budget.* The amended budget, as approved and adopted herein, shall constitute and shall be declared to be appropriations for the Funds and Departments as set forth therein, and the appropriations thus made shall not be used for any other purpose. No money in any fund shall be used to pay for any indebtedness created in excess of the amount appropriated for such fund or for the departments of such fund as referred to in the operating budget. The appropriations made

herein are for the year 2007 and no expenditures shall be incurred as being authorized by such appropriations prior to January 1, 2007 or subsequent to December 31, 2007.

Section 4. Amendments to the operating budget may be approved by the City Council provided the total adopted budget for any fund shall not be increased except pursuant to the provisions of K.S.A. Section 79-2929a. Adjustments or appropriations between Departments within the same Fund which are less than Fifteen Thousand Dollars (\$15,000.00) total per Department and where conditions indicate that a loss of revenue, damage to city property, impairment of essential services or substantial hardship to a significant segment of the public would likely result, may be approved by the City Manager.

Section 5. City of Topeka Ordinance No. 18942 is hereby specifically repealed.

Section 6. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

AMENDMENT CERTIFICATE

To the Clerk of Shawnee County, State of Kansas

We, the undersigned, duly elected, qualified and acting officers of

THE CITY OF TOPEKA

certify that: (1) the hearing mentioned in the attached publication was held; and (2) after the Budget Hearing this budget was duly approved and adopted as the maximum expenditure and (3) the Amount(s) of 2006 Ad Valorem Tax to be Levied are within statutory limitations for the 2007 Budget.

Page No.	Fund Name		2007 Amended Budget		
		Statutory Authority	Expenditures	Amount of 2006 Ad Valorem Tax	County Clerk's Use Only
Adopted Budget & Financial Statements					
1	Certificate				
2	Schedule of Budgeted Transfers				
3	GENERAL	Administrative; KSA 12-101a	\$ 74,006,268	\$ 11,321,986	
9	GENERAL IMPROVEMENT	Charter Ord. #7; KSA 79-1950a	1,291,912	1,297,310	
10	HALF-CENT SALES TAX	Administrative; Interlocal Agreement	8,870,000	-	
			\$ 84,168,180	\$ 12,619,296	
	Interfund Elimination		4,921,454		
	Total		\$ 79,246,726		

Proof of Publication of Notice of Hearing and Budget Summary

Final Assessed Valuation _____]

State Use Only

Received _____]

Reviewed by _____]

Follow-up: Yes _____ No _____]

Assisted by: _____ N/A

Attest: _____, 2006

City Manager

STATE OF KANSAS
City of Topeka/Shawnee County
2007

SCHEDULE OF 2007 BUDGETED TRANSFERS

Fund Trans From:	Fund Trans To:	2006	2007	Statute
101 GENERAL *	268 ZOO	-	231,936	Charter Ord. #69
230 GENERAL IMPROVEMENT	830-PARK IMPROVEMENTS (Zoo Sidewalks)	-	50,000	KSA 79-2934
230 GENERAL IMPROVEMENT	880-MISC. CAPITAL PROJECTS (50-50 Sidewalk Program)	-	50,000	KSA 79-2934
230 GENERAL IMPROVEMENT	880-MISC. CAPITAL PROJECTS (City wide Facility Repair)	-	200,000	KSA 79-2934
290 HALF-CENT SALES TAX	301-BOND AND INTEREST	933,688	4,389,518	KSA 79-2934
		\$ 933,688	\$ 4,921,454	

**Transfer of \$111,936 approved in Adopted Budget*

*City of Topeka, Kansas**Operating Budget for Fiscal Year 2007**Summary of Resources and Appropriations**General Operating Fund*

Resources and Appropriations	2007 Adopted	2007 Amended	Difference
<u>FUND: GENERAL FUND 101</u>			
FUND BALANCE, BEGINNING	\$ 7,891,659	\$ 7,891,659	\$ -
REVENUE:			
TAXES AND ASSESSMENTS:			
General Property Tax-Current	10,960,296	10,960,296	-
General Property Tax-Delinquent	175,000	175,000	-
NRA Special Fund	(3,623)	(3,623)	-
Motor Vehicle/RV Tax	1,138,989	1,138,989	-
Local Sales Tax	26,970,000	26,970,000	-
Payment in lieu of Debt Service	400,000	400,000	-
PAYMENT IN LIEU OF TAX:			
State of Kansas	-	-	-
IRB Distribution	42,926	42,926	-
Water	2,200,000	2,200,000	-
Water Pollution Control	2,065,000	2,065,000	-
Parking Garages	190,000	190,000	-
Golf Course	3,000	3,000	-
Heartland Park	70,000	70,000	-
Public Housing	-	-	-
Stormwater Utility	460,000	460,000	-
Neighborhood Revitalization Act	-	-	-
Voluntary	-	-	-
TOTAL PAYMENT IN LIEU OF TAX	5,030,926	5,030,926	-
TOTAL TAXES AND ASSESSMENTS	44,671,588	44,671,588	-
INTERGOVERNMENTAL REVENUE:			
Liquor Tax Gross Receipts	450,000	450,000	-
Federal Grants / Police Grants	-	-	-
Shawnee Co/Community Resources Council	51,387	51,387	-
Other	-	-	-

TOTAL INTERGOVERNMENTAL	501,387	501,387	-
TOTAL LICENSES	307,050	307,050	-
TOTAL PERMITS	1,281,000	1,281,000	-
UTILITY FRANCHISE			
Gas Service	3,433,750	3,433,750	-
Electric	4,743,000	4,743,000	-
Southwestern Bell	605,000	605,000	-
Other Telecommunications	50,000	50,000	-
Other	500	500	-
Cablevision	1,304,275	1,304,275	-
TOTAL UTILITY FRANCHISE	10,136,525	10,136,525	-
TOTAL LICENSES, PERMITS & FRANCHISES	11,724,575	11,724,575	-
TOTAL FEES FOR SERVICES	4,449,150	4,449,150	-
MUNICIPAL COURT			
TOTAL MUNICIPAL COURT FINES	2,082,600	2,082,600	-
TOTAL MUNICIPAL COURT COSTS	962,900	962,900	-
TOTAL MUNICIPAL COURT	3,045,500	3,045,500	-
OTHER			
Environmental Code Assessments	100,000	100,000	-
Interest on Investments	614,000	614,000	-
Rents	248,000	248,000	-
Other	98,000	98,000	-
Transfer from Transient Guest Tax	60,000	60,000	-
Transfer from Planning Fund	153,080	153,080	-
Transfer from General Improvement Fund	13,827	13,827	-
Transfer from Worker Comp Fund	435,502	435,502	-
TOTAL OTHER REVENUES	1,722,409	1,722,409	-
Subtotal Revenue	66,114,609	66,114,609	-
TOTAL BALANCE AND REVENUE	74,006,268	74,006,268	-

EXPENDITURES:			
CITY COUNCIL			
Personnel Services	262,528	262,528	-
Contractual Services	46,923	46,923	-
Commodities	3,322	3,322	-
Capital Outlay	-	-	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL CITY COUNCIL	312,773	312,773	-
MAYOR			
Personnel Services	151,285	151,285	-
Contractual Services	27,310	27,310	-
Commodities	4,900	4,900	-
Capital Outlay			-
Net Prior/Current Year Encumbrances			-
TOTAL MAYOR	183,495	183,495	-
EXECUTIVE			
Personnel Services	585,327	585,327	-
Contractual Services	238,089	238,089	-
Commodities	7,400	7,400	-
Capital Outlay	-	-	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL EXECUTIVE	830,816	830,816	-
LEGAL			
Personnel Services	1,265,433	1,265,433	-
Contractual Services	143,261	143,261	-
Commodities	35,000	35,000	-
Capital Outlay	-	-	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL LEGAL	1,443,694	1,443,694	-
FINANCIAL SERVICES			
Personnel Services	1,461,384	1,461,384	-
Contractual Services	363,553	363,553	-
Commodities	14,950	14,950	-
Capital Outlay	-	-	-
Other Financial Uses	-	-	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL FINANCIAL SERVICES	1,839,887	1,839,887	-

MUNICIPAL COURT			
Personnel Services	1,257,703	1,257,703	-
Contractual Services	500,391	500,391	-
Commodities	29,525	29,525	-
Capital Outlay	15,800	15,800	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL MUNICIPAL COURT	1,803,419	1,803,419	-
HUMAN RESOURCES			
Personnel Services	531,260	531,260	-
Contractual Services	284,192	284,192	-
Commodities	19,211	19,211	-
Capital Outlay	-	-	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL HUMAN RESOURCES	834,663	834,663	-
HUMAN RELATIONS COMMISSION			
Personnel Services	239,853	239,853	-
Contractual Services	52,014	52,014	-
Commodities	8,000	8,000	-
Capital Outlay	-	-	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL HUMAN RELATIONS COMMISSION	299,867	299,867	-
POLICE			
Personnel Services	23,052,262	23,052,262	-
Contractual Services	2,885,573	2,885,573	-
Other Payments & costs	1,000	1,000	-
Commodities	1,243,768	1,243,768	-
Capital Outlay	78,900	78,900	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL POLICE	27,261,503	27,261,503	-
FIRE			
Personnel Services	17,408,747	17,408,747	-
Contractual Services	940,253	940,253	-
Commodities	403,716	403,716	-
Capital Outlay	45,000	45,000	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL FIRE	18,797,716	18,797,716	-

PUBLIC WORKS			
Personnel Services	6,591,713	6,591,713	-
Contractual Services	4,222,764	4,222,764	-
Commodities	561,526	561,526	-
Capital Outlay	247,058	247,058	-
Other Financial Uses	(720,316)	(720,316)	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL PUBLIC WORKS	10,902,745	10,902,745	-
METROPOLITAN PLANNING			
Personnel Services	722,158	722,158	-
Contractual Services	174,731	174,731	-
Commodities	9,500	9,500	-
Capital Outlay	500	500	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL PLANNING	906,889	906,889	-
CONTRIBUTIONS TO OTHER AGENCIES			
Jayhawk Area Agency on Aging	27,000	27,000	-
Topeka Cemetery Association	100,000	100,000	-
Keep America Beautiful	15,000	15,000	-
Community Resource Council	102,771	102,771	-
Arts Council of Topeka	-	-	-
Topeka Performing Arts Center	300,000	300,000	-
Shawnee County Family Resource Center	55,000	55,000	-
Youth and Social Services	280,029	280,029	-
Project Health Access	100,000	100,000	-
Battered Women's Task Force	30,000	30,000	-
Safe Streets	-	-	-
Housing and Credit Counseling	78,000	78,000	-
Success by Six	41,545	41,545	-
To Be Distributed by Council	-	-	-
Net Prior/Current Year Encumbrances	-	-	-
TOTAL CONTRIBUTIONS TO AGENCIES	1,129,345	1,129,345	-
MISCELLANEOUS PROVISIONS			
Debt Reduction & Capital Improvement	-	-	-
TOTAL MISCELLANEOUS PROVISIONS	-	-	-

INTERFUND TRANSFERS			
Transfer to Metro Planning Agency	-	-	-
Transfer to Unsafe Structures Fund	200,000	200,000	-
Transfer to Capital Projects	800,000	800,000	-
Transfer to Parks and Recreation Fund	467,032	467,032	-
Transfer to Zoo Fund	111,936	231,936	120,000
Transfer to Risk Mgmt. Reserve Fund	-	-	-
TOTAL INTERFUND TRANSFERS	1,578,968	1,698,968	120,000
MISC NON-DEPARTMENTAL			
Personnel Services	(2,486,540)	(2,486,540)	-
Contractual Services	301,350	301,350	-
Downtown Topeka Inc.	125,000	125,000	-
Care of Prisoners	900,000	900,000	-
Other Payments and Costs	20,000	20,000	-
NRA Rebate	216,019	216,019	-
Commodities	13,000	13,000	-
Capital Outlay & Reserve	-	-	-
Miscellaneous (Contingency)	6,791,659	6,671,659	(120,000)
Net Prior/Current Year Encumbrances	-	-	-
TOTAL MISC NON-DEPARTMENTAL	5,880,488	5,760,488	(120,000)
TOTAL GENERAL FUND EXPENDITURES	74,006,268	74,006,268	-
RESIDUAL EQUITY TRANSFER IN (OUT)	-	-	-
OPERATING TRANSFERS OUT	-	-	-
LESS: RESERVES	-	-	-
FUND BALANCE, ENDING	\$ -	\$ -	\$ -
PROVISION FOR DELINQUENCIES	361,690	361,690	-
TOTAL TAX TO BE LEVIED	\$11,321,986	\$11,321,986	\$ -

City of Topeka, Kansas Operating Budget for Fiscal Year 2007*Summary of Resources and Appropriations**Special Revenue Funds*

Resources and Appropriations	2007 Adopted	2007 Amended	Difference
<u>FUND: GENERAL IMPROVEMENT 230</u>			
FUND BALANCE, BEGINNING	\$ 18,616	\$ 18,616	\$ -
REVENUE:			
General Property Tax-Current	1,255,866	1,255,866	-
General Property Tax-Delinq	15,500	15,500	-
NRA Special Fund	(52)	(52)	-
Motor Vehicle/RV Tax	16,369	16,369	-
Miscellaneous Interest	-	-	-
IRB Distribution	613	613	-
Subtotal Revenue	1,288,296	1,288,296	-
TOTAL BALANCE AND REVENUE	1,306,912	1,306,912	-
EXPENDITURES:			
PERSONNEL SERVICES			-
CONTRACTUAL SERVICES	100,000	100,000	-
OTHER PAYMENTS AND COSTS			-
NRA Rebate	3,085	3,085	-
COMMODITIES			-
CAPITAL OUTLAY	900,000	-	(900,000)
MISCELLANEOUS (Contingency)	-		-
TOTAL EXPENDITURES	1,003,085	103,085	(900,000)
OPERATING TRANSFERS IN			
OPERATING TRANSFERS OUT (General Fund)	13,827	13,827	-
OPERATING TRANSFERS OUT (Capital Project)		900,000	900,000
OPERATING TRANSFERS OUT (HOME Grant)	275,000	275,000	-
NET OPERATING TRANSFERS	\$ 288,827	\$ 1,188,827	900,000
UNAPPROPRIATED FUND BALANCE, END	\$ 15,000	\$ 15,000	-
PROVISION FOR DELINQUENCIES	\$ 41,444	\$ 41,444	
TOTAL TAX TO BE LEVIED	\$ 1,297,310	\$ 1,297,310	-

*City of Topeka, Kansas**Operating Budget for Fiscal Year 2007**Summary of Resources and Appropriations**General Operating Fund*

Resources and Appropriations	2007 Adopted	2007 Amended	Difference
<u>FUND: Half-Cent Sales Tax Fund 290</u>			
FUND BALANCE, BEGINNING	\$ -	\$ -	\$ -
Half-Cent County Sales Tax	8,870,000	8,870,000	-
Interest			
	8,870,000	8,870,000	-
TOTAL BALANCE AND REVENUE	8,870,000	8,870,000	-
EXPENDITURES:			
TRANSFER TO JEDO	8,870,000	4,480,482	(4,389,518)
TRANSFER TO WATER			
TRANSFER FOR TRAFFICWAY PROJECTS			
TRANSFER TO BOND AND INTEREST		4,389,518	4,389,518
TOTAL EXPENDITURES	8,870,000	8,870,000	-
RESIDUAL EQUITY TRANSFER IN (OUT)			
FUND BALANCE, ENDING	\$ -	\$ -	\$ -

NOTICE OF BUDGET HEARING AMENDING THE 2007 BUDGET

The governing body of the CITY OF TOPEKA, KANSAS will meet on the 11th day of December, 2007 at 6:00 pm,
at the CITY COUNCIL CHAMBERS at 214 E. Eighth Street, for the purpose of hearing and answering
objections of taxpayers relating to the proposed amended use of funds.

Detailed budget information is available at OFFICE OF THE CITY MANAGER, CITY HALL and will be available at this hearing.

BUDGET SUMMARY

The amendments would authorize transfers from the General Improvement Fund to Capital Projects; from the Half-Cent Sales Tax Fund to the Bond and Interest Fund; and from the General Fund to the Zoo Fund.

Fund	Adopted Budget 2007			Proposed Amendment 2007
	Actual Tax Rate	Amount of Ad Valorem Tax	Expenditures	Expenditures
General	11.044	\$11,321,986	\$74,006,268	\$74,006,268
General Improvement	1.266	\$1,297,310	\$1,291,912	\$1,291,912
Half-Cent Sales Tax	--	\$0	\$8,870,000	\$8,870,000

By Order of the governing Body:

City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 20, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: Mike McGee **DOCUMENT #:**

SECOND PARTY/SUBJECT: Ordinance - Administrative Hearings for Enforcement / Abatement of Violations **PROJECT #:**

CATEGORY/SUBCATEGORY: 013 Ordinances - Codified / 002 Administration

CIP PROJECT: No

ACTION OF COUNCIL: First Reading. 12/04/07 **JOURNAL #:** 07

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 112-71 concerning administrative hearings and specifically repealing said original section. Final Reading.

(Establishes an administrative hearing process to address housing code violations.)

POLICY ISSUE:

City of Topeka Code 112-71 outlines procedure for designation of hearing officer and penalty for failure to comply with administrative order.

STAFF RECOMMENDATION:

Approve and Adopt

BACKGROUND:

The current process to correct housing violations requires the use of Municipal Court for violators who do not correct the noted deficiencies after proper notification. Unfortunately the authority of the court is limited to fines or jail. The court cannot order someone to correct their property deficiencies. Many housing violators are owner/residents who simply do not have the financial capability to correct the problems that reduce the value of the property and create eyesores within the neighborhood. Fines and or jail time will not correct the problems in most cases and outstanding warrants for no shows in court continue to be a problem as well. Thus a new approach is needed. After consultation with the Municipal Court Judge and legal staff, it was concluded that we should pursue violators through an administrative process using the Administrative Hearing Officer (AHO) and an evening court type setting to improve attendance. The AHO is better equipped to develop solutions by working with the property owner given the particular circumstances surrounding the property owners financial and physical capabilities to correct the property deficiencies. This ordinance change is required so that attendance at an administrative hearing can be ordered. The capability does not currently exist in the property maintenance code. While moving to an administrative hearing process will certainly not guarantee the correction of every housing violation, it will reduce the backlog in the court and facilitate a more open working relationship with the property owner. Habitual violators or others who simply defy the violation notice but have the capability to correct the deficiency remain as candidates for Municipal Court action.

BUDGETARY IMPACT:

None for this action

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code § 112-71 concerning administrative hearings and specifically repealing said original section.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That City of Topeka Code Chapter 112, Division 5, Appeal Procedures, is hereby amended to read as follows:

Division 5

Appeal Procedures~~Administrative Hearings~~

Section 2. That City of Topeka Code § 112-71, Designation of hearing officer; procedures, penalty for failure to comply with administrative order, is hereby amended to read as follows:

Designation of hearing officer; procedures, penalty for failure to comply with administrative order.

(a) For purposes of this article, the city shall designate an administrative hearing officer who shall have the duty and authority to hear and enter such administrative orders as are necessary to the enforcement of this chapter.

(b) The owner, occupant, PUC or agent may request an administrative hearing within the time specified in the notice of violation. Additionally, the public works director may request an administrative hearing to seek enforcement or abatement of violations contained in the notice of violation. The administrative hearing officer shall schedule a hearing within three (3) working days of receipt of the hearing request. Written notice of the hearing date and time shall be provided to the person requesting

the hearing as well as the other party by first class mail. At the hearing, the owner, occupant, PUC or agent shall be given the opportunity to present information relevant to the violation notice. The public works director also shall be given the opportunity to present information relevant to the violation notice. The hearing may be continued to a later time in exceptional cases where additional information is needed, as determined by the hearing officer.

(c) The administrative hearing officer shall review the notice of violation and all relevant information. If the hearing officer determines after such review that: 1) a violation exists; 2) no request for a hearing has been made by the owner, occupant, PUC or taxpayer/agent; and 3) the condition remains unabated, then the hearing officer shall enter an administrative order. The administrative order shall contain: (1) a finding of whether the city properly sent notice to the owner, occupant, PUC or agent in accordance with provisions herein; (2) a finding of the violation conditions which exist; (3) the failure of the owner, occupant, PUC or agent to abate or otherwise remove the violated conditions and (4) an administrative monetary penalty for failure to correct the violations.

(d) If, after any order of the administrative hearing officer has become final, the person to whom such order is directed shall fail, neglect, or refuse to obey such order, the public works director may cause such person to be prosecuted in Municipal Court for violations of this chapter.

(e) The administrative hearing officer shall provide the option of daytime or telephone evening administrative hearing times.

(f) The administrative hearing officer may grant variances from the provisions of this chapter or from applicable rules and regulations issued by the public works director when not inconsistent with the intent of this chapter.

Section 3. That original City of Topeka Code § 112-71 is hereby specifically repealed.

Section 4. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 16, 2007

+ Back Print

DATE:	December 11, 2007		
CONTACT PERSON:	Jeff Hunt	DOCUMENT #:	
SECOND PARTY/SUBJECT:	College Hill Parking Lot	PROJECT #:	T861000.00 (HTE 862590)
CATEGORY/SUBCATEGORY	014 Ordinances – Non-Codified / 004 Public Improvements		
CIP PROJECT:	Yes		
ACTION OF COUNCIL:	First Reading 11/27/07	JOURNAL #:	07
		PAGE #:	

DOCUMENT DESCRIPTION:

A PROJECT BUDGET in the amount of \$346,216 and AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-861000.00 (HTE 862590), which provides for an additional public parking lot benefiting the College Hill Redevelopment District, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka. Final Reading. (Council District No. 6)

(Approval would allow for the construction of 50 additional parking spaces to benefit the College Hill Redevelopment District at SW 16th and Lane Streets.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Adopt the Project Budget.
Approve the Ordinance as presented.

BACKGROUND:

This project is listed in the 2007 Capital Improvement Program. It will provide 50 additional parking spaces to serve the College Hill redevelopment area. The project will include asphalt pavement, concrete curb and gutter, sidewalk, storm drainage facilities, engineering, and all other appurtenances needed to complete the project.

BUDGETARY IMPACT:

Project Budget: \$346,216.00

2007 CIP amount: \$291,000.00

Developer: \$55,216.00

The annual debt service for the General Obligation bonds is estimated at \$25,541 for 20 years, totaling \$510,827. Payments will be made from the Bond and Interest Fund.

SOURCE OF FUNDING:

General Obligation Bonds: \$291,000.00

Item #15

Washburn-Lane Parkway Renovations, LLC: \$55,216.00

ATTACHMENTS:

[Debt Service](#)

[Vicinity Map](#)

[Final Project Budget](#)

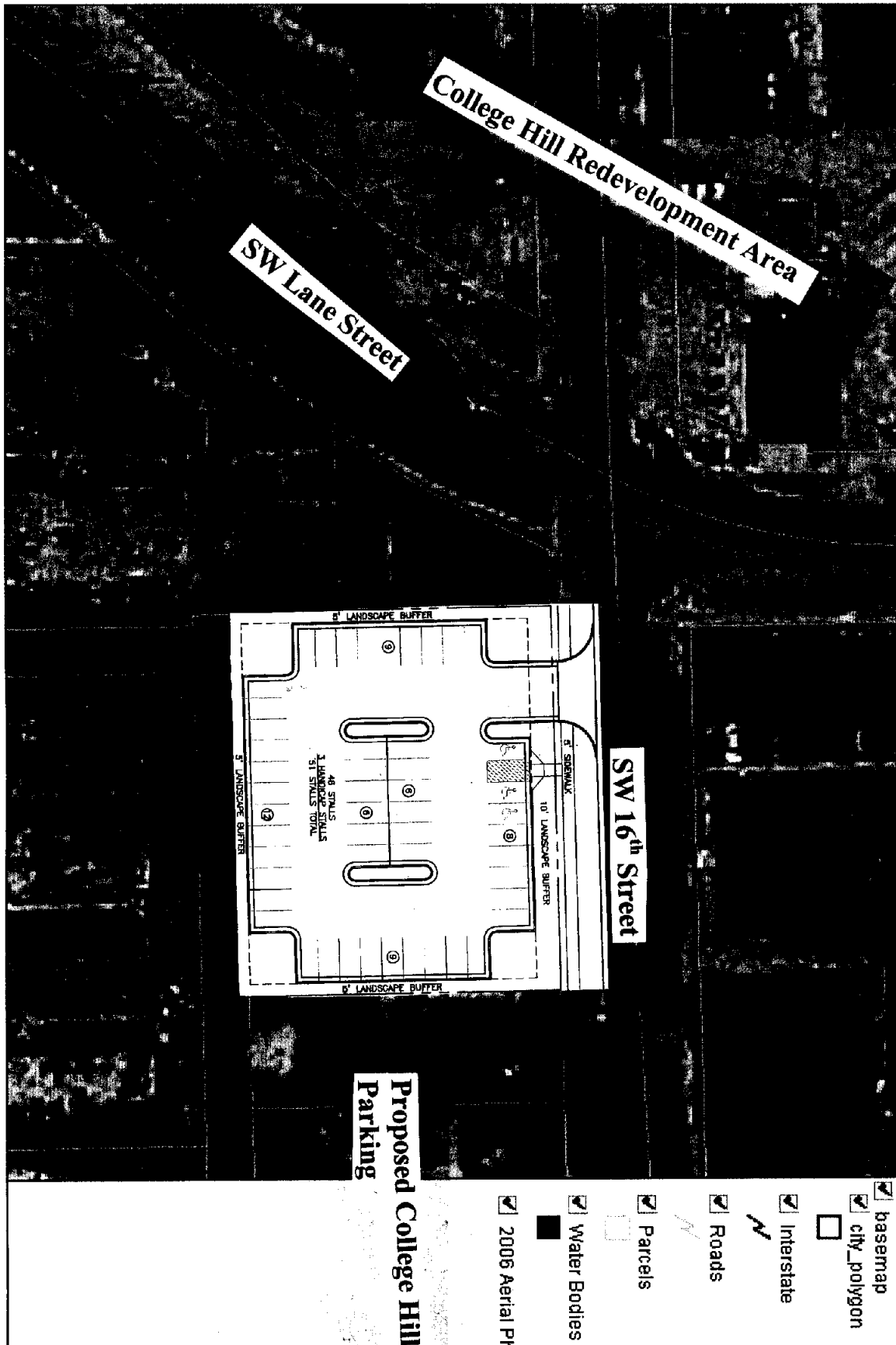
[Ordinance](#)

GO Bond Cost of Project

PROJECT: T 861000-00

Interest rate	5.25%
Number of Years	20
Cost of Issuance	2.00%
Temp Note interest	5.000%
Principal (project cost)	<u>\$291,000</u>
Plus Temp Note Interest (unless included in Principal)	<u>\$14,550</u>
Subtotal	\$305,550
Plus Cost of Issuance	<u>\$6,111</u>
Total	\$311,661
Annual Debt Service	\$25,541
Annual Debt Service as Percent of Total	8.2%
Total Debt Service (principal and interest)	\$510,827
Difference Project Cost and Total Debt Service	\$219,827
GO Bonded Indebtedness as of January 2007	\$165,635,000
2006 Temporary Notes that Finance Future GO Bond projects	\$11,470,000
Approved, not Included in GO Bond Issue or Temporary Notes--City Projects	\$10,976,214
Approved, not Included in GO Bond Issue or Temporary Notes--Special Assessment Projects	<u>\$2,552,885</u>
Total Indebtedness	<u><u>\$190,634,099</u></u>
Plus Project	\$190,945,760

PROJECT NO. T 861000-00



PROJECT BUDGET

Project No. T 861000-00

Additional Parking Lot for the College Hill Development

LOCATION:

The parking lot will be located at the property address of 1325 SW 16th Street, generally located at SW 16th and Lane Street.

INSERT MAP

DESCRIPTION OF PROJECT:

This project will provide 50 additional parking spaces to serve the College Hill redevelopment area. The project will include asphalt pavement, concrete curb and gutter, sidewalk, storm drainage facilities, engineering, and all other appurtenances needed to complete the project.

SOURCE OF FUNDS:

This project will be paid from City of Topeka General Obligation Bonds.

The other Funding Source will be provided by the College Hill Developers as stated in the Developer agreement.

COST ESTIMATE:

	City of Topeka	Other Funding Source	Total
Construction:	\$129,612.00	\$0.00	\$129,612.00
Design/Survey	\$0.00	\$14,350.00	\$14,350.00
Construction Service Fees:		\$0.00	\$0.00
<i>Construction Staking (5%)</i>	\$0.00	\$0.00	\$0.00
<i>Construction Inspection (8%)</i>	\$5,000.00	\$0.00	\$5,000.00
<i>City of Topeka Admin. (2%)</i>	\$2,000.00	\$0.00	\$2,000.00
<i>Capital Planning Fund Reim.</i>	\$0.00	\$0.00	\$0.00
<i>Geotechnical Report</i>	\$0.00	\$0.00	\$0.00
Right-of Way Acquisition:	\$0.00	\$0.00	\$0.00
Property Acquisition	\$136,288.00	\$40,866.00	\$177,154.00
Contingency Amount:	\$5,000.00	\$0.00	\$5,000.00
Temporary Notes:	\$13,100.00	\$0.00	\$13,100.00
Total:	\$291,000.00	\$55,216.00	\$346,216.00

PUBLIC HEARING:

PROJECT AUTHORITY:

- a. Statutes: _____
- b. Capital Budget Year.: _____
- c. Improvement District: _____
- d. City at Large: _____
- e. Method of Assessment: _____

PROJECT ENGINEER:

Jeff Hunt

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-861000.00 (862590), which provides for an additional public parking lot benefiting the College Hill Redevelopment District, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That it is hereby deemed advisable and necessary and is also hereby authorized, pursuant to Section A12-1 of the Code of the City of Topeka that the following public improvement be made:

A. GENERAL NATURE OF IMPROVEMENT:

This project will construct a public parking lot which will provide 50 additional parking spaces to benefit the College Hill Redevelopment District. The project will include asphalt pavement, concrete curb and gutter, sidewalk, storm drainage facilities, engineering, and all other appurtenances needed to complete the project.

B. TOTAL PROJECT BUDGET COST:

\$346,216.00

C. SOURCE OF FUNDS:

City of Topeka General Obligation Bonds or any legally available funds	\$291,000.00
Washburn-Lane Parkway Renovations, LLC	<u>\$ 55,216.00</u>
TOTAL	\$346,216.00

Section 2. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

41 PASSED and APPROVED by the City Council_____.

42 CITY OF TOPEKA, KANSAS

43

44

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46 ATTEST: _____
William W. Bunten, Mayor

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48

49

50

51 _____
Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 20, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: Jeff Hunt **DOCUMENT #:**

SECOND PARTY/SUBJECT: Developer Agreement/Washburn-Lane Parkway Renovations, LLC **PROJECT #:** T-861000.00 (HTE 862590)

CATEGORY/SUBCATEGORY: 006 Communication / 005 Other

CIP PROJECT: Yes

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION approving the Developer Agreement between the City of Topeka and Washburn-Lane Parkway Renovations, L.L.C., for Project No. T-861000.00 (HTE 862590) and specifically authorizing the City Manager to execute the agreement. *(Council District No. 6)*

(Approval would provide for the construction of 50 additional parking spaces to benefit the College Hill Redevelopment District at SW 16th and Lane Streets.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Adopt the Communication and authorize City Manager to execute the developer agreement as presented.

BACKGROUND:

This project will provide 50 additional parking spaces to serve the College Hill Redevelopment area. The project will include asphalt pavement, concrete curb and gutter, sidewalk, storm drainage facilities, engineering, and all other appurtenances needed to complete the project.

BUDGETARY IMPACT:

Project Budget: \$346,216.00

SOURCE OF FUNDING:

General Obligation Bonds: \$291,000.00

Washburn-Lane Parkway Renovations, LLC: \$55,216.00

Item #16

ATTACHMENTS:

CONTRACT FOR DEVELOPMENT AND
SALE OF PUBLIC PARKING LOT

CITY OF TOPEKA CONTRACT NO. _____

THIS CONTRACT, made and entered into this _____ day of _____, 2007, by and between the City of Topeka, Kansas, a Kansas municipal corporation of Shawnee County, Kansas, hereinafter referred to as the "City," and Washburn-Lane Parkway Renovations, LLC, a Kansas limited liability company with its principal offices in Topeka, Kansas, hereinafter referred to as the "Developer."

WHEREAS, the City desires to acquire, own and operate a public parking lot in the City of Topeka; and

WHEREAS, the City and the Developer desire to enter into a detailed agreement as to the responsibilities and obligations of each as the same relates to the development by the Developer of the public parking lot.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein made and other good and valuable considerations, the sufficiency and receipt of which is hereby acknowledged by each party, the parties do hereby mutually agree as follows:

1. DEFINITIONS.

Unless otherwise specified in this Contract, the following terms as used in this Contract shall have these meanings or definitions:

a. *City's Other Direct Costs* shall mean the City's actual costs for this Project including but not limited to the costs of construction inspection, and administrative services.

b. *Commencement Date* shall mean the date on which all of the

Conditions have been met and satisfied (or waived) and the Developer is to commence construction of the public parking lot project.

c. *Conditions* shall mean all conditions precedent and other requirements or contingencies which must be met and satisfied (or waived) before this Contract shall become binding and effective upon the City and the Developer.

d. *Engineer* shall be the duly licensed engineer firm selected by the Developer to design the public parking lot and prepare the Final Plans and specifications.

e. *Final Completion* shall be the consummation of the transaction contemplated by this Contract accomplished by completion of the Public Parking Lot Project by the Developer and payment by the City to the Developer of the balance of the Purchase Price.

f. *Final Plans* shall mean the engineering designs, plans and construction and materials specifications for the construction of the Public Parking Lot Project to be prepared at the direction of the Developer through the Engineer and other duly licensed and qualified professionals, and sufficient under generally accepted construction standards and practices.

g. *Initial Payment* shall be the payments towards the Purchase Price in the total amount of fifty thousand dollars (\$50,000.00) to be made by the City to the Developer at the time of conveyance of the Site to the City. After Developer has obtained the appropriate zoning for the site and the City has approved Final Plans.

h. *Professional Services Agreement* shall set forth the duties and

responsibilities of the Developer for the preliminary and final design and construction of the Public Parking Lot Project which agreement shall be executed by the Parties concurrently with this Contract.

i. *Public Parking Lot Project* shall mean the Site as improved with the parking lot.

j. *Purchase Price* shall mean the actual amount to be paid by the City to the Developer to develop the Public Parking Lot in an amount not to exceed two hundred ninety-one thousand dollars (\$291,000.00) less City's Other Direct Costs and Temporary Finance Costs. The Purchase Price will include acquisition of the Site, preliminary and final design, plans, engineering, regulatory permits, demolition, debris removal and disposal, site environmental remediation, construction, construction inspection, special inspections, construction management, all construction and other costs normally associated with a project of this type not specifically excluded herein.

k. *Site* shall mean the Real Property located at 1325 SW 16th Street and more specifically described as Lot 219, Oakley's Subdivision in the City of Topeka, Kansas combined, and upon which the Public Parking Lot Project is to be constructed by the Developer.

l. *Temporary Finance Costs* shall mean the City's cost of money or interest it pays on the Initial Price from the date of the Initial Payment until the date the City issues its general obligation bonds to receive the bond proceeds to cover the costs of the Public Parking Lot Project.

m. *Washburn-Lane* shall mean Washburn-Lane Parkway Renovations, LLC, a Kansas limited liability company.

2. CONVEYANCE OF SITE.

Upon the satisfaction of all Conditions under section 5, the Developer shall execute and deliver to the City a good and sufficient general warranty deed, by which the Site is conveyed to the City subject to the Permitted Title Exceptions (as that term is defined in section 8.3). Each such general warranty deed shall be acceptable in form and substance to the City's legal counsel.

Prior to conveyance of the Site to the City, the Developer agrees to raze and demolish all buildings and other improvements situated on the Site. The Site shall be conveyed to the City free of any contamination by hazardous or toxic wastes or substances at levels or concentrations exceeding those permitted by applicable laws and regulations or any other noncompliance with applicable environmental laws and regulations, and the Developer will cause there to be delivered Phase I environmental assessments of the Site prepared by certified environmental engineers or inspectors and reporting the properties free of environmental defects. A Phase II environmental assessment shall be provided by the Developer if recommended by the Phase I assessment.

After conveyance of the Site to the City, Developer shall construct, erect, and install the Public Parking Lot Project through good and reputable contractors selected by the Developer, in accordance with the Plans and the other terms and conditions of this Contract.

3. GENERAL DESIGN.

The Developer agrees to design and construct the Public Parking Lot Project, which will include a Public Parking Lot which will be owned by the City providing for not less than fifty (50) public parking stalls.

4. PURCHASE PRICE.

4.1 Calculation of Purchase Price.

The Purchase Price shall be composed of the estimated actual construction cost. The estimated actual construction costs shall be itemized and submitted to the City on AIA Documents G702 and G703.

4.2 Manner of Payments.

The Purchase Price shall be paid by City to Developers as follows:

a. The Initial Payment will be the sum of fifty thousand dollars (\$50,000.00) upon the Developer's conveyance of the Site to the City, at the time and in accordance with sections 2 and 5 of this Contract; and

b. A final Progress Payment in the amount of two hundred forty-one thousand dollars (\$241,000.00) shall be made subject to final adjustment for the City's Other Direct Costs and Temporary Finance Costs to the Developer upon Final Completion and after receipt of exact lien waivers from all of Developer's suppliers, contractors, and subcontractors.

4.3 Audit and Review.

After Final Completion and prior to final payment the Developer shall make all financial books and records relating to the Public Parking Lot Project available to the City for a final audit and review of all payments and expenditures.

5. CONDITIONS PRECEDENT.

The City and the Developer acknowledge and agree that no payments shall be made under this Contract unless and until each of the following of the Conditions shall have been met, satisfied or waived, as the case may be:

5.1 Construction Plans.

The Developer shall have caused the Final Plans to be prepared no later than thirty (30) days from the date of this Contract by the engineers and delivered to the City for the review and approval by the City through its public works director within fifteen (15) days after receipt of the same. The Final Plans shall reflect the dimensions of the parking lot, location of all stalls, drainage, access, surface, curb and gutter and landscaping. At such time as the City has approved all of the Final Plans, the same shall be initialed and approved by an authorized representative of each party and a complete set delivered to each party.

5.2 Zoning.

The Developer shall obtain approval of the City Council of the zoning classification or conditional use permit to allow for development and use of the site as a public parking lot.

5.3 Professional Services Agreement.

The City and the Developer shall concurrently with this Contract enter into a written agreement regarding the Developer's provision of professional design, construction management and construction inspection services, and regarding general conditions of construction, which agreement shall be in form and substance satisfactory to each party and not inconsistent with the terms of this Contract and the Final Plans.

6. CITY COUNCIL APPROVAL.

City and Developer acknowledge that this Contract shall not become effective until the City Council approves an ordinance approving the Public Parking Lot Project authorizing a project budget in the amount of three hundred forty-six thousand two hundred sixteen dollars (\$346,216.00). The total amount of the project budget shall be

apportioned two hundred ninety-one thousand dollars (\$291,000.00) to the City and fifty-five thousand two hundred sixteen dollars (\$55,216.00) to the Developer.

7. CONSTRUCTION DETAILS.

7.1 General Requirements.

The Developer agrees that the Public Parking Lot Project shall be constructed in a good and workmanlike manner, using quality materials, and in strict conformity with the Final Plans (as the same may be modified from time to time by written change orders signed by both the Developer and the City), and in compliance, with all applicable zoning, building, fire, and safety codes and the ADA.

7.2 Commencement and Completion; Force Majeure.

The Developer shall cause construction of the Project to be commenced as soon as practical on or after the Commencement Date and as weather and soil conditions permit. The Developer shall cause its contractors to diligently pursue the construction of the Project until completion. Construction of the Project shall be substantially completed by the Developer no later than one hundred fifty (150) calendar days following the Commencement Date, which period will be extended by the number of days construction is delayed by reason of inclement weather, labor strike, riot or civil commotion, war, material shortages, acts of God or other delays beyond control of the Developer, and by the number of days in excess of thirty (30) which elapse after the City's receipt of the final design plans and applicable permit fees until the City issues all necessary building permits to the Developer. The City hereby covenants and agrees that it will not unreasonably withhold or delay issuance of the necessary

permits to construct the Project as long as the final design plans are reasonably consistent with the Final Plans approved by the City and the Developer has paid all required permit fees.

7.3 Substantial Completion.

At such time as the Developer has substantially completed construction of the Project it shall notify City, and the authorized representatives of the City and the Developer and the Developers contractors shall make a final inspection of the Project and shall prepare any "punch list" of incomplete or deficient items of work to the Project. The Developer shall diligently pursue completion or correction of any punch list item of remaining work, and shall attain Final Completion within thirty (30) days thereafter, whereupon possession of the Public Parking Lot shall be relinquished to the City.

7.4 Warranties.

The Developer shall cause its general contractor to give in writing directly to the City a general warranty and guarantee that the Project, as constructed and as the same exists on the date of Final Completion, shall be free from defects in materials or workmanship for a period of one (1) year. The Developer shall have no obligation or liability under such warranties or guarantees given by its general contractor directly to the City. If the Developer's general contractor fails to give such a written warranty directly to the City within fourteen (14) days of Final Completion then the Developer shall without further act or instrument be deemed to have so warranted and guaranteed to the City that the Project will be free from defects in materials or workmanship for such one (1) year period.

Parties agree there are no warranties, guarantees or assurances which

might otherwise be implied under law except as described herein in the paragraph above are hereby expressly disclaimed by the Developer and, as against the Developer, the City hereby waives any such warranties or guarantees to which it might otherwise be entitled under law.

8. TITLE INSURANCE.

8.1 Title Commitment.

Within fourteen (14) days of execution of this Contract, the Developer shall furnish the City with a commitment (the "Title Commitment") for a ALTA current form policy of owner's title insurance in the amount of the Purchase Price, insuring the title of the City to the Site in fee simple, free and clear of all liens, claims and encumbrances, with the only exceptions from coverage being those easements, reservations, and restrictions of record which do not materially and adversely affect the value of the Site or its capability to be improved and used as a public parking lot, existing zoning ordinances, future taxes and special assessments. The Title Commitment shall be issued on behalf of a recognized title insurance underwriter acceptable to the City. The City shall have ten (10) days after receipt of the Title Commitment to examine the same and assert any reasonable title objections or requirements based upon the Title Commitment. If, by the Commencement Date, the Developer is unable to cure or satisfy the City's reasonable title requirements or objections, the Commencement Date shall be deferred to afford the Developer time to do so, but if the City's reasonable title requirements or objections are not cured and satisfied or otherwise waived by January 1, 2008, the City may cancel and terminate this Contract by delivering written notice to the Developer no later than February 1, 2008, in which case

neither party shall have any further obligation under this Contract.

8.2 Mechanic's Liens Coverage.

On or prior to the Closing, the Developer agrees to provide all affidavits and indemnity agreements to the title insurer so that the standard exceptions from coverage for unfilled mechanic's liens and rights of parties in possession will be deleted from the final owner's title policy to be issued to the City.

8.3 Permitted Title Exceptions.

Any easements, reservations, restrictions or other title matters which appear as exceptions from coverage on the Title Commitment and as to which City asserts no objections or requirements, shall be deemed to be accepted by City are referred to herein as the "Permitted Title Exceptions."

9. INSURANCE.

9.1 Coverage.

At all times after the Commencement Date and until Closing, the Developer will maintain in effect and pay for all public liability insurance coverage with respect to the Project as may be specified and required as part of the Professional Services Agreement.

9.2 Damage or Destruction.

If, prior to the Closing Date, the Project is damaged or destroyed by casualty, the parties shall forthwith make a claim for and collect any proceeds payable under the policies of insurance to be maintained by the Developer, which proceeds shall be held by the City in trust for the benefit of the parties. The Developer shall properly and fully repair, restore or replace that part of the Project damaged and shall be entitled to obtain from the City and apply and use

so much of the insurance proceeds as is necessary to pay the costs of effecting such repairs and replacements, so that at the Final Completion the Project is of the condition specified in section 7.3. If at the Final Completion the City has accepted the Parking Structure as completed and there remains unexpended insurance proceeds in the hands of the City, the Developer shall be entitled to the same. In case of any such damage by casualty, the Final Completion date shall be deferred to afford the Developer a reasonable period of time to properly complete the repair, restoration or replacement of any such damaged portions of the Project.

10. TAXES.

10.1 2007 and 2008 Taxes.

The Developer shall be responsible for any ad valorem taxes levied and assessed against the Site for that part of the year 2007 or 2008 prior to conveyance of the Site to the City.

10.2 Tax Exemption.

The parties recognize that the Project will result in a public use. As such, the parties anticipate that the Public Parking Lot will be tax exempt provided it is used exclusively for exempt municipal purposes.

11. REPRESENTATIONS AND WARRANTIES.

11.1 City's Representations and Warranties.

The City hereby represents and warrants to the Developer as follows:

a. Due Authorization.

The City has all requisite power and authority under applicable Kansas laws and the ordinances of the City to enter into and perform this

Contract. The City is under no legal restraint which would prohibit or limit its lawful performance of this Contract or issuance of the Bonds to pay for the Project. Once the City Council has approved this Contract and the Project Budget, the execution and delivery of this Contract by the City Manager is a legal and valid act of the City and the City is bound hereby. The officials, agents and representatives of the City who have executed and delivered this Contract and who may execute and deliver any other documents, instruments and agreements or perform any acts or deeds in connection with the transactions contemplated by this Contract, have been and will remain duly authorized and empowered to do so on behalf of the City, and the City will be bound thereby.

b. Financing.

The City has all necessary authority to lawfully issue the Bonds, and once the Bonds are duly issued the proceeds thereof, net of issuance and sale costs, will be segregated by the City and held and used to fund payment of the Purchase Price to the Developer.

11.2 Developer's Representations and Warranties.

The Developer hereby represents and warrants to the City as follows:

a. Due Authority.

The Developer is a limited liability company duly formed, existing and in good standing under the laws of the State of Kansas, and has all requisite power and authority to enter into and perform this Contract. The officers, managers, agents and representatives of the Developer who have executed and delivered this Contract and who may execute and

deliver any other documents, instruments and agreements or perform any acts or deeds in connection with the transactions contemplated by this Contract, have been and will remain duly authorized and empowered to do so on behalf of the Developer, and the Developer will be bound thereby.

b. Site.

The Developer has or shall acquire fee simple title to the Site. The Developer shall not enter into any other contracts or other commitments to sell, convey or lease all or any portion or interest in the Site to any other party.

12. COSTS AND EXPENSES.

12.1 City's Costs.

The City shall be responsible to pay the costs and expenses of recording the deeds by which the Site is conveyed to it.

12.2 Developer's Cost.

The Developer shall pay the following costs and expenses:

a. The premium and costs of an owner's policy of title insurance for the Site to be issued pursuant to the Title Commitment.

b. All legal fees of its own legal counsel in connection with this transaction.

13. DEFAULT.

13.1 Developer's Remedies.

In the event of default by the City of its obligations under this Contract, then the Developer may pursue any remedy at law or in equity including, but not limited to, compelling specific performance or recovery of damages from the City.

13.2 City's Remedies.

In the event of default by the Developer of its obligations under this Contract, the City may pursue any remedy it may have under law or in equity including, but not limited to, specific performance or recovery of damages from the Developer.

13.3 No Waiver.

The failure of either party to declare this Contract to be in default or pursue any available remedies by reason of a breach by the other party of its obligations under this Contract, shall not constitute a waiver or release by the non-defaulting party of its rights and remedies upon any subsequent default by the other party.

14. GENERAL PROVISIONS.

14.1 Additional Acts.

In addition to the acts and deeds recited and contemplated under this Contract to be performed, executed and/or delivered by the Developer or the City, the Developer and the City hereby agree to cause to be performed, executed and/or delivered at the Closing or thereafter, any and all such further acts, deeds and assurances as the City or the Developer, as the case may be, may reasonably require to consummate the transactions contemplated under this Contract.

14.2 Applicable Law.

This Contract shall be governed by and construed under and in accordance with the laws of the State of Kansas.

14.3 Entire Contract.

This Contract, together with the Plans, any Exhibits or Addenda attached hereto, embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous contracts, understandings, representations and statements, oral or written, are merged into this Contract. Neither this Contract nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought and then only to the extent set forth in such instrument.

14.4 Headings.

The headings contained in this Contract are for reference and convenience purposes only and shall not in any way affect the meaning or interpretation hereof.

14.5 Interpretation.

Whenever the context hereof shall so require, the singular shall include the plural and vice versa. The terms "include," "includes," "including," and similar terms shall be construed to mean "without limitation." All references to sections, subsections, and Exhibits shall be deemed references to sections, subsections of this Contract and to Exhibits which are attached hereto and made a part hereof for all purposes.

14.6 Multiple Counterparts.

This Contract may be executed in a number of identical counterparts. If so executed, each such counterpart is to be deemed an original for all purposes, and all such counterparts shall collectively constitute one (1) contract, but in the

making proof of this Contract it shall not be necessary to produce or account for more than one (1) such counterpart.

14.7 Notice.

Any notice, demand, approval or disapproval, consent or submission for approval or consent permitted or required hereunder (hereinafter, collectively, any "Notice") shall be in writing, and any such Notice shall be sent to the Developer or the City by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, UPS or other overnight delivery service, addressed as follows:

To Developer:	William Newsome Washburn-Lane Parkway Renovation, LLC 601 W Iowa Street P.O. Box 1707 Lawrence, KS 66044
With copy to:	Grant M Glenn Woner, Glenn, Reeder, Girard & Riordan 5611 SW Barrington Court South P.O. Box 67689 Topeka, KS 66667-0689
To City:	Public Works Director City of Topeka 620 SE Madison Topeka, KS 66607
With copy to:	City Clerk City of Topeka 215 SE 7 th Street Topeka, KS 66603

Or the same may be delivered by messenger at the same address or, if the same is a post office box, the last known address of the addressee. In the event such notice is given or delivered by messenger delivery or facsimile, the date of actual delivery shall

fix the time thereof. If delivered by facsimile, the person giving notice must retain proof of receipt of such facsimile in the form of a log showing delivery. In the event Notice is given or delivered by registered or certified mail, such notice shall be deemed given or delivered five (5) business days after the date on which the sealed envelope containing the Notice is deposited in the United States mail, properly addressed and with proper postage prepaid.

14.8 Parties Bound.

The terms and provisions of this Contract shall inure to, extend to and be for the benefit of the successors, assigns, and legal representatives of the respective parties hereto though the foregoing shall not of itself be construed as authorizing any assignment of this Contract.

14.9 Severability.

If any provision of this Contract shall, for any reason, be held by a court of competent jurisdiction to violate any applicable law or to be unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision in this Contract and the other provisions shall remain in full force and effect.

14.10 Time; Entire Contract.

Time is of the essence of this Contract. The parties hereto expressly acknowledge and agree that, with regard to the subject matter of this Contract and the transactions contemplated by this Contract, there are no oral contracts or understandings between the parties. This Contract, including the defined terms and all Exhibits, and Addendums, if any, attached hereto: (a) embodies the final and complete contract between the parties; (b) supersedes all prior and

contemporaneous negotiations, offers, proposals, contracts, commitments, promises, acts, conduct, course of dealing, representations, statements, assurances and understandings, whether oral or written; and (c) may not be varied or contradicted by evidence of any such prior or contemporaneous matter or by evidence of any subsequent oral contract of the parties hereto.

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

CITY OF TOPEKA, KANSAS

Norton N. Bonaparte, Jr., City Manager

ATTEST:

APPROVED AS TO FORM AND LEGALITY

DATE_____BY_____

Brenda Younger, City Clerk

WASHBURN-LANE PARKWAY
RENOVATIONS, LLC

William Newsome, Manager



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 20, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: Jeff Hunt **DOCUMENT #:**

SECOND PARTY/SUBJECT: Agreement for Professional Services/Washburn-Lane Parkway Renovations, LLC **PROJECT #:** T-861000.00 (HTE 862590)

CATEGORY/SUBCATEGORY: 006 Communication / 005 Other

CIP PROJECT: Yes

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION approving an Agreement for Professional Services between the City of Topeka and the Washburn-Lane Parkway Renovations, L.L.C., for Improvement Project No. T-861000.00 (HTE 862590) and specifically authorizing the City Manager to execute the agreement. *(Council District No. 6)*

(Approval would provide for the construction of 50 additional parking spaces to benefit the College Hill Redevelopment District at SW 16th and Lane Streets.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Approve the Communication and authorize City Manager to execute the Professional Services Agreement as presented.

BACKGROUND:

This project will provide 50 additional parking spaces to serve the College Hill Redevelopment area. The project will include asphalt pavement, concrete curb and gutter, sidewalk, storm drainage facilities, engineering, and all other appurtenances needed to complete the project.

BUDGETARY IMPACT:

Project Budget: \$346,216.00

SOURCE OF FUNDING:

General Obligation Bonds: \$291,000.00

Washburn-Lane Parkway Renovations, LLC: \$55,216.00

Item #17

ATTACHMENTS:

CITY OF TOPEKA PUBLIC WORKS DEPARTMENT
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is between the City of Topeka, Kansas (City) and Washburn-Lane Parkway Renovations, LLC (Developer);

WITNESSETH:

WHEREAS, the City wishes to engage the Developer to perform professional services (the "Services") on Project Number T-861000.00 (862590), a City Public Parking Lot. These services include providing site acquisition, demolition, engineering design and construction documents, land surveying, construction staking, construction management, and construction inspection services by professionals licensed by the State of Kansas to provide such services, construction of the building and provision of all materials, labor, equipment, amenities, other incidentals and cleanup to provide a finished, complete and fully functioning turnkey facility designed and constructed in conformance with the scope documents and all federal, state and local laws, regulations, statutes, ordinances, rules and codes for the City Public Parking Lot (the "Project" which may also be referred to as the "Work"); and,

WHEREAS, the Developer is prepared to provide or otherwise make available to the City, the Services.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES CONTAINED IN THIS AGREEMENT, THE CITY AND THE DEVELOPER AGREE TO THE FOLLOWING:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be _____, 2007.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Kansas and the codes and ordinances of the City of Topeka.

ARTICLE 3 - SERVICES TO BE PERFORMED BY THE DEVELOPER

The Developer shall perform, or cause to be performed, the Services described in Attachment A, Scope of Services, in accordance with the scope of service documents and applicable sections of all federal, state and local laws, regulations, statutes, ordinances and codes.

ARTICLE 4 – COMPENSATION

The City shall pay the Developer in accordance with the Attachment B, Compensation.

ARTICLE 5 – THE CITY'S RESPONSIBILITIES

The City shall be responsible for all matters described in Attachment C, City's Responsibilities.

ARTICLE 6 - SUPPLEMENTAL AGREEMENTS

The provisions set forth in Attachment D, Supplemental Agreements shall be incorporated into this Agreement.

ARTICLE 7 - PROJECT SCHEDULE

The provisions set forth in the Contract for Development and Sale of City Public Parking Lot, City of Topeka Contract Number _____, are incorporated by reference into this Agreement as if it is fully set forth herein.

ARTICLE 8 - STANDARD OF CARE

The Developer shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by competent parties and licensed professionals under similar circumstances. The Developer shall also cause any architects, engineers, land surveyors and contractors to exercise the same degree of care, skill and diligence ordinarily possessed and exercised by competent parties and licensed professionals under similar circumstances.

ARTICLE 9 - INDEMNIFICATION AND INSURANCE AND BONDS

INDEMNIFICATION:

9.1. In the following instances, the Developer hereby agrees to indemnify, defend, and hold harmless the City and any of its departments, divisions, agencies, officers, and employees from all loss, damage, cost, or expense arising out of or alleged to arise out of the Developer's negligent performance of the Services under this Agreement:

9.1.1. Claims, suits, or action of every kind and description when such suits or actions arise from the alleged negligent acts, errors, or omissions of the Developer.

9.1.2. Injury or damages received or sustained by any party because of the negligent acts, errors, or omissions of the Developer.

INSURANCE

9.2. Due to the unique nature of this Project and the City's interest in ensuring adequate insurance protection without incurring the costs of over-insurance, the Developer and/or its contractors will be required to maintain insurance totaling the following sums in Sections 9.2 through 9.7. The Developer shall purchase and maintain during the life of this Agreement or shall cause to have its contractors purchase and maintain, insurance coverage which will satisfactorily insure it against claims and liabilities which arise because of the execution of this Agreement. The insurance coverages to be provided by the Developer are as follows:

9.2.1. Commercial General Liability Insurance, with a limit of four million dollars (\$4,000,000.00) for each occurrence and four million dollars (\$4,000,000.00)

in the general aggregate.

9.2.2. Automobile Liability Insurance, with a limit of one million dollars (\$1,000,000.00) for each accident, combined single limit for bodily injury and property damage.

9.2.3. Workers' Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of five hundred thousand dollars (\$500,000.00) for each accident.

The Developer shall also maintain valuable papers insurance to assure the restoration of any plans, drawings, field notes or other similar data relating to the Work covered by this Agreement, in the event of their loss or destruction, until such time as the project has been completed and delivered to the City.

The Developer's Liability Insurance:

9.3 The Developer shall purchase and maintain or cause to be purchased and maintained such commercial general liability and other insurance as is appropriate for the Project and as will provide protection from claims set forth below which may arise out of or result from the Developer's performance and furnishing of the Work and the Developer's other obligations under the Contract Documents, whether it is to be performed or furnished by the Developer or by anyone directly or indirectly employed by the Developer to perform or furnish any of the Work, or by anyone for whose acts the Developer may be liable.

9.3.1. Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts, including "all-states" endorsement, as per state and federal statutory requirements.

9.3.2. Employers Liability Insurance covering claims for damages because of bodily injury, occupational sickness or disease, or death of the Developer's employees with a five hundred thousand dollars (\$500,000.00) each person, limit.

9.3.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Developer's employees.

9.3.4. Claims for property damages, other than to the Project itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

9.3.5. Claims arising out of operation of laws or regulations for damages because of bodily injury or death of any person or for damage to property.

9.3.6. The commercial general liability insurance required under paragraphs 9.3.3 through 9.3.5 shall have the following specific coverages:

9.3.6.1. Bodily Injury (including completed operations and products liability):

\$ 500,000.00	Each Occurrence
\$1,000,000.00	Annual Aggregate Property Damage:
\$4,000,000.00	Each Occurrence
\$4,000,000.00	Annual Aggregate or a combined single limit of \$4,000,000.00

9.3.6.2. Personal Injury, with employment exclusion deleted:

\$1,000,000.00	Annual Aggregate
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9.3.6.3. Excess Liability:

Bodily Injury and Property Damage Combined:

\$1,000,000.00	Each Occurrence
\$1,000,000.00	Annual Aggregate

The commercial general liability insurance shall include completed operations insurance. Property Damage liability insurance shall be provided with coverages for explosion, collapse and underground hazards, where applicable. The City shall be named as an additional insured on the Developer's general liability policy.

9.3.7. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle. Coverages for hired car and employee non-owned auto liability shall also be provided. The coverage limits shall be:

9.3.7.1 Bodily Injury:

\$ 500,000.00	Each Person
\$1,000,000.00	Each Occurrence

9.3.7.2. Property Damage:

\$ 500,000.00	Each Occurrence or a combined single limit of \$1,000,000
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Contractual Liability Insurance:

9.4. The commercial general liability insurance required by paragraph 9.3 will include contractual liability insurance applicable to the Developer's obligations and responsibilities. The coverage limits shall be:

9.4.1. Bodily Injury:

\$500,000.00	Each Occurrence
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9.4.2. Broad Form Property Damage:

\$500,000.00	Each Occurrence
\$1,000,000.00	Annual Aggregate

City's Liability Insurance:

9.5. The Developer, at its sole expense, shall purchase the City's Protective Liability Insurance. This insurance shall be maintained in full force and effect for the duration of the contract by the Developer and shall name the City as the named Insured.

This insurance shall have the same limits of liability as the commercial general liability insurance and shall protect the City against any and all claims and liabilities for injury to or death of persons, or damage to property caused in whole or in part by, or alleged to have been caused in whole or in part by the negligent acts or omissions of the Developer, or any agent, servant, worker or employee of the Developer arising from the Services or Work for the project.

Notice of Cancellation:

9.6. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) in accordance with paragraphs 9.3 through 9.7 shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to the City by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when the Developer may be correcting, removing or replacing defective Work under the one (1) year correction/warranty period. In addition, the Developer shall maintain such completed operations insurance for one (1) year after final payment and furnish the City with evidence of continuation of such insurance at final payment.

Receipt and Application of Proceeds:

9.7. Any insured loss under the policies of insurance required by paragraphs 9.3.5 and 9.3.6 will be adjusted with the City and made payable to the City. The City shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

9.8. The City as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen (15) days after the occurrence of loss to the City's exercise of this power. If such objection be made, the City as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, the City as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of such duties.

Acceptance of Insurance:

9.9. If the City has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by the Developer in accordance with paragraphs 9.3 through 9.7 on the basis of its not complying with the Contract Documents, the

City shall notify the Developer in writing thereof within thirty (30) days of the date of delivery of such certificates to the City. The Developer shall provide to the City such additional information in respect of insurance provided by the Developer as the City may reasonably request. Failure by the City to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the Developer as complying with the Contract Documents.

Partial Utilization - Property Insurance:

9.10. If the City finds it necessary to occupy or use a portion or portions of the Project prior to completion of all the Work, such use or occupancy may be accomplished provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

BONDS:

9.11. The Developer shall furnish or cause to be furnished by its contractors a Payment Bond, in an amount totaling the construction cost of the project, one hundred twenty-nine thousand six hundred twelve dollars (\$129,612.00) as security for the faithful performance and payment of all the Developer's obligations under the agreement and Contract Documents. This Bond shall remain in effect at least until after Final Completion and Developer has provided City with executed affidavits and lien waivers from all sub-contractors and suppliers of the Project except as otherwise provided by law or regulation or by the agreement and Contract Documents. The Bond shall be in the forms prescribed by law or regulation or by the agreement and Contract Documents and be executed by such sureties who are authorized to conduct business in the State of Kansas and who are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published by the U.S. Treasury Department. The Bond signed by an agent must be accompanied by a certified copy of the authority to act.

9.12. If the surety on any Bond furnished by the Developer or contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 9.13, the Developer shall within five (5) days thereafter substitute another Bond and Surety, both of which must be acceptable to the City.

9.13. Prior to issuance of the Notice to Proceed by the City, the Developer shall have on file with the City all bonds and certificates of insurance acceptable to the City. The Developer shall submit said bonds and certificates of insurance to the City with this Agreement.

9.14. Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article shall survive.

ARTICLE 10 - DEVELOPER'S RESPONSIBILITY

Developer shall bear full, complete and total responsibility for acquisition of the site; acquisition of all permits and certificates; demolition; removal of unsuitable materials from the site and disposal thereof; all hazardous materials abatement including asbestos, poly chlorinated biphenols (PCB's), lead and all others, if any; and to provide the design; design calculations, drawings and documents; construction drawings and documents; construction; construction management; construction staking; construction inspection, special inspection and land surveying; building survey work; as built drawings; and to provide other documents as required by the building code(s) or other codes or by this Agreement and the Contract Documents; all in conformance with the scope of services documents and drawings and all applicable sections of all federal, state and local laws, regulations, statutes, ordinances, rules and codes.

The Developer's responsibility shall also include, but not be limited to: (1) construction means and methods, techniques, sequences, procedures, and safety precautions and programs in connection with the Project; (2) the failure of any contractor, subcontractor, vendor, or other Project participant, to fulfill contractual responsibilities or to comply with federal, state or local laws, regulations, statutes, ordinances, rules and codes; and (3) procuring all building and other permits, certificates, and licenses required for any construction, operation and occupancy of the facility.

It shall additionally be the Developer's responsibility to engage the contractor and to provide, at the Developer's expense, any inspectors or special inspectors required by the building code(s) or other codes and the applicable professionals licensed in the State of Kansas for all aspects of the Work regulated by Kansas Statutes and administered under the purview of the Kansas State Board of Technical Professions including but not limited to architecture, engineering, geology and land surveying and any others as required to demolish and clear the site, design, locate, construct, inspect, describe and convey clear title to the completed and fully functional facility in compliance with the scope of service documents and drawings and all federal, state or local laws, regulations, statutes, ordinances, rules and codes. The Developer shall also be responsible for all cleanup and bear full, complete and total responsibility to deliver the completed and fully functional "turnkey" City Public Parking Lot within the contract time for the agreed Purchase Price. Additionally the Developer shall provide clear title to the City Public Parking Lot unless eminent domain is required to secure the 8th Street Properties, in which case the Developer has no responsibility for conveying to the City title to the property acquired through eminent domain.

ARTICLE 11 - COST AND SCHEDULE

The Developer shall guarantee that costs will not vary from the agreed amount unless otherwise agreed to by the parties and that actual construction will be finished on schedule and the fully functional facility will be completed and delivered for use by the City within the time specified in the Contract for Development and Sale of Parking Lot.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and computer software provided by the Developer pursuant to the agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by the City or others on any other project. Any reuse without prior written verification or adaptation by the

Developer for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Developer.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, architectural and engineering documents, reports, drawings, and specifications provided by the Developer as part of the Services shall become the sole property of the City, however, that both the City and the Developer shall have the unrestricted right to their use. The Developer shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property protected under the copyright laws of the United States. Rights to intellectual property developed, utilized, or modified in the performance of services shall remain the property of the Developer. The City shall have the unlimited right to the use of intellectual property developed, utilized, or modified in the performance of the Services at no additional cost to the City.

ARTICLE 14 –TERMINATION

14.1. The City may terminate this Agreement upon the occurrence of any one (1) or more of the following events:

14.1.1. If the Developer commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if the Developer takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

14.1.2. If a petition is filed against the Developer under any chapter of the Bankruptcy Code, as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the Developer under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

14.1.3. If the Developer makes a general assignment for the benefit of creditors;

14.1.4. If a trustee, receiver, custodian or agent of the Developer is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Developer is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Developer's creditors;

14.1.5. If the Developer admits in writing an inability to pay its debts generally as they become due;

14.1.6. If the Developer persistently fails to provide or perform the services or Work in accordance with this Agreement (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule);

14.1.7. If the Developer disregards the laws or regulations of any public body having jurisdiction;

14.1.8. If the Developer otherwise violates in any substantial way any provisions of the agreement; or

14.1.9. If the City terminates the Contract for Development and Sale of City Public Parking Lot, this Agreement will automatically terminate.

14.2. The City may, after giving the Developer (and the surety, if there be one) seven (7) days written notice, and thirty (30) days opportunity to cure, and to the extent permitted by federal, state or local laws and regulations, terminate the services of the Developer, exclude the Developer from the site and take possession of the Work, incorporate in the Work all materials and equipment stored at the site or for which the City has paid the Developer but which are stored elsewhere, and finish the Work as the City may deem expedient. In such case the Developer shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price of this Agreement exceeds the direct, indirect and consequential costs of completing the Services and the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) such excess will be paid to the Developer. If such costs of completing the Services and the Work exceed such unpaid balance, the Developer shall pay the difference to the City. When exercising any rights or remedies under this paragraph the City shall not be required to obtain the lowest price for the Services and the Work performed.

14.3. Where the Developer's services have been so terminated by the City, the termination will not affect any rights or remedies of the City against the Developer then existing or which may thereafter accrue. Any retention or payment of moneys due to the Developer by the City will not release the Developer from liability.

ARTICLE 15 - CONTRACT TIME AND DELAY IN PERFORMANCE

15.1. The Work will commence with an issuance of a Work Order by the City, provided the Developer complies with the required submittal times for the executed agreement and its counterparts, and be substantially completed and ready for occupancy including issuance of an elevator inspection certificate and an occupancy certificate, by the Codes Enforcement Section of Development Services as provided in the City's building code, and any boiler inspection certificate and any other certificates required for operation of the facility and included equipment in compliance with any federal, state and local laws, regulations, statutes, ordinances rules and codes, on or before the date specified for substantial completion in the Contract for Development and Sale of Public Parking Lot

15.1.1. No extension of Contract Time beyond the date stipulated for final completion in paragraph 15.1 shall be considered except as provided in the Contract for Development and Sale of Parking Lot.

15.2. Liquidated Damages. The City and the Developer recognize that time is of the essence for this Agreement and that the City will suffer financial loss if the Project is not complete and ready for final payment by the date specified in paragraph 15.1 above, plus any extensions thereof allowed by the City. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the

Developer agree that as liquidated damages for delay (but not as a penalty) the Developer shall pay the City an amount of one thousand dollars (\$1,000.00) per day for each day that substantial completion extends beyond the time specified in paragraph 15.1 for Substantial Completion. The City may deduct the total accrued liquidated damages from the final payment due to the Developer.

ARTICLE 16 - COMMUNICATIONS

Any communication required by this Agreement shall be made in writing to the addresses specified in the Contract for Development and Sale of City Public Parking Lot.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Developer and the City.

ARTICLE 17 - WAIVER

A waiver by either the City or the Developer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 18 – SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 19 – INTEGRATION

This Agreement, along with the Contract for Development and Sale of Parking Lot, represents the complete and integrated agreement between the City and the Developer. In the event there is a conflict between this Agreement and the Contract for Development and Sale of Parking Lot with regard to terms and conditions then the document containing the most specific and latest terms and condition shall prevail.

ARTICLE 20 - SUCCESSORS AND ASSIGNS

The City and the Developer each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

ARTICLE 21 - ASSIGNMENT

Neither the City nor the Developer shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent the Developer from employing independent consultants, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event the Developer employs independent consultants, associates, and subcontractors to assist in performance of the Services, the Developer shall be solely responsible for the negligent performance of the independent consultants, associates, and subcontractors so employed.

ARTICLE 22 - THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Developer.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement.

CITY OF TOPEKA, KANSAS

Norton N. Bonaparte, Jr., City Manager

ATTEST:

APPROVED AS TO FORM AND LEGALITY

DATE _____ BY _____

Brenda Younger, City Clerk

WASHBURN-LANE PARKWAY
RENOVATIONS, L.L.C.

William Newsome, Manager

ATTACHMENT A

TO AGREEMENT FOR PROFESSIONAL SERVICES

Owner: City of Topeka, Kansas

Developer: Washburn-Lane Parkway Renovations, LLC

Project Number & Name: Project Number T-861000.00 (862590) City Public Parking Lot

SCOPE OF SERVICES

SERVICES

A.1. The project is specifically defined in the Contract for Development and Sale of a City Public Parking Lot.

A.2. The Developer agrees to provide those services as specified in the Contract for Development and Sale of a City Public Parking Lot, including but not limited to: site acquisition; demolition; hazardous materials investigation and abatement including asbestos, poly chlorinated biphenols (PCB's), lead and all others, if any; geotechnical investigation and report; engineering design and related construction plans, specifications and documents; engineering and land surveying and construction staking; building survey work; construction inspection; and as built plans; all by professionals licensed by the State of Kansas to provide such services; obtain all building, mechanical, electrical and other permits and certificates as required by federal, state and local laws, regulations, statutes, ordinances and codes as may be required for the demolition of existing structures, abatement of any hazardous materials encountered; and construction, operation and occupancy of the completed building facility; construction and provision of all materials, labor, equipment, amenities, other incidentals and cleanup; and provision of all support utilities, repair or reconstruction of the streetscape and provision of all other amenities to provide a complete and fully functioning turnkey facility designed and constructed in conformance with the scope documents and all federal, state and local laws, regulations, statutes, ordinances and codes for a City Public Parking Lot (the Project).

The Developer shall also provide, as part of these services, construction plans, specifications, reports and other documents, which shall include but not be limited to the following:

A.2.1. A Phase I Environmental Site Assessment Report and, if required, a Phase II Environmental Site Assessment Report. These reports shall be provided by and submitted by the Developer prior to the Developer securing the permit(s) and proceeding with hazardous materials abatement, if required, and demolition.

A.2.2. Project Manual including complete project construction specifications and the Developer's construction contract documents.

A.2.3. Engineering drawings prepared by and bearing the signature and seal of

an engineer licensed to practice in the State of Kansas. The drawings shall include a cover sheet with project identification information including project name and number and a site location map. A site plan shall be provided which shall include the public parking lot footprint and the adjacent existing and proposed streetscape features, complete existing and proposed site and off site utility information and complete drainage information including contours and storm drains as appropriate. Plans shall be included with all notes, dimensions and details as required to depict the complete public parking lot.

A.2.4. Additional drawings may be required for construction, repair or reconstruction of streetscape elements or utilities such as sanitary and/or storm sewers and water lines. If required, such Work shall be designed by and drawings therefore shall be prepared, in accordance with the latest criteria on file in the office of the City Engineer, signed and sealed by a civil engineer licensed to practice in the State of Kansas. If required, such Work shall be constructed, repaired, or reconstructed by the Developer and all materials and methods therefore shall be in conformance with the City's latest Standard Specifications on file in the office of the city engineer.

A.2.5. "As Built" drawings upon completion of the project.

Affidavits Upon Completion Of Project

A.3. Upon completion of the project and prior to final payment, the Developer shall submit a signed affidavit to the City attesting that the design and construction of the completed and finished facility and all related and component elements meet all applicable provisions of all federal, state and local laws, regulations, statutes, ordinances, rules and codes.

Wage Rates:

A.4. The Developer shall be responsible to ensure that the per diem wage rate for each class of labor employed by the Developer shall be not less than the current rate of per diem wage being paid in the City for each class of Work performed. Current Rate of Per Diem Wages is defined as the rate of wage paid in the City to the greater number of workmen, laborers or mechanics in the same trade, occupation, or Work of a similar nature. For the purposes of this subparagraph, the current rate of per diem wages shall be defined as and synonymous with required wages and fringe benefits for each job classification on federal and federally assisted construction projects as determined by the Secretary of Labor of the United States Government in the area wage determination decisions for the State of Kansas which are current and effective on the effective date of this Agreement. Changes in published area wage decisions appear in the Federal Register approximately every one hundred twenty (120) days. It shall be the responsibility of the Developer to ascertain, and cause to be paid, those prevailing wage rates and fringe benefits for each pertinent employee classification in order to be in compliance with this subparagraph. Job classifications shall be strictly adhered to.

Wage Rate Determination:

A.5. The Wage Rate Determination (including modifications) found attached to this Agreement must be utilized by the Developer for the duration of this project. This means that

each class of workers must be paid at least the total sum of money (base pay and fringe benefits) for each classification. If a company pays fringe benefits to approved plans, funds or programs, it is necessary that verification of payment of these benefits be made to the City's contract compliance inspector with the first payroll. Any company not affiliated with an approved plan, fund or program must pay both the base pay and all fringe benefits to each employee in cash.

Any worker who works more than forty (40) hours a week must be paid one and one-half (1½) times the base pay plus all fringe benefits.

Weekly payroll reports and monthly utilizations shall be submitted as required by the City's contracts and procurement office. Weekly Payroll Reports must be submitted for every week to the City's contract compliance inspector until the project is complete even if no Work is performed. For the weeks that no Work is performed, fill out a payroll report, sign it and write across it "No Work Performed This Week."

This Wage Rate Determination becomes effective the date the agreement is signed and must be utilized for the duration of the project.

The latest modification (if any) for each class of worker takes precedence over any other decision.

Final payment on this Project will not be released until all payrolls and utilizations are in the City's contracts and procurement office and are correct.

The Developer is responsible to the City's contracts and procurement office for all subcontractor's compliance reports.

Warranty and Guarantee:

A.6. The Developer warrants and guarantees to the City that all Work will be in accordance with the agreement and Contract Documents and will not be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Paragraph A.6.

Access to Work:

A.6.1. The City, representatives of the City, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at all reasonable times for their observation, inspecting and testing. The Developer shall provide proper and safe conditions for such access.

Tests and Inspections:

A.6.2. If laws or regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the Developer shall assume full responsibility, therefore, pay all costs in connection therewith and furnish the required certificates of inspection, testing or approval. The Developer shall also be responsible for and shall pay all costs in connection with any inspection or testing required.

A.6.3. All inspections, tests or approvals other than those required by laws or regulations of any public body having jurisdiction shall be performed by organizations acceptable to the City and the Developer.

The City May Stop the Work:

A.6.4. If the Work is defective, as determined by the City, or the Developer fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the City may order the Developer to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Developer or any other party.

Correction or Removal of Defective Work:

A.6.5. If required by the City, the Developer shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the City, remove it from the site and replace it with non-defective Work. The Developer shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

One Year Correction Period:

A.6.6. If within one (1) year after the date of Final Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, the Developer shall promptly, without cost to the City and in accordance with the City's written instructions, either correct such defective Work, or, if it has been rejected by the City, remove it from the site and replace it with non-defective Work. If the Developer does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the Developer

Acceptance of Defective Work:

A.6.7. If, instead of requiring correction or removal and replacement of defective Work, the City, prior to final payment, prefers to accept it, the City may do so. The Developer shall bear all direct, indirect and consequential costs attributable to the City's evaluation of and determination to accept such defective Work (such costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate decrease in the

Contract Price, and, if the parties are unable to agree as to the amount thereof, the City may make a claim therefore. If the acceptance occurs after final payment, an appropriate amount will be paid by the Developer to the City.

The City May Correct Defective Work:

A.6.8. If the Developer fails within a reasonable time after written notice of the City to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by the City in accordance with paragraph A.6.5, or if the Developer fails to perform the Work in accordance with the agreement and Contract Documents, or if the Developer fails to comply with any other provision of the agreement and Contract Documents, the City may, after seven (7) days written notice to the Developer, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, the City may exclude the Developer from all or part of the site, take possession of all or part of the Work, and suspend the Developer's services related thereto, and incorporate in the Work all materials and equipment stored at the site or for which the City has paid the Developer but which are stored elsewhere. The Developer shall allow the City, the City's representatives, agents and employees such access to the site as may be necessary to enable the City to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the City in exercising such rights and remedies will be charged against the Developer and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the City may make a claim therefore. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of Work of others destroyed or damaged by correction, removal or replacement of defective Work. The Developer shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the City of the City's rights and remedies hereunder.

A.6.9. Defective Work is defined as work not in reasonable conformance with the Project plans and specifications, as typically acceptable in the industry in this locale, such that the final product is not suitable for its intended purpose.

ATTACHMENT B
TO AGREEMENT FOR PROFESSIONAL SERVICES

Owner: City of Topeka, Kansas

Developer: Washburn-Lane Parkway Renovations, LLC

Project Number & Name: Project Number T-861000.00 (862590) City Public Parking Lot

COMPENSATION

B.1. For the services covered by this Agreement, the City agrees to pay the Developer as per the Contract for Development and Sale of City Public Parking Lot.

B.2. The Developer shall submit applications for payment to be processed by the City as provided in the Contract for Development and Sale of Parking Lot.

B.3. Payments to the Developer and completion.

Final Inspection:

B.3.1. Upon notice from the Developer of Substantial Completion as provided in the Contract for Development and Sale of City Public Parking Lot, the City will make a final inspection with the Developer and will notify the Developer in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The Developer shall immediately take such measures as are necessary to remedy such deficiencies.

Final Application for Payment:

B.3.2. After the Developer has completed all such corrections to the satisfaction of the City and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents, and after the City has indicated that the Work is acceptable (subject to the provisions of paragraph B.3.3.), the Developer may make application for final payment. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to the City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, the Developer may furnish receipts or releases and receipts in full; affidavits of the Developer that the releases include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the City or the City's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, the Developer may furnish a Bond or other collateral satisfactory to the City to indemnify the City against any lien. The Developer shall also be responsible for correct submittal of all payroll information to the

satisfaction of the City's contracts and procurement office prior to submittal of the application for final payment.

Waiver of Claims:

B.3.3. The making and acceptance of final payment will constitute:

B.3.3.1. A waiver of all claims by the City against the Developer, except claims arising from unsettled liens, from defective Work appearing after final inspection pursuant to paragraph B.3.3 or from failure to comply with the agreement and Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by the City of any rights in respect of the Developer's continuing obligations under the agreement and Contract Documents; and

B.3.3.2. A waiver of all claims by the Developer against the City other than those previously made in writing and still unsettled.

B.4. Start of performance, records and other matters. It is further understood and agreed:

B.4.1. That the performance of services under this Agreement shall not commence until all insurance, bonds and other documents, as required, are submitted by the Developer and determined by the City to be satisfactory and a notice to proceed is issued by the City.

B.4.2. That the Developer shall start the performance of Services within ten (10) days of receipt of a notice to proceed and shall complete the Work in accordance with the contract times set forth in the Contract for Development and Sale of Parking Lot.

B.4.3. That the Developer and anyone directly or indirectly employed by the Developer to perform or furnish any of the Work or anyone for whose acts the Developer may be responsible, shall keep records, on the basis of generally accepted accounting practices, of costs and expenses which records shall be available for inspection at all reasonable times.

ATTACHMENT C
TO AGREEMENT FOR PROFESSIONAL SERVICES

Owner: City of Topeka, Kansas

Developer: Washburn-Lane Parkway Renovations, LLC

Project Number & Name: Project Number T-861000.00 (862590) City Public Parking Lot

CITY'S RESPONSIBILITIES

The City will furnish, as required by the Work and not at the expense of the Developer, the following items:

C.1. Make available to the Developer all records, reports, maps, and other data in the City's possession, pertinent to provision of the services required under this Agreement.

C.2. Examine all plans, specifications and other documents submitted by the Developer and render decisions promptly to prevent delay to the Developer as provided in the Contract for Development and Sale of Parking Lot.

C.3. Designate one (1) City employee as the City representative with respect to all services to be rendered under this Agreement. This individual shall have the authority to transmit instructions, receive information and to interpret and define the City's policies and decisions pertinent to the Developer's services.

C.4. Issue notices to proceed to the Developer for the professional services.

ATTACHMENT D

TO AGREEMENT FOR PROFESSIONAL SERVICES

Owner: City of Topeka, Kansas

Developer: Washburn-Lane Parkway Renovations, LLC

Project Number & Name: Project Number T-861000.00 (862590) City Public Parking Lot

SUPPLEMENTAL AGREEMENTS

The City and the Developer agree that the following communications, representations, and agreements by the Developer, whether oral or written, relating to the subject matter of the agreement are hereby incorporated into and shall become a part of the agreement as set forth in Article 19 - Integration.

Changes In The Work

D.1. Without invalidating the agreement and without notice to any surety, the City may, at any time or from time to time, order additions, deletions or revisions in the Services and Work; these will be authorized by a Change Order. Upon receipt of any such document, the Developer shall promptly proceed with the Work involved which will be performed under the applicable conditions of the agreement and Contract Documents (except as otherwise specifically provided).

D.2. The Developer shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Services and Work performed that is not required by the agreement and Contract Documents as amended, modified and supplemented as provided in the agreement

D.3 The City and the Developer shall execute appropriate Change Orders covering:

D.3.1. Changes in the Services and Work, which are ordered by the City pursuant to paragraph D.1, are required because of acceptance of defective Work under paragraph A.6.7 or correcting defective Work under paragraph A.6.8, or are agreed to by the parties; and

D.3.2. Changes in the Contract Price or Contract Time which are agreed to by the parties.

Change Of Contract Price

D.4. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the Developer for performing the Services and Work. All duties, responsibilities and obligations assigned to or undertaken by the Developer shall be at its expense without change in the Contract Price.

D.5. The Contract Price may only be changed by a Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party promptly (but in no event later than fifteen (15)

days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting documents shall be delivered within thirty (30) days after such occurrence and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be reviewed by the other party and a response provided promptly (but in no event later than thirty (30) days after receipt of the notice of the amount of the claim with supporting documents) to the party making such claim. Failure to submit a claim for an adjustment in the Contract Price in accordance with this paragraph D.5 will invalidate said claim but either parties failure to respond within the thirty (30) days provided in this paragraph D.5 shall not be construed in any way as an acceptance of such claim and change in Contract Price by the other party unless agreed to by written Change Order.



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 20, 2007

 + Back  Print

DATE: December 11, 2007
CONTACT PERSON: Ken Benjamin (8-0141) **DOCUMENT #:**
SECOND PARTY/SUBJECT: Labor Agreement **PROJECT #:**
CATEGORY/SUBCATEGORY: 006 Communication / 005 Other
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION authorizing the City Manager to execute a three-year labor agreement between the City of Topeka and Street Section Teamsters Local No. 696.

(The agreement would be effective retroactive to January 1, 2007 and consist of new Competency Pay Plan (CPP) initial skill level placements, out-year Cost of Living Allowances (COLAs), step increases, and other substantive changes.)

POLICY ISSUE:

Whether to approve implementation of a new skill and performance-related compensation plan for Street Section workers, with comparability adjustments based on existing qualifications, followed by open advancement opportunities and modest COLAs and performance-dependent step increases, plus a series of additional pro-employee incentive bonuses, in exchange for management-flexibility overtime criteria; uninsurable driver procedures; shift differential clarifications; Code of Ethics adoption; check-off service administrative fees; and further language improvements.

STAFF RECOMMENDATION:

Approval.

BACKGROUND:

The Street Section will be the second operation in the City to move to a competency-based pay plan, the other being Water Pollution Control. Details of the new approach have been more than 12 months in their development. While the City knew from its inception that the program would be front-loaded in order to have everyone start off at the level appropriate to their current duties and responsibilities, it was not until the past month that actual funding requirements could be determined. In order to keep faith with the original commitment while striking a balance over the three-year term of this Agreement, COLAs were done away with the first year and kept to absolute minimums during the second and third. The conceptual essence of this new system is thus upward movement based on individual ambition, training, skill, practice, and certification.

BUDGETARY IMPACT:

It is estimated that implementation of the contract would cost \$33,025 more than budgeted for personnel costs in 2007. Assuming an overall skill level increase of 2.0 percent for 2008, the contract would increase expenditures by \$95,014 above what is budgeted for personnel. For 2009, costs would increase \$77,347 from the 2008 estimate, based on a 2.0 percent skill level increase. The impact would be to the Special Street Repair Fund.

SOURCE OF FUNDING:

Fund 291, Special Street Repair. Primary source of revenue is Motor Fuels Tax. The fund does not receive property tax revenue.

ATTACHMENTS:

[Edited Version of contract Highlighting Proposed Changes](#)

[Cover Memo explaining key features of new Agreement](#)

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ARTICLE 1

RECOGNITION AND UNION SECURITY

Section 1. ~~Employees Covered~~ **Preamble**. This Agreement ~~shall be restricted to the employees within the collective bargaining unit as defined in the State of Kansas Public Employees Relations Board, Case No. 75-UCA-2-2000~~ is **by and between the City of Topeka, Kansas, hereinafter referred to as the “City,” the “Employer,” or “Management” and the City of Topeka Street Section of the International Brotherhood of Teamsters, Local No. 696, hereinafter referred to as “Teamsters” or “Union.”**

Section 2. ~~Employee Rights~~. Public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing, for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and conditions of employment. In accordance with existing state laws, public employees ~~also~~ shall **also** have the right to refuse to join or participate in the activities of employee organizations.

Section 3. ~~City Ordinances~~. The parties agree that all ordinances now in force which are not in conflict with any ~~Article, Section~~ **provision** of any ~~Article, or any language contained in this~~ Agreement, shall apply to members of the bargaining unit. Any ordinances hereafter enacted may

also be applied to employees of the bargaining unit covered by this Agreement; , provided that both parties ~~to the Agreement agree on~~ **consent to** such application.

Section 4. Bargaining Unit.

A. ~~Introduction.~~ The Employer recognizes the Union as the exclusive bargaining agent for employees in the ~~appropriate~~ **collective bargaining** unit. **As defined in the State of Kansas Public Employee Relations Board Case No. 75-UCA-2-2000,** ~~The appropriate bargaining~~ **that** unit shall ~~be limited to~~ **consist of** employees in ~~position classifications listed below~~ **the Street Maintenance Section** holding part-time and full-time permanent and probationary ~~appointments.~~ **positions as Custodians or Equipment Operators.**

B. ~~Classifications.~~ The job classifications in the ~~appropriate~~ unit shall be:

<u>Street Maintenance Section</u>	
Equipment Operator I	Custodian
Equipment Operator II	Maintenance Worker II
Equipment Operator III	

The City agrees to advise the Union in advance of any changes in or additions to the above classifications and to meet and confer with the Union before the institution of any change to the terms and conditions of employment of the employees covered by the provisions of this Agreement.

Section 5. Check-off. The Employer agrees to deduct the Union membership initiation fee assessments, dues, and/or representation fees once each month **on the first pay day** from the ~~pay~~ **wages** of those employees who personally request in writing such deductions be made. The written authorization for the above deductions shall be ~~delivered and~~ received in the Human Resources

Department ~~no later than~~ **at least** thirty (30) days prior to the day that said deductions ~~are~~ **is** to be made. The amounts to be deducted shall be certified to the Employer by the official Treasurer of the Union. The aggregate deductions of all employees shall be remitted together with **a** computer printout to the official Treasurer of the Union by the end of the succeeding month after such deductions are made by the Department of ~~Administrative~~ **Financial** Services. The computer printout shall consist of a listing of every employee for which current Union deductions are withheld.

To partially offset the administrative costs associated with the check-off service, the Employer is authorized to charge and receive reimbursement from the Union in the amount of \$.10 per bargaining unit member per deduction and \$.60 for the processing of any change. For the purpose of administering this provision, "change" shall mean in the amount of a deduction or in the addition or removal of someone from the check-off computer printout. Although monthly itemizations shall accompany such regular printout, the annual total of check-off administrative fees for the prior calendar year shall be billed to the Union Treasurer each January.

~~Any employee may, direct a written request, pursuant to the provision of T the Union by laws, to will notify the Director of Financial Services and Union President stating that the in writing whenever any employee no longer desires has elected to rescind his or her authorized deductions for Union membership. The Such a withdrawal of authorization shall become effective thirty (30) days from with the first full pay period following the date of receipt of the notice by the Director of Financial Services and such notice shall cause the removal of the employee's name from the list of employees authorizing Union dues deductions from their pay. Deduction cards or cancellation cards shall be provided by the Union, upon request by an employee, and shall be confidential.~~

All withholding and benefit deductions shall be ~~taken out~~ **made** before the Union check-off is taken from the employee's wages. In the event no wages are left in any pay period to meet the

Union check-off, the City is not ~~responsible for the check-off~~ **obligated to process the deduction.**
~~Neither is the City~~ **it** responsible for **keeping track of or** retroactively **deducting** check-offs when the employee's pay becomes sufficient to ~~meet the check-off~~ **cover them.** ~~The City is not responsible for any voluntary deduction, including the~~ **No** Union check-off; **shall be made** if an employee is on unpaid leave.

Section 6. Visits by Union Representatives. Non-employee Union representatives will be permitted to come on the premises of the Employer for the purpose of investigating grievances, discussing alleged violations of the Memorandum of Agreement, and fulfilling their exclusive representative obligations to the members of the ~~appropriate~~ **bargaining** unit, provided they report to the Section Manager and give the following information:

- a. The name of the employee to be visited.
- b. The approximate time needed for **and purpose of** the visit.

The Section Manager will determine whether the employee's duties are such that the employee ~~is~~ **can be made** available at the time to talk to the Union representative. If the Section Manager determines that the employee's duties are such that the employee cannot be released at that time, the Union representative will be told when the employee will be available ~~to talk to the non-~~ **employee Union representative.**

Section 7. Bulletin Boards. The official ~~Department~~ bulletin boards ~~presently~~ provided for posting notices to employees in the Division and/or Section ~~within said Division~~ may be made available to ~~the~~ appropriate Union officials for the purpose of posting notices of Union meetings, results of elections, and Union activities. Such notices shall be dated, and on Union stationery. The Union agrees to furnish a copy of any such ~~Union~~ notice to the Section Manager prior to its posting.

Section 8. New Employees. The City will introduce new bargaining unit employees to ~~the a~~
Union ~~Representative~~ **Steward** on the job.

ARTICLE 2
GENERAL PROVISIONS
AND
MISCELLANEOUS BENEFITS

Section 1. **Code of Ethics and Pledge Against Discrimination and Coercion.**

The Union hereby commits itself and all bargaining unit members to abide by the provisions of the City of Topeka Code of Ethics as adopted by the City Council on March 27, 2007, as may be amended, and made applicable to all elected and appointed officials and employees.

The provisions of this Agreement shall be applied equally to all employees without discrimination as to age, ~~marital~~ **familial** status, race, ~~sex~~ **religion, gender**, color, creed, **sexual orientation**, national origin **or ancestry**, political affiliation, or ~~physical handicap~~ **disability** that does not affect job performance. The Union shall share equally with the Employer the responsibility for applying this provision of the Agreement.

All references to employees in this Agreement designate both sexes, and wherever **just** the male gender is used it shall be construed to include male and female employees.

The Employer agrees not to interfere with the right of employees to become members of the Union,~~and~~ There shall be no discrimination, interference, restraint, or coercion by the Employer or any Employer representative against any employee of the Union membership.

There shall be no coercion exercised upon any employee in an attempt to persuade them to join the Union. Likewise, there shall be no discrimination, interference, threats or restraint exercised upon any non-union employee. The Union recognizes its responsibility as bargaining agent and agrees to represent all employees within the bargaining unit, without discrimination, interference, restraint, or coercion, whether or not they belong to the Union.

Section 2. Work Rules. It is understood that work rules and/or regulations will not be inconsistent with the provisions of ~~the~~ **this** Agreement. Work rules and/or regulations will be reasonable and uniformly applied in like circumstances.

Existing work rules and regulations pertaining to the performance of work and ~~the~~ conduct of employees shall be available in the Street Section for review by employees. One copy of the rules and regulations shall be made available to the Union. When existing work rules are changed or new rules established, they shall be posted prominently on the Street Section bulletin board for a period of seven (7) consecutive calendar days before implementation. **In the event the Union does not agree to a proposed new or changed rule or regulation which would materially affect a condition of employment, it shall not take effect until the parties have met to discuss the issue. Such a meeting shall take place within fifteen (15) days of receipt by the City of the Union's written objection to the proposal.**

~~In the event~~ **During** an emergency ~~is as~~ declared by the Section Manager or his/her designee, existing work rules ~~changes shall only remain in effect during the emergency as declared by the~~ **Employer may be temporarily suspended.**

Section 3. Policies, ~~and~~ Rules, **and** Regulations not Contained in this Agreement. The parties agree that all City policies and programs, as well as the administrative rules and regulations implementing them, now in force or here~~in~~-after enacted in accordance with the Topeka City Code and Personnel Code **and** not in conflict with ~~any Article, Section of any Article, or any language contained in~~ **provision of** this Agreement, shall apply to ~~all City employees including~~ all employees covered by this Agreement. The City will provide written notice of proposed new policies, programs, and rules or regulations, or material changes to existing policies, programs, and rules or regulations, to the Union prior to presentation for public comment. In the event the Union does not

agree to a proposed policy, program, rule, or regulation which would materially affect a condition of employment, ~~the policy, program, rule or regulation~~ it will not apply to employees covered by this Agreement. Any additional benefits and/or rights granted to all City employees by any such policy or program or ~~the~~ administrative rules and regulations implementing ~~them~~ **it, however**, will also be ~~granted and~~ applied to employees covered by this Agreement.

Section 4. Uniforms. If an employee is required to wear a uniform as a condition of employment, such uniform shall be furnished to the employee by the Employer. The Employer agrees to provide employees of the Street Section with the following uniform items:

T-shirts - 7

Jeans or bib overalls – 7

Denim work shirts – 7

Heavy coat with hood – 1

Insulated bib overalls – 1

Sweatshirt – 1

Work cap/hat - 1

Additional or replacement uniforms shall be subject to a "repair ~~and~~ or replace" program administered by the Employer. In the event of lost clothing or damage due to carelessness, the employee shall pay for the replacement. Employees are expected to exercise diligence in the care of ~~the~~ uniforms.

Section 5. Protective Devices and Clothing. If an employee is required to wear protective clothing or any type of protective device as a condition of employment, such protective clothing or device shall be furnished to the employee by the Employer. ~~Provided, however,~~ The City shall pay

no more than one hundred ~~and twenty-five~~ **fifty** dollars (\$~~125~~**50.00**), ~~however, maximum~~ toward the purchase of an employee's first **and any Management-authorized replacement** pair of approved footwear. ~~A maximum of one hundred and twenty-five dollars (\$125) shall be paid toward the replacement of one (1) pair per year or as needed and approved by the supervisor.~~

The Employer agrees to provide safety glasses to all employees who are required to wear ~~such safety glasses~~ **them**. The Employer agrees to pay up to a total of one hundred ~~twenty-five (\$125)~~ **fifty** dollars (**\$150**) annually toward the purchase or repair of **such** prescription safety glasses ~~in the event the employee determines that he/she desires to obtain prescription safety glasses.~~

The requirement for any type of protective clothing or device shall be determined by the City Risk Manager, the ~~respective~~ Street Section's safety committee, and the Section Manager. The cost of maintaining the protective clothing or device clean and in proper working condition, with the exception of steel-toed footwear, shall be paid by the Employer. In the event of loss or damage due to carelessness, the employee shall pay for the replacement. Employees are expected to exercise diligence in the care of protective clothing or devices.

Section 6. Return of City Property. Employees ~~hired after January 3, 1981,~~ shall be required to sign a written authorization allowing the City to deduct from ~~any~~ **their** pay ~~entitlement of the employee,~~ the value of any property belonging to the City that is not returned upon separation. Such property shall include, but not be limited to, the following:

- A. Uniforms furnished to the employee by the City;
- B. Any tools, equipment, and/or materials belonging to the City;
- C. Any keys that could be used to gain access to City property and all copies made thereof; **and**
- D. Protective devices or clothing furnished by the City.

~~Employees hired prior to January 3, 1981, also shall be required to return any property belonging to the City upon separation.~~ Failure to return **or pay for** such property may result in the City's pursuing civil remedies to recover such property or its value.

Section 7. Night Security. ~~It is agreed that~~ The Employer will ~~provide for~~ **regularly check** on all employees working by themselves ~~to be regularly checked~~ to assure their health and safety.

Section 8. Job Evaluation. All employees shall ~~receive a copy~~ **be given copies** of their annual job evaluations ~~upon request.~~ No changes shall be made on ~~their~~ evaluations after ~~they~~ ~~receive their copy~~ **copies have been provided.** All employees shall be entitled to a fair and impartial evaluations. Accidents shall not cause an employee to be ~~evaluated~~ **rated** downward in the event ~~that~~ the accident is found to be "no fault" of the employee.

Section 9. Distribution of the Memorandum of Agreement. Unless advised differently by the Union prior to printing, the Employer will make available to the Union one copy of this Agreement for each employee in the bargaining unit within one week after receiving the reproduced copies. If the City provides a copy for each bargaining unit employee, the printing cost shall be shared equally between the Union and the City. Stewards will be authorized to distribute copies of the Memorandum of Agreement to employees.

Section 10. Job Studies. Union requests for job reclassification studies shall be considered on an individual, case-by-case basis. If the Human Resources Director and/or the Public Works Director determine that a job study is warranted, the study shall be conducted by the Human Resources Department. As a result of the study, the Director of Human Resources shall make a

recommendation to the City Manager, who shall make the final determination **whether any reclassifications are approved.**

Section 11. Union/Management Meetings. At the request of either the Union or the Employer, meetings shall be held for the purpose of considering matters of mutual interest other than grievances, provided that mutually acceptable arrangements as to time and place can be made. Employees designated as representatives of the Union, not to exceed four (4), shall not suffer loss of time or pay when absent from their assigned work schedules for the purpose of attending said meetings.

Section 12. Employee Assistance Programs. The City and Union agree to cooperate in encouraging employees who are in need of counseling and/or assistance in such areas as alcoholism, drug abuse, financial and/or legal difficulties, family problems, and similar areas to undergo a programs directed to their rehabilitation. An employee may be required to seek appropriate remedial counseling if, in the determination of the Section Manager, the employee's personal behavior and/or activity is interfering with job performance. Referrals for assistance may be arranged confidentially ~~either~~ through **either** the Human Resources Department, ~~or through~~ the Section Manager, or ~~through~~ the Union representative and/or designee.

Section 13. ~~Certification~~ Driver's License/Insurability Requirements.

A. All bargaining unit members who are required to obtain or maintain a valid Commercial Driver's License (CDL) will be provided up to two (2) hours of on-duty time to take the initial CDL test or to renew an existing license.

B. The Employer agrees to reimburse ~~any~~ employees for the cost of required endorsements,

as determined by the Section Manager, pursuant to the State requirements for a Commercial Driver's License. ~~CDL. The City shall reimburse employees the cost of renewing a Commercial Drivers License. The City shall reimburse the employee for the first original attempts to acquire or renew his/her Commercial Driver's License. their CDLs, but Aall subsequent testing attempts and fees associated with the employee successfully acquiring their Commercial Driver's License subsequent attempts~~ will be the responsibility of the employee ~~taking the test.~~

C. Employees shall notify their supervisors in the event their personal driver's licenses or CDLs are suspended, revoked, or otherwise confiscated or when they are charged with any driving infraction. Such notification shall be made to the supervisor prior to the start of the next scheduled work period. Under no circumstances shall a Street Section employee whose driver's or CDL license has been suspended, revoked, or otherwise confiscated operate a City vehicle prior to supervisory notification of the restrictive action. Failure to report the license encumbrance or the operation of a City vehicle prior to supervisory notification thereof shall be grounds for immediate disciplinary action up to and including termination from City employment.

D. An employee who suffers the loss of his or her license for a period of ninety (90) calendar days or less or becomes uninsurable under the City's current policy coverage shall be assigned to non-driving duties for a period of thirty (30) calendar days. Thereafter, an employee will be assigned to non-driving duties for which the employee is qualified for an additional sixty (60) calendar days, but will be paid at the rate for the position into which he or she is assigned. Employees may use accrued vacation, personal leave, or compensatory time during this sixty (60) calendar day period. If an employee's license is reinstated or he or she becomes insurable during this overall ninety (90) calendar day period, the employee shall be reinstated to his or her former position.

E. Unless there exists a non-driving position to which he or she can continue to be assigned without any special accommodation, an employee who suffers the loss of his or her license or remains uninsurable under the City's current policy coverage for a period of time greater than ninety (90) calendar days shall be removed from his or her position with the Street Section but kept on the City rolls with continued benefits at the minimum salary level necessary to cover the deductions therefor in an otherwise non-duty, non-pay status for an additional ninety (90) calendar days while competing for positions which have no license and/or insurability requirements. Employees may use accrued vacation, personal leave, or compensatory time during this ninety (90) calendar day period, however, to continue receiving full pay.

Section 14. Cafeteria Benefit Plan. ~~The City agrees that~~ **All benefit-eligible** bargaining unit members may ~~be members of~~ **participate in** the existing cafeteria benefit plan, established and recognized as a qualified I.R.S. Section 125 Plan; **B**argaining unit members shall have the same benefits, rights, and obligations as all other City employees who are members of this plan, ~~and will~~ **as well as** be subject to ~~the same any~~ changes in the plan that ~~may be made, which~~ would affect those other employees.

Section 15. Deferred Compensation. **All benefit-eligible** employees ~~are eligible to~~ **may** participate in the Deferred Compensation Plan as defined by the City of Topeka.

Section 16. Employee Development. The purpose of the City's employee development program is to promote improved productivity in City services.

A. Only full-time, benefit-eligible employees may be reimbursed for tuition expenses for

academic or technical courses pursued through recognized accredited educational institutions.

- B. The course must directly relate to the employee's current job duties; or ~~any course including~~ **be an** outside-the-major electives required for a degree or certificate in a field ~~in~~ **to** which the employee would have a reasonable expectation of being promoted ~~to~~ while employed at the Street Section.
- C. Up to five hundred dollars (\$500.00) annually ~~maximum~~ may be authorized and reimbursed for eligible employees.
- D. An employee must complete the request for tuition reimbursement form as provided by the Human Resources Department and have the concurrence and signature of ~~their~~ **his/her** Section Manager, Division ~~Superintendent~~ **Head**, Department Head, and the Human Resources Department before the employee can be reimbursed. The approved request form must be received by the Human Resources Department within one month after the beginning date of the course which the employee desires to attend. Evidence of completion with a passing grade of "C" (70th percentile) or above and proof of payment for the course must be received by the Human Resources Department within two months after the ending date of the semester/~~inter~~-session/quarter in **which it was taken in** order for the employee to receive reimbursement.
- E. The City will not reimburse employees for non-credit special interest courses completed by examination only; continuing education courses; late fees; lab fees; extracurricular fees; textbooks; or other course-related materials and tuition covered by other sources such as government assistance to a veteran (GI Bill), grants, scholarships, and similar programs.

- F. An employee attending a course pursuant to these guidelines during working hours may arrange with his/her supervisor to utilize compensatory time, vacation time, or time without pay as scheduling/staffing allows as determined by Management for the time utilized to attend the course(s).
- G. The ~~Department~~ **Division** Head shall make every effort to budget for and approve reimbursement for academic courses for ~~their~~ employees. The ~~Department~~ **Division** Head shall approve courses on a first-come, first served basis in a non-discriminatory manner. Approval will be subject to budgetary constraints.

Section 17. Mileage Reimbursement. **Reimbursement to an employee for the use of an employee's his or her private vehicle for City business shall be conditioned upon approved by the appropriate Section Manager prior to such use. Requests for approval after the use shall only be honored in extraordinary circumstances where pre-authorization was not feasible -- and in any event at the total discretion of the Section Manager . The Approved reimbursement for use of a private vehicle shall be at the rate established by the City.**

Section 18. Employee Wellness Development Program. To encourage policies and practices ~~to that~~ enable employees to achieve optimal physical and mental health, the City shall offer a physical fitness ~~program~~ **facility** to bargaining unit, ~~benefit-eligible~~ employees. All ~~bargaining unit benefit-eligible employees~~ **those** wishing to ~~partake of the~~ **participate in** a physical fitness program must apply through the City Wellness Center prior to the start of ~~the fitness a class or program~~. This program ~~will be governed by~~ **may be subject to** budgetary restrictions.

Section 19. Benefits Committee. The Union shall be entitled to select one (1) employee from the bargaining unit as a representative ~~to the~~ **on any** City Employees Benefits Committee, ~~if one exists or if formed.~~ **Union Such** representative ~~will~~ **shall** receive ~~the~~ **his/her** regular rate of pay for the time spent in meetings during ~~their~~ regularly scheduled hours of employment, not to exceed two (2) hours per month. ~~Provided,~~ The Section Manager or ~~his~~ designee may, **however**, authorize additional time on a case-by-case basis upon written request from the employee representatives.

Section 20. Personal Day. All bargaining unit employees **shall**, upon ~~the~~ successful completion of their initial employment probationary periods (minimum 6 months, maximum 9 months), ~~shall be allowed~~ **granted** one (1) discretionary personal day off with pay per calendar year. Employees must schedule ~~their~~ **such** personal days off ~~with pay~~ with their Section Manager. This personal day cannot be carried over from one (1) calendar year to the next except due to extenuating circumstances ~~for just cause~~ **as approved by the Section Manager**. However, in all instances the Personal Day must be used by June 30th of the next calendar year or be lost.

Section 21. Residency. Employees ~~employed~~ **hired** after December 31, 1981 ~~by the City~~ must **either** be bona fide residents of Shawnee County, ~~except~~ at the time of appointment or employment ~~when they need not be residents of Shawnee County, but shall~~ establish **such** residency ~~in Shawnee County~~ within six (6) months ~~after~~ **of** completion of the initial employment probation. Residency shall **also** be maintained within the limits of Shawnee County for the duration of ~~the~~ **employee's** City employment. The City Manager may grant one extension, not to exceed six (6) months, for the establishment of residency ~~upon the request of an individual employee~~ for good cause shown.

Section 22: Cell Phones

In the event ~~that~~ an employee is provided with a cell phone, the restrictions on **and rates per minute for** personal use ~~(including personal minutes per billing period) and rates per minute for~~ personal minutes which exceed the maximum allowable minutes will be commensurate with the City's policy.

ARTICLE 3

DEFINITIONS

The following terms, when used in ~~the Article~~ **this Agreement**, shall have the meaning as ~~prescribed to them in this agreement~~ unless the context clearly indicates otherwise:

- A. Full-time Employee is one who works ~~a minimum of~~ 40 hours per ~~work~~ week on a regular and continuing basis.
- B. Part-time Employee is one who works less than 40 hours per ~~work~~ week on a regular and continuing basis.
- C. Regular Employee is a benefit-eligible, full-time or part-time employee, ~~if they have~~ **who has** satisfactorily completed a probationary period as stated ~~below in Article 10,~~ **Section 2.**
- D. Temporary Employee is one who works on an irregular or non-permanent basis.
- E. Overtime Work shall mean work approved by the Section Manager or designee in excess of 40 hours per week in pay status.
- F. Classifications shall be defined as the categories into which employees are grouped and which are specified in Section 4 of Article 1 of this Agreement.

ARTICLE 4

MANAGEMENT RIGHTS

Except where limited by express provisions elsewhere in this Agreement, nothing in this Agreement shall be construed to restrict, limit, or impair the rights, powers, and authority of the Employer as granted to it under the laws of the State of Kansas and the Municipal Code. The rights, powers, and authority include, but are not limited to, the following:

- a) Direct the work of its employees;
- b) Hire, promote, demote, transfer, assign, and retain employees in positions within the ~~public agency~~ **Section or Division**;
- c) Suspend or discharge employees for just cause;
- d) Maintain the efficiency of governmental operation;
- e) Relieve employees from duties because of lack of work or for other legitimate reasons;
- f) Take actions as may be necessary to carry out the mission of the ~~agency~~ **City** in emergencies; and
- g) Determine the methods, means, and personnel by which operations are to be carried on.

~~However~~ The provisions of this Article shall not, **however**, be used for the purpose of undermining the Union.

The work performed by supervisory/~~Management~~ personnel in responding to various urgent/emergency situations during their on-call duty period is not to be used by **Management** as a means ~~to~~ **of laying off any** bargaining unit personnel or ~~to refuse~~ **ing** to fill a bargaining unit position vacated by termination, retirement, or other ~~means~~ **forms** of attrition. The parties agree that, if

Management is aware that there is a need for overtime work (other than the types of work routinely performed by on-call Management personnel during their on-call duty periods), then the work shall be performed by a bargaining unit employee, subject to the provisions of Article 8 of this Agreement.

The parties also agree that work that will result in a continuation of a regular work schedule shall be performed by a bargaining unit employee, subject to the provisions of Article 8 of this Agreement.

ARTICLE 5

GRIEVANCE PROCEDURE

Section 1. Definitions.

Grievance. A grievance is defined to be any matter(s) ~~involving an alleged violation of this Agreement occurring, during its term only, by the City as result of in~~ which ~~the aggrieved~~ **an** employee maintains that his **or her** rights or privileges have been violated by reason of the City's interpretation or application of the provisions of this Agreement. Such matter(s) shall be **resolved** exclusively ~~resolved~~ in accordance with the procedure herein provided. Both parties agree to keep the grievance procedure free of non-meritorious ~~grievances~~ **claims**.

Section 2. Applicability. This process shall apply to permanent employees in the bargaining unit. Initial probationary employees may utilize the procedure for benefit issues only.

Section 3. Representation. The Union shall be the exclusive representative of all the employees in the bargaining unit for ~~the~~ purposes of presenting to and discussing with the City grievances ~~of any and all such employees~~ arising from ~~such~~ **their** employment.

Section 4. Union Grievances. Union ~~O~~fficers or ~~S~~tewards who are members of the bargaining unit shall have the right to initiate a grievance when any provision of this Agreement ~~has~~ **is alleged to have** been violated or when the Employer's interpretation of the terms and provisions of this Agreement ~~leads to a controversy with~~ **is different from** the Union's. ~~over application of the terms or provisions of this Agreement.~~

Section 5. Steward System. The Employer agrees to recognize stewards who have been designated by the Union to serve in this capacity. The number of stewards, selected from among regular employees in the ~~appropriate~~ **bargaining** unit, will not exceed three (3), **subject to modification by mutual agreement of the parties.** One of the stewards in **the Street Section** selected by the Union shall be designated as the Chief Steward.

The Union agrees to provide the Employer a list of all stewards, designating their assignments as a regular or alternate steward. The Employer agrees to provide a list of all supervisors, designating the areas ~~of the appropriate unit~~ in which they serve as a supervisor. The Chief Steward is not restricted to any area in performing assigned functions ~~of the appropriate unit.~~ The steward list will be maintained on a current basis.

Stewards shall be allowed reasonable time during working hours, without loss of pay or leave, for the ~~sole~~ purpose of investigating grievances; in the ~~appropriate~~ unit represented by the steward. Reasonable time for this purpose shall be interpreted to mean not more than forty five (45) minutes per week. ~~Provided, however,~~ If there are two (2) or more grievances filed in any one (1) week period, **however,** the investigating ~~Union~~ steward shall have one (1) hour to investigate ~~all grievances filed in a one (1) week period~~ **them.** **Requests to the Division Head or designee for extensions of this time limit may be authorized by the Division Head and/or designee and will not be unreasonably denied.** Before leaving the assigned work area, the Steward will notify the ~~immediate~~ **appropriate** Supervisor ~~who is not in the appropriate unit~~ and advise:

1. That the absence will involve Union business as it relates to possible grievances and
2. The location to which the Steward is going.

It is understood that the work and service provided by the Employer are the primary concern and **that** such requests for absences on Union business will reflect ~~the~~ **that** concern. If the

Supervisor feels that the Steward cannot be excused at the requested time, the Supervisor will make arrangements **for him/her to be excused** as soon as practical ~~so the steward may be excused~~. On arriving at the destination, the Steward will seek out the person in charge and advise:

1. The purpose of the Steward's visit and
2. The name of the employee to be seen.

The Supervisor normally will make the employee available. If the employee is not available because of work demands, the Supervisor will make arrangements, without undue delay, to make the employee available.

Alternate stewards will function as stewards in the absence of the regular stewards and will observe the procedures set forth in this Section.

The Chief Steward will observe the procedures set forth in this Article except that the Chief Steward will be allowed one and a half (1½) hours per week for investigating grievances.

An employee desiring to leave his or her assigned work area to discuss an ~~alleged~~ grievance/complaint with a steward will obtain prior permission from the immediate Supervisor. Permission will not be unduly denied.

~~The number of authorized stewards is subject to modification upon mutual agreement by the parties in local labor management relations meetings.~~

Section 6. Procedure. The City and the Union agree to ~~the following exclusive procedure of presenting and adjusting grievances which must be processed in accordance with~~ the following steps, time limits, and conditions **for presenting and adjusting grievances:**

STEP 1: A grievance must be taken to the immediate Supervisor ~~outside the bargaining unit~~ within fourteen (14) calendar days following knowledge of the problem **and discussed among that Supervisor, the aggrieved employee(s), and the Union Steward.** ~~The aggrieved employee and~~

~~their Union representative shall discuss the matter with the employee's immediate supervisor outside of the bargaining unit.~~ If the grievance is not settled within ten (10) calendar days following this discussion, the grievance shall, ~~within such time,~~ be reduced to writing on forms provided by the City and submitted to the next step.

STEP 2: In the event Step One does not resolve the matter, the written grievance shall be forwarded to the Section Manager within the above ten (10) day period. The grievance shall be signed by the employee and ~~by the Union Steward representative,~~ and shall set forth the facts of the dispute, the relief sought, and ~~shall refer to~~ the specific provision or provisions of the Contract alleged to have been violated. Second step grievance discussions shall take place at a meeting with the Section Manager, grievant, and ~~the Union Steward representative.~~ Such meeting shall be scheduled and held within ten (10) calendar days **of receipt by the Section Manager.** The City shall give its written answer within seven (7) calendar days after the close of discussion.

STEP 3: In the event Step Two does not resolve the matter, the written grievance shall be forwarded to the Division Head within the ~~above~~ ten (10) day period **following receipt of the City's answer.** The grievance shall be signed by the employee and ~~by the Union Steward representative,~~ and shall set forth the facts of the dispute, the relief sought, and ~~shall refer to~~ the specific provision or provisions of the Contract alleged to have been violated. ~~Second~~ **Third** step grievance discussions shall take place at a meeting ~~with~~ **among** the Division Head, ~~the~~ grievant, and the Union **Steward representative.** Such meeting shall be scheduled and held within ten (10) calendar days **of receipt by the Division Head.** The City shall give its written answer within seven (7) calendar days after the close of discussion.

STEP 4: Such answer shall be final unless the grievance is appealed by written notice to the Department Head within seven (7) calendar days after receipt of the City's ~~second~~ **third** step answer. Fourth Step grievance discussions shall take place at a meeting ~~with~~ **among** the Department Head ~~and/or designee, the~~ Division Head, the grievant, and the Union representatives. Such meeting shall be scheduled and held within ten (10) calendar days **of receipt of the appeal by the Department Head**. The City shall give its written answer within seven (7) calendar days after the close of discussion.

STEP 5: **Only the Union may advance a grievance beyond Step 4.** The answer of the Department Head **at the Step 4 level** shall be final unless the Union appeals the decision to the **City Manager's Office Human Resources Department** within seven (7) calendar days after receipt of the answer from the Department Head. A representative of the **City Manager's Office Human Resources Department** shall investigate and ~~shall~~ conduct an informal hearing into the matter. The representative of the **City Manager's Office Human Resources Department** shall provide a final answer for ~~the grievant and the Union~~ within fifteen (15) calendar days of receipt of the appeal ~~from the Union~~.

NOTE: In all cases involving actual or recommended terminations, the appeal at this level shall instead be to the Director of Human Resources, who shall follow the identical investigation, hearing, and answer requirements within the same prescribed time limits.

STEP 6: The answer of the representative of the **City Manager's Office (or, in the case of a termination matter, the Human Resources Department Director)** shall be final unless the Union appeals the grievance to arbitration by giving written notice of a desire to arbitrate to the Human Resources Department within ten (10) calendar days after receipt of the City's ~~fourth~~ **fifth** step answer.

Section 7. Arbitration. If the grievance is appealed to arbitration, the parties shall first meet ~~and try~~ to agree upon an arbitrator. This meeting shall take place within ten (10) calendar days of receipt of the notice specified in Step ~~Five~~ **Six**. Failing such agreement, the parties shall jointly ~~request~~ **ask** the Federal Mediation and Conciliation Service; to submit a list of five (5) arbitrators. Should the first list of arbitrators ~~be found to be unacceptable, then~~ either party may request that a second list of arbitrators be ~~obtained~~ **provided**. The party requesting arbitration shall strike the first name and each party shall strike one name alternatively until one arbitrator is left. The arbitrator shall be notified of his/her selection and a request shall be made that the arbitrator set a time and place for the hearing subject to the availability of ~~the~~ City and ~~the~~ Union representatives. The parties shall attempt to stipulate to the issue(s) before the arbitrator.

Section 8. Authority of Arbitrator. Only one grievance may be decided by ~~the~~ **an** arbitrator at any hearing; ~~however,~~ **unless** the parties ~~may~~ mutually agree to waive this requirement. The arbitrator shall have no right to add to, subtract from, nullify, ignore, or modify any of the terms of this Agreement or expand the issue(s). The arbitrator shall consider and decide only the particular issue(s) presented in writing by the City and the Union. The arbitrator's decision ~~and award~~ shall be based solely upon his/her interpretation ~~of the application~~ of the terms of the Agreement. If the matter sought to be arbitrated does not, **in the arbitrator's judgment**, involve an interpretation of the terms or provisions of this Agreement, ~~the arbitrator~~ **he/she** shall so rule. The ~~award~~ **decision** of the arbitrator shall be final and binding on the City, the Union, and the employee or employees involved.

Section 9. Arbitration Expenses. The expenses of the arbitrator, including fees, shall be shared equally by the City and the Union. Each party shall be responsible for its own arbitration

expenses. When an employee of the bargaining unit is subpoenaed by either party in an arbitration case, that employee may appear without loss of pay if he/she appears during his/her regularly scheduled hours of work.

Section 10. Effect of Time Limits. The parties agree to follow each of the foregoing steps in the processing of a grievance; ~~and~~. If, in any step, the City's representative fails to give a written answer within the time limit ~~therein set forth~~ **specified**, the grievance shall automatically be transferred to the next step at the expiration of such time limit. Any grievance not moved by the Union to the next step within the time limits provided following the City's answer will be considered settled on the basis of the City's last answer. The number of days to answer or move a grievance may be extended by mutual agreement.

Section 11. Expedited Grievance Procedure. In the event of an **actual or proposed** termination, ~~the grievant or~~ the Union may **bypass** Steps 1, 2, 3, and 4 and file the grievance directly with the Director of Human Resources, as indicated in Step 5, **who will make the final determination on behalf of the City**. All arbitration procedures ~~thereafter~~ shall be ~~taken~~ in accordance with the provisions of ~~Step 6~~ **Sections 7 and 8** of this ~~Section~~ **Article**.

ARTICLE 6

DISCIPLINE AND DISCHARGE

Section 1. General Policy. The Employer shall apply the concept of progressive discipline through four administrative actions relative to infractions of a like or similar nature. Supervisors ~~and~~ shall point out deficiencies in work at the time **they occur**, or as soon as practicable following knowledge thereof, ~~problems. The Supervisor shall~~ **and** strive to make suggestions and corrections in a constructive, ~~and~~ helpful manner. When disciplinary ~~action~~ or other corrective measures are warranted for just cause, they may include the following steps, ~~which may~~ **though** not necessarily be initiated in the ~~below listed~~ order **listed**:

~~1st Written Reprimand~~ Caution Counseling - signed verbal discussion documented as to issue addressed, initialed by both the supervisor, ~~signed by~~ **and** the employee, with a copy provided thereto, acknowledge receipt thereof and witnessed by a Union officer/steward. placed in the employee's personnel file.

~~Final~~ Written Reprimand - signed by the supervisor, ~~signed by~~ **and** the employee, to acknowledge receipt thereof, ~~and~~ witnessed by a Union officer/Steward, **and placed in the employee's personnel file.**

Suspension - (~~Notice to be given~~ in writing) of a removal from pay status for a specified period of time, with, at the employee's discretion (subject to Division Head concurrence), an alternative forfeiture of the equivalent amount of accrued vacation leave, provided, however, that decisions regarding such substitutions, while deserving of an explanation, shall not themselves be grievable.

Discharge - ~~(Notice to be given in writing)~~ of termination of employment with the City of Topeka for an offense(s) or recurrence of offenses serious enough to warrant such.

In the event an employee refuses to ~~sign to~~ acknowledge receipt of ~~the a~~ copy of ~~the any~~ action, it shall be noted by the supervisor and initialed by the Union ~~Representative~~ **Steward**. Employee assistance measures may be utilized if deemed appropriate by Management. (See Article ~~18 2~~, Section 12).

Section 2. Grounds for Suspension or Discharge. Compliance with ~~divisional~~ **Department and Section** rules ~~are is~~ necessary to ~~the a~~ safe and efficient operation of ~~the division~~ **workplace** and to maintaining sound relationships with employees. Below is a listing of offenses **(not all-inclusive)** which are of such a serious nature as to warrant immediate discharge or suspension and **for which** the Employer shall have the absolute and ~~unalterable~~ right to ~~terminate or suspend~~ **take such actions** ~~for just cause an employee immediately and without any prior notice of any kind for the violations listed below.~~ Related and mitigating factors may be considered, **however**, when determining the **appropriate response to misconduct** ~~action to take.~~ The list of offenses presented herein does not purport to be all inclusive.

1. Refusing to perform work assignments.
2. Leaving work assignment and/or City property without permission.
3. Possession of any type of firearms or explosives.
4. Removal of any City property from City premises for the employee's personal use and/or the disposal of any property without the written approval of the **Division Head** or ~~his~~ designee.
5. Knowingly falsifying information to the City.
6. Fighting, including striking a fellow employee or ~~the striking of a supervisor, or~~

threatening a fellow employee or supervisor with apparent intent to cause bodily harm.

7. Soliciting or performing ~~work~~ during ~~working~~ **duty** hours ~~work of the type performed by the division~~ **not authorized or directed by or otherwise beneficial to the City.**
8. ~~Possession or~~ Consumption of alcohol during working hours; or **possession or** use of illegal drugs during working hours; or ~~reporting for work in a condition unable to~~ **inability** to perform duties because of ~~consumption of alcohol or use~~ **being under the influence of illegal drugs either.**
9. Willful and/or reckless neglect of duty.
10. Failure to return to ~~job~~ **work** after ~~an~~ approved leave of absence or failure to return to the job after any other ~~permitted~~ **approved** departure.
11. The use of abusive language or unacceptable treatment of a citizen or City employee, including verbal and non-verbal sexual or racial harassment.
12. Failure to comply with the Drug testing policy of the City.

The preceding list does not limit Management's right to take appropriate corrective or disciplinary actions' for just cause as ~~needed~~ **necessary**. ~~Any employee receiving a corrective or disciplinary action shall sign any such action to acknowledge receipt of the action.~~ Employees may request the presence of a **Union Steward** ~~representative~~ at **all** disciplinary proceedings.

A permanent employee, as defined in Article ~~23~~, Paragraph C, of this Agreement, may be removed for just cause. Any employee ~~so removed for just cause~~ shall be given written notice of his/her dismissal ~~in writing stating the just cause for removal.~~ **with the reason(s) therefor.** Any **terminated** employee ~~dismissed for just cause~~ shall be ~~removed from~~ **taken off** the payroll immediately.

Section 3. Manner of Discipline. If the Employer has reason to discipline an employee, it shall ~~normally~~ be done **if at all possible** in a manner that will not embarrass the employee ~~before in~~ **front of** other employees or the public.

Section 4. Notification of Disciplinary Action. ~~Employees requesting Union representation shall be entitled to such, and the employee and Union representative shall be given the opportunity at the above meeting to rebut or clarify the reasons for such discipline.~~

Section 5. Notification and Measure of Disciplinary Action. ~~In the event disciplinary action is taken against an employee, the Employer shall promptly furnish the employee, in writing, a clear and concise statement of the disciplinary action and reasons therefore. Once the measure of discipline is determined and imposed, the Employer shall not increase it for the particular act of misconduct. An employee shall be entitled to the presence of a Union representative at any phase of a disciplinary action.~~

For all proposed disciplinary actions, the Employer shall notify the employee involved at least forty-eight (48) hours in advance of any meeting on the matter that a corrective measure is being contemplated and why. With that notification, employees shall be informed of their rights to Union representation if they so choose. It is the responsibility of the employee, however, to make the representation request. The employee may waive either the forty-eight (48) hour waiting period or Union representation or both, but must do so in writing. If neither is waived, the employee and/or the Union representative shall be given the opportunity at the ensuing meeting to rebut or clarify the reasons for such possible discipline. Such meeting shall occur within fourteen (14) days of Management's having knowledge of the underlying problem, unless the Chief Union Steward is advised within that time frame that an extension is necessary and why.

Section 5. ~~Notification Form~~ and Measure of Disciplinary Action.

In the event disciplinary action is taken against an employee, the Employer shall promptly furnish the employee and the Union (if representation has been requested) a clear and concise statement in writing of the disciplinary action and reasons therefor. Once the measure of discipline is determined and imposed, the Employer shall not increase it for the particular act of misconduct. An employee shall continue to be entitled to the presence of a Union representative at any phase of a disciplinary action, even if previously waived. If there is no Union representation in a disciplinary matter, no resulting penalty can be used as a precedent for the handling of a similar incident in the future.

Section 6. Personnel File. A copy of any adverse action shall be given to the employee. An employee must furnish written permission to allow a Union **Steward** ~~representative~~ to have access to ~~that employee~~ **his or her** file. All records of disciplinary actions of a nature not serious enough to warrant immediate suspension or discharge shall be removed from the official personnel file of the employee after a period of ~~two (2) years~~ **eighteen (18) months** from the date of the action if no such similar actions occur during that ~~two-year~~ period. It shall be the responsibility of the employee to provide notification in writing to the Director of Human Resources at the end of the ~~two-year~~ **eighteen (18) months** period that such disciplinary action(s) need to be removed. **All records of disciplinary actions involving suspensions shall remain on file for a period of thirty (30) months.**

ARTICLE 7

HOURS OF WORK

Section 1. Regular Hours. The ~~N~~normal work week for full-time employees in the ~~appropriate~~ **bargaining** unit shall be forty (40) hours in a regularly recurring period of one hundred sixty-eight (168) hours in the form of seven (7) consecutive twenty-four (24) hour periods. The normal work day for full-time employees ~~in the appropriate unit~~ shall be eight (8) hours within a twenty-four (24) hour period. All employees shall be assigned to a regular work shift and each work shift shall have a regular starting and quitting time.

Section 2. Work Schedules. Work schedules are defined as an employee's assigned hours, days of the week, days off, and shift rotations.

All work schedules showing ~~the~~ employee's' shifts, work days, and hours shall be posted on applicable departmental bulletin boards.

The Employer shall provide five (5) calendar days' written notice to the Union and the affected employees prior to making permanent changes in work schedules. Employees will not be sent home early for the purpose of avoiding overtime.

Work schedules will not require ~~the~~ employees to work split shifts or consecutive shifts, except in emergencies as stated in Section ~~11~~ **9**.

Section 3. Rest & Meal Periods.

- A. All employee work schedules shall provide, where applicable, for a fifteen (15) minute rest period during each one-half shift. The rest period shall be at the job site or **in** close proximity.

Supervisors shall cooperate with ~~the~~ employees required to work overtime in making arrangements for contingencies such as daycare, **and** shared rides ~~and etc.~~ When ~~the nature of the work being done has been declared~~ **is incidental to** an emergency **declared** by the Section Manager or ~~his~~ designee, ~~the~~ employees shall not be entitled to ~~a~~ rest periods until the emergency work has been completed.

- B. All employees shall be granted a thirty (30) minute meal periods during each work shift, **along with ten (10) minute clean-up times prior to that period.** Those ~~employees allowed a thirty (30) minute meal periods shall be permitted to eat~~ as near the middle of the shift as possible. ~~The m~~Meal periods **themselves** shall be without pay and shall be at the job site or **in** close proximity. If for any reasons, ~~this a~~ meal period is shortened and/or canceled and ~~the an~~ employee is required to perform work, that time will be credited to the employee's hours of work for that week. The Section Manager or designee may reschedule ~~the~~ meal periods during, but not beyond, the sixth (6th) hour **of a shift.**
- C. Employees called back or required to work outside of normal work hours shall be given ~~a~~ paid **fifteen (15)** minute rest periods after each **two (2)** continuous hours of work and/or ~~a~~ paid **thirty (30)** minute combination rest and meal periods after each **four (4)** continuous hours of work.

~~The Section Manager or designee may~~ **City will provide either an actual meal itself or a single paid meal allowance of six dollars and fifty cents (\$6.50) to** ~~the an~~ employee who is required to work **four (4) or more continuous hours of unscheduled overtime beyond a normal shift.** If the employer determines that the employee's work cannot be interrupted for a **full** meal break, the employee shall be entitled ~~under these circumstances~~ to only enough time to eat the meal.

Section 4. ~~Clean-up Time~~ **Post-trip Inspection/Clean-up.** Employees shall be granted a five (5) minute personal clean-up period prior to the meal periods, and ten (10) **twenty (20)** minutes at the ends of the shifts **to both clean-up; perform post-trip inspections; brief supervisors on work accomplished; receive assignments for the next day; and prepare vehicles and equipment accordingly.** ~~However, where work conditions dictate, the before meal clean-up periods may be extended to ten (10) minutes.~~

Section 5. Time and Place for Reporting for Work. Employees shall be ready to commence work or depart from their reporting stations for ~~the~~ job assignments at the beginning of each work schedule.

Section 6. Reporting Time. Any employee ~~who is scheduled for work and~~ who presents himself/herself for work as scheduled shall be assigned to at least one (1) hour of work on the job for which he/she was scheduled ~~for work.~~

Section 7. Call/Show-up Time. Any employee called to work ~~by pager or phone~~ outside of his/her regularly scheduled shift shall be paid for a minimum of three (3) hours “show-up” time or ~~for the actual number of hours worked, whichever is greater, at his/her scheduled hourly rate.~~ **If the employee cannot be reached by pager then the telephone will be used.** Only one show-up allowance may be paid **an employee** per 24-hour period, **after which** ~~An employee shall only be paid compensation will be~~ for actual hours worked ~~on subsequent calls in a 24 hour period.~~ **The end of a call time occurs once the leadperson has returned to his/her domicile.**

Section 8. Shift Differential. ~~Effective following approval of this Agreement,~~ Full time; benefit eligible employees of the Street Section shall be eligible for shift differential as follows:

1. ~~Shift W~~work assignments generally starting at or after 7:00 p.m. but before 3:00 a.m. shall ~~be considered shift work~~ **qualify for the differential.**
2. **As an exception to the normal requirement that shift work be regular and recurring, those who bid on and are assigned to pre-established “night” shifts for emergency snow removal shall also receive the differential for hours worked in that contingency capacity.**
3. **If an employee volunteers for or is otherwise assigned to fill-in on a temporary basis for an absent co-worker on shifts that would ordinarily satisfy the criteria of subsection 1 above, that employee shall be entitled to the differential for all hours worked in that assignment.**
- ~~24.~~ Employees assigned to ~~shift work~~ **such night schedules** shall be paid an additional ~~forty five~~ **fifty cents (\$.50)** per hour.
5. **For the purposes of either standby actually worked, or overtime performed, in conjunction with an underlying qualifying night schedule, Shift Differential, as a premium pay, shall be added prior to calculation of one and one-half (1½) times the employee’s regular hourly rate.**
6. **Payment of Shift Differential shall only be for actual hours worked and not applied to non-duty status compensation for vacation; sick, funeral, or emergency leave; compensatory or holiday time; and any related absence with pay.**

Section 9. Exclusionseptions.

Emergencies. When ~~a~~ **the** Section Manager or designee has determined that an emergency exists, the Union agrees that the provisions of this Article may be temporarily ~~altered~~ **suspended** in order to control the situation which has caused the emergency.

ARTICLE 8

OVERTIME

Section 1. Overtime.

- A. Definition. Overtime is defined as all hours in pay status in excess of forty (40) hours in any scheduled work week. Overtime work must be approved by the Section Manager.
- B. ~~Carry-Over Overtime.~~ **The Employee(s) with relevant skills** involved in assigned work that requires overtime **them to be held over in order** to complete the work assignments will be offered the first that opportunity for overtime associated with that particular work **without regard to the normal seniority list.** ~~The overtime will not be given to an employee that does not have the relevant skills to complete the work being done.~~
- C. Rate of Pay. Compensation for overtime work shall be at one and one-half (1½) times the employee's regular rate of pay.
- D. Eligible employees. For the purposes of this Article, **only those** employees in a **non-leave** pay status are eligible for overtime work, ~~with the exception of people using sick leave.~~ **and need to be called, provided, however, that an employee on approved vacation or sick leave for other than personal illness may, at the time of request therfor, ask to be retained on a particular overtime call list.**

Section 2. Distribution of Overtime Work.

- A. ~~Overtime work shall be offered to the most senior qualified employee within the a section category. Both parties agree that~~ The Section Manager will determine the categories of employees **for overtime work.** ~~However, he/she~~ The Section Manager

- will notify the Union in advance of any **proposed** changes in ~~the~~ **those** categories of employees and agrees to **in order that its input may be** considered ~~any input from the~~ Union regarding these categories of employees. **before implementation.**
- B. Snow removal shifts will be determined by seniority bid for day or night shift in October of each year. Once shifts have been established, necessary overtime due to inclement weather will utilize the day call or night call process. When overtime begins **within** three (3) hours ~~or less prior to~~ **of** the start of the day shift, the day shift will be called for overtime work. When the overtime begins **within** three (3) hours ~~or less prior to~~ **of** the start of the night shift, the night shift will be called for overtime work. ~~Any overtime not associated with inclement weather will be handled by section seniority list as set forth in Section 2. A.~~
- C. When it is necessary to call employees for overtime work, the opportunity ~~to work overtime~~ shall **generally, except for holdover or emergency snow removal situations,** be offered to the most senior qualified employee listed first in ~~the~~ **a particular** section category, **continuing** until each employee listed has been ~~offered overtime~~ **called.** ~~Provided, however,~~ Any employee who has been called out for overtime and is still on ~~that~~ **an** overtime assignment will be required to finish that assignment **before being considered for another opportunity.**
- D. ~~Employees within the Street Section will follow the procedure above but, A~~after that a list of eligible employee's has been exhausted, ~~then~~ the least senior employee ~~that is~~ qualified to perform the work **in question** will be required to accept the overtime work ~~or face possible disciplinary action.~~ **assignment.**

Section 3. Employee's Obligation to Accept Overtime Work. Any employee shall have the right to refuse the first call for overtime work on an individual overtime job, but ~~shall be required to~~ **must** accept the offered overtime **assignment** on the second call. ~~Any employee refusing overtime work upon receiving second call shall be subject to disciplinary action as provided in the disciplinary Article of this Agreement.~~

Section 4. Definition of Pay Status. For the purposes of ~~this~~ Article, the following ~~hours~~ shall be considered hours worked **pursuant to Fair Labor Standards Act (FLSA) requirements for calculation of overtime:**

1. Sick leave time
2. Holiday time
3. Vacation time
4. Compensatory time
5. Any other time in pay status as provided by this Agreement.

Section 5. Compensatory Time. Compensatory time shall be given in accordance with the provisions of the ~~Fair Labor Standards Act~~ **FLSA, but all employee requests for such shall require supervisory approval. In the event of a snow or other similar emergency declared by the City Manager whereby all "non-essential" employees are directed to stay at home with pay and without assessment of personal leave, all Street Section workers covered by this Agreement who are considered essential and therefore required to (and do) report shall receive in Compensatory Time the same number of hours as those deemed non-essential are excused from duty, less any time such essential Street employees are themselves granted absences from normal work schedules.**

ARTICLE 9

SENIORITY

Section 1. Definition. Seniority shall be defined as the total length of uninterrupted service accumulated by an employee in each of the following categories:

- A. City Seniority - The total length of uninterrupted service following initial date of hire with the City.
- B. Division Seniority - The total length of uninterrupted service following the date of assignment to the specific division where the employee is currently employed.
- C. Classification Seniority - The total length of uninterrupted service following the date of assignment to a specific job classification within a specific division of the City.

Employees shall accrue seniority for time spent on involuntary Military Leave or leave as a result of an on-the-job injury or as provided elsewhere in this Agreement.

Section 2. Loss of Seniority. An employee's seniority accumulation shall stop if the employee:

- 1. Is discharged for just cause (unless reversed and awarded back pay through the grievance or other legal procedure).
- 2. Retires.
- 3. Quits or resigns. Any employee who voluntarily resigns in good terms and returns to work, in the same division within one hundred twenty (120) days shall receive credit for all City seniority previously accrued. **However, unless a**Any employee who does not receives direct compensation from the City during the above-mentioned that 120 day period, **he/she shall not accrue no further** seniority during that time. Divisional

and Classification seniority shall commence on the date the employee returns to work.

Section 3. Seniority List. The ~~Section Manager~~ **Division Head** shall maintain an up-to-date seniority list of all employees ~~which shall~~ **containing** the name of each employee, date of hire, date entered the ~~D~~ivision, and date entered the classification.

Every six (6) months the City shall update and post the seniority lists on the official bulletin boards and submit a copy to the Union. The City and the Union shall be allowed thirty (30) days to notify one another of any errors they find in the seniority lists as posted.

ARTICLE 10

PROBATIONARY EMPLOYEES

Section 1. Definition. Probation, ~~is as~~ an integral part of the selection/screening process, ~~and~~ shall be utilized for closely observing the employee's work; and for securing the most effective adjustments of an employee.

Section 2. ~~Original~~/Initial Probation. Each employee, following initial employment, shall be subject to a minimum ~~original~~ probationary period of 1,040 hours. This probationary period may be extended, for just cause, by the Employer for up to 520 additional hours if the performance demonstrated by the employee does not conclusively illustrate reasonable ability to complete the expected duties and if the action to extend the probationary period is taken prior to the end of the 1040 hours ~~probationary period~~. The Employer agrees to notify employees and the Union in writing of ~~the decisions~~ to extend ~~their original~~/initial probationary periods.

Section 3. Seniority of an ~~Original~~/Initial Probationary Employee. An ~~original~~/initial probationary employee shall have no seniority until the completion of the probationary period. On successful completion of the initial probationary period, the employee will acquire seniority from the date of hire.

Section 4. ~~Promotional Probation.~~ ~~All promotional appointments shall be subject to a promotional probationary period of 520 hours. This probationary period shall be extended once by the Employer for up to 520 additional hours if the performance demonstrated by the employee does not conclusively illustrate reasonable ability to complete the expected duties and if the action to~~

~~extend the probationary period is taken prior to the end of the normal 520 hours promotional probationary period. An employee who fails to meet the requirements of the promotional probation shall be reinstated to his/her former position they held prior to their promotional appointment. An employee who does not successfully complete the promotional probationary period must wait one (1) year from the date of notification before being eligible to apply for promotion in that classification. The employee may grieve his/her failure to successfully complete the promotional probationary period.~~

Section 4. CDL Requirement. All initial probationary employees shall be required to have or obtain a Class A CDL prior to the completion of their initial probationary periods. The necessary on-duty time shall be allowed for this, consistent with the provisions of Article 2, Section 13.A.

ARTICLE 11

VACANCIES-TRANSFERS-PROMOTIONS

Section 1. Definitions.

- A. Vacancies: For purposes of this Article, a vacancy exists whenever a position is not filled by a permanent employee.
- B. Transfers: For purposes of this Article, a transfer is: ~~t~~The lateral movement of an employee in the same pay range to a position within a different or same classification in the same pay range.
- C. Promotion: For purposes of this Article, a promotion is: ~~t~~The advancement of an employee ~~by the Section Manager or his/her designee~~ to a higher ~~paying~~ **classification competency scale** within the Street Section on a permanent basis.

Section 2. Posting. All vacancies to be filled on a permanent basis shall be posted on Union bulletin boards for a period of five (5) working days prior to filling the vacancy. The posting notice will contain the job title/description, shift, and any other information as necessary. Management shall make every effort to fill jobs as expeditiously as possible and shall promptly notify the Union of decisions not to fill jobs at the time such ~~Management~~ decisions are made. ~~or~~ **On** request of the Union, Management shall provide a statement of the status of a position if the position is not posted within thirty (30) days of the vacancy. Vacancy announcements shall not be required ~~for vacancies~~ where the Employer allows a transfer or demotion to avoid a layoff situation. If a vacancy is not filled within fourteen (14) days following the posted open bidding period, it may be re-opened for bids.; ~~however, If the opening is not~~ **neither** filled ~~and not~~ **nor** re-opened, Management will notify the Union of **and explain the reason for** its decision, ~~including a statement explaining the decision.~~

Section 3. Promotion. **Promotion within the Division will be based on the acquisition of new competency levels pursuant to training, practice, experience, and qualification as set forth in Article 18, Section 4. Testing can occur at any time, with advancement to the next higher scale commencing with the first day of the first pay period following certification by the Section Manager.** ~~Division seniority and qualifications will be used in determining those employees who will be selected for promotion. The decision as to the qualifications shall be reasonably determined by the Employer. An employee shall be qualified either by past experience, by previously satisfactorily completing a training program established voluntarily by the Division, or in those cases where there are not any qualified training programs, by satisfactorily completing a 520-hour on-the-job training program before his/her promotion or reassignment. The employee will serve a promotional probationary period of 520 hours that shall be extended once by the employer for up to 520 additional hours as defined in Article 10, Section 4. An employee who does not successfully complete the promotional probation period must wait one (1) year from the date of notification before being eligible to apply for promotion in that classification. The promotion will be awarded to the qualified employee with the most Division seniority. The employee will make application for promotion in writing to the Operations Manager or designee.~~

~~In the event a more senior employee is not appointed to a vacancy for which the employee has applied, the employee may request written reason(s) for the denial.~~

~~Any employee who is promoted to a position in a higher pay range shall be compensated at a step on the new pay range which will amount to an increase in pay over the amount the employee was earning in the position from which the employee was promoted.~~

~~Note: The Union recognizes that the City's vision is to provide training opportunities to the bargaining unit personnel and to continue to use qualifications as part of the overall selection criteria~~

for promotions. During 2003-04 contract negotiations, both parties agreed that when a new training program is ready to be instituted the City and Union negotiating representatives will meet and discuss how seniority is to be applied when employees are selected for promotion.

Section 4. Working Out of Class. Whenever management determines to fill a position, on a temporary basis, with an employee whose position is in a lower classification pay range, such employee shall, after working more than ten (10) consecutive work days, be compensated at the beginning rate of pay for the higher rated classification for all consecutive days worked in the classification. Compensation at the higher rate shall be paid retroactive to the date the employee commenced working out of class. The employee shall be paid at the next higher step in the higher paid classification which will amount to an increase in pay if the employee is earning more in his/her classification than the beginning rate of the higher classification.

All time spent working out of class in a higher compensated classification shall be considered as training time for the higher classification. Time spent working out of class within two years of a promotion to the higher class shall be credited to the employee toward the promotional probationary requirement; provided however that not more than two hundred and sixty (260) such hours may be credited toward any promotional probationary period.

ARTICLE 12

LAYOFF PROCEDURE

Section 1. Layoff Determination. Layoffs shall be defined as a reduction of staff or the elimination of any ~~classification or position~~ to ensure the efficient and economical operation of the Section as determined by the ~~Section Manager~~ **Division Head, Department Head,** and/or the ~~Governing Body~~ **City Manager.**

In the event a reduction in force is deemed necessary, employees shall be laid off as follows:

1. The Section Manager shall designate ~~the classification(s)~~ where the layoff(s) will occur. ~~and, In general,~~ temporary employees or employees who are partially subsidized through specially-budgeted programs shall be laid off first, followed by benefit-eligible employees on part-time schedules, followed by benefit-eligible full-time employees.
2. The laying off of benefit-eligible, full-time employees will occur in the inverse order of their seniority ~~in the classification.~~

Section 2. Required Notice. Employees who are to be laid off shall be given formal written notice at least ~~ten (10)~~ **fifteen (15)** working days in advance of the date of the layoff, ~~or If sufficient such notice is not given, the Employer shall give fifteen (15) work days in pay to the individual affected one day's salary for each day fewer than fifteen (15) that the notice was actually provided. in lieu of the required notice.~~ The Union shall be given a copy of the layoff notice.

Section 3. Bumping. ~~Bumping shall be defined as the process of a senior employee in a classification replacing a junior employee for the purposes of a layoff as defined above. An~~

~~employee who, after seniority is applied, is to be laid off in one classification may bump a junior employee in another classification if the senior employee is qualified to perform the work of the other classification and the bumping employee has more divisional seniority than the employee to be bumped.~~

Section 43. Recall. Employees shall be recalled from layoff according to their seniority ~~in the job classification in which the Section Manager has declared an opening.~~ If there is more than one employee available to be recalled, the Section Manager shall recall the employee with the most seniority, ~~in that classification.~~ **regardless of the number of skill levels he or she has.**

The City shall retain a list of ~~those~~ employees who have been laid off. Those employees who have remained on a layoff status for ~~one (1) day past~~ **more than** twenty-four (24) months shall be ~~stricken~~ from the list ~~forever and shall not be included in any~~ **longer subject to** recall list of employees by the Section Manager.

~~The~~ **E**mployees **on a lay-off list** shall notify the Section Manager ~~in writing and~~ by Certified Mail within ten (10) days of any change of address. Any employee failing to provide such a notice shall ~~not~~ have **no** recourse, legal or otherwise, against the City if a recall occurs and he/she **has** ~~failed~~ to receive notice ~~of the recall.~~

The City agrees to ~~notify the employee or~~ **advise laid off** employees ~~laid off~~ **on a recall list** ~~by mailing the notice of a job vacancy in a specific job classification~~ **by mailing notices** to the employees' last known addresses ~~as provided by the employee to the Section Manager~~ in the manner ~~set out in the foregoing paragraph~~ **forth above.**

Any employee **who** ~~receives~~ notice of a recall; **and** who desires to be considered for **a** vacancies shall notify the ~~D~~ivision ~~H~~ead by Certified Mail within ten (10) calendar days ~~after of~~ the postmarked date of the City's ~~certified notice of the recall.~~ ~~The notice shall contain~~ **stating the**

exact date the employee will be available to return to work. The employee shall be required to be available to return to work within twenty-four (24) days of the ~~postmarked date of the City's notice to the employee or the employee shall forfeit his/her right to be recalled.~~ **in order to be considered.**

Section 54 Layoff Options. The Division Head may recommend alternative cutback areas (to any anticipated layoff of employees) to the City Manager ~~of the City~~. Nothing in this Agreement shall prohibit the City Manager from entering into an arrangement with the Union to minimize the effect of general layoffs by:

- a) Reducing the total number of working hours of employees,
- b) Reducing the level of payment to current classifications,
- c) **Implementing** a rotational ~~layoff~~ **furlough** system, or
- d) **Utilizing** other **scheduling** variations which may cause minimal impact on services rendered to the public.

ARTICLE 13

SICK LEAVE

Section 1. Accumulation. Employees covered by this Agreement shall accrue sick leave at a rate of 3.692 hours per pay period for a forty-hour employee. The maximum ~~accrual allowance~~ **year-end carry-over** for sick leave shall be one thousand forty (1,040) hours for a full time forty-hour employee. **While bargaining unit members may continue to accrue above that number at their normal rate during the ensuing twelve-month period, any excess on December 31 will be zeroed out and compensated in accordance with the provisions of Section 4 below.** An employee must be performing assigned duties or on authorized paid leave **or Workers' Compensation** to be eligible to accrue sick leave.

Section 2. ~~Payment Requests.~~ An employee shall ~~receive hour-for-hour reimbursement for sick leave usage only if the employee is~~ **be allowed to utilize** sick leave for approved purposes. Employees who wish to ~~receive full prevailing rate reimbursement for~~ **be on sick leave status** shall notify their ~~duly authorized~~ **Supervisors** of their illnesses prior to the start of their shifts or prior to leaving their work sites. The ~~reimbursement~~ requests may be subject to reasonable audit, confirmation, **and medical certification,** ~~and approval by the duly authorized supervisor prior to authorization of such payment~~ **before or after approval.** Requests ~~for reimbursement~~ submitted more than two (2) working days after ~~the~~ **an** employee returns to work ~~shall not be honored and as well as~~ claims submitted following termination of employment shall not be ~~reimbursed.~~ **honored unless in special circumstances an exception is made by the Division Head.** ~~Reimbursement for~~ Sick leave shall be available as it is accrued, including during the initial probationary period, but it shall not be allowed in advance of accrual.

Section 3. Acceptable Use.

- A. Sick leave may be ~~allowed~~ **utilized** in minimum one-quarter-hour increments when an employee is unable to perform duties due to a personal sickness or injury; **or** **when** the illness or injury of an employee's spouse, ~~children~~, ~~stepchildren~~, parents, grandparents, or ~~grandchildren~~ living with the employee ~~when~~ **requires** care-giving ~~is necessary~~ from the employee. Additionally, sick leave may be used ~~for the need~~ for medical, dental, or other routine, diagnostic or remedial treatment ~~by of~~ the employee or the employee's spouse, ~~children~~, ~~stepchildren~~, parents, grandparents or ~~grandchildren~~ living with the employee when ~~care-giving~~ **facilitation** is necessary ~~from~~ **by** the employee. **In no case, however, shall** ~~provided that~~ sick leave granted for such purposes ~~shall not~~ exceed the actual time necessary for examination, ~~or~~ treatment, and ~~reasonable travel time as determined by the Section Manager.~~

In non-emergency situations, ~~the employees~~ shall schedule medical or dental appointments, and/or treatments at a times which does not ~~unduly~~ interfere with job-related duties and shall notify ~~his/her~~ supervisors as soon as the ~~time of~~ appointments ~~is~~ **are** known. Sick leave may also be allowed **or directed** if exposure to a contagious disease may endanger or jeopardize the attendance of other employees.

- B. Sick leave ~~reimbursement~~ may be ~~allowed~~ **utilized** for elective surgery. ~~If this use of sick leave is necessary for a period exceeding more than three (3) days will be necessary, however, arrangements shall must be made in advance between the employee and with the Section Manager so that the leave shall will to the extent possible be at a time when best suited to the work situation allows.~~

Section 4. Year-end Reconciliation/Payment Upon Retirement. **Employees who at the end of the year have in excess of the number of Sick Leave hours permitted for carry-over as stipulated in Section 1 above shall have such residual hours zeroed out and compensated at the rate of thirty-five percent (35%) of their respective hourly wages on December 31.** Any employee retiring under **the Kansas Public Employees Retirement System (KPERs)** or the Social Security System will **similarly** be paid for thirty-five ~~(35)~~ percent **(35%)** of eligible accrued sick leave up to a maximum ~~payment~~ of three hundred and sixty-ninety-seven ~~(36097)~~ hours at ~~their~~ **respective prevailing his or her hourly rates immediately preceding retirement.**

Section 5. Return to Work. Any employee who ~~shall~~ **absents himself or herself on Sick Leave for more than five three or more** consecutive workdays may be required to provide the Human Resources Director with a ~~medical~~ report from a medical doctor duly ~~certified~~ **licensed** by the State of Kansas ~~and Kansas Medical Association, showing~~ **indicating the dates** the employee has been ~~under treatment~~ and **certifying that he or she is capable of** returning ~~released~~ to full duty. Failure to provide a doctor's statement as required may result in **a determination that the Sick Leave in question was not supported by medical opinion, thereby leading the employee being subject to disciplinary action as provided for in Article 5 of this Agreement for abuse.** The Human Resources Director may waive the above requirement.

~~Provided, however, that~~ Any employee who is off work for any period as a result of a ~~work-~~ **job-related injury** shall, before ~~reporting~~ **starting** back to work, report to the Human Resources Department. ~~The Human Resources Director may require~~ **The employee to shall at that time provide to the Human Resources Director a medical statement from a medical doctor duly certified licensed by the State of Kansas and the Kansas Medical Association, showing the City**

Health Care Provider (CHCP), by whom the employee will have been required to be treated, certifying that the employee is capable of performing full regular duties.

The Human Resources Director may **also** require any employee ~~reporting~~ **appearing to be** sick or injured **on the job or coming back to work from extended Sick Leave (more than three consecutive work days)** to report to ~~a medical doctor of the Director's choice~~ **the CHCP** for an **independent evaluation examination, regardless of whether or not a note from that employee's personal physician has been presented.** The cost of such an examination shall be paid by the Employer. Any employee refusing to be examined by ~~a medical doctor of the CHCP Director's choice~~ may be subject to ~~disciplinary action which may include immediate termination a~~ **determination that he/she is not yet cleared to return to duty.**

Section 6. Excessive Use of Sick Leave. Any employee who establishes a pattern that makes it appear ~~that~~ the employee is using sick leave improperly; shall receive a written notice from the Section Manager or ~~his~~ designee notifying him or her to report to the Human Resources Department. Thereafter, the employee may be required to report to the ~~City Medical advisor~~ **CHCP** for consultation concerning the employee's **health duty status.** The ~~City Medical Advisor~~ **CHCP** may require a doctor's statement ~~showing~~ **certifying:**

1. ~~They were~~ **That the employee was** treated by a physician and the date(s) of that treatment;
2. ~~A statement from the attending physician stating T~~that the illness or injury was of sufficient seriousness to prevent the employee from being present at work;
3. ~~That Date or dates~~ the employee was unable to work **on a specified date or dates** because of the illness or injury; **and**
4. ~~That Date~~ the employee may return to work to assume his **or her** regular duties **on a**

date certain.

Failure to comply with ~~providing~~ the above Doctor's statement **requirement** may result in a **determination that the Sick Leave in question was not supported by medical opinion, thereby leading to disciplinary action for abuse.**

Section 7. Leave Requiring Medical Attention. An employee may remain on the job so as long as his/her health permits. **As provided in Sections 3.A. and 5 above,** ~~The Division Head~~ **Management** may require any employee to report to the Human Resources Department if there ~~Division head has~~ **is** reason to believe that ~~an~~ **that** employee ~~may be~~ **is** incapable of performing his/her duties because of illness or injury. The Human Resources Director may refer the employee to the ~~City Medical Advisor~~ **CHCP** for consultation and/or examination to determine the ability of the employee to perform his/her assigned duties.

Section 8. Employees Receiving Worker's' Compensation Benefits. Any employee injured as a result of an accidental injury arising out of and in the course of his **or her** employment; -- and who is receiving ~~W~~**worker's'** ~~C~~**compensation** benefits while he/she is ~~T~~**temporarily** ~~T~~**totally** ~~D~~**disabled** and is still employed as a regular employee of ~~a department of~~ the City of Topeka; -- may prorate sick leave in an amount representing the difference between ~~their~~ **his/her** normal base compensation from the City and the amount received from Workers' Compensation. ~~Provided, however, A~~**n** employee who is receiving ~~W~~**worker's'** ~~C~~**compensation** of any kind shall continue to accrue sick leave.

Section 9. Incentive for Non-Use of Sick Leave Reimbursement.

Employees shall be granted one (1) **bonus** day of **personal** leave for each ~~consecutive one~~ **hundred twenty (120) days of not using any full calendar quarter (i.e., January-March; April-June; July-September; and October-December) in which they use no sick leave.** The employees shall be responsible for **making the** requesting for the additional day ~~earned~~ in writing to ~~their~~ **his/her** supervisor and utilizing the day within ~~three (3) months of the date approved~~ **by the end of the fifteenth day following the end of the quarter in question (i.e., January 15; April 15; July 15; and October 15, respectively), unless an exception is granted for good cause.** If not utilized ~~within that time period~~ **by the end of the quarter following that in which it is requested and approved,** the day will be forfeited. **For the purposes of this bonus entitlement, Sick Leave taken in conjunction with a job-related injury covered by Workers' Compensation shall not be considered disqualifying.**

For all full calendar years following the effective date of this Agreement, Employees shall instead of Personal Leave Day bonuses for the non-use of Sick leave be compensated with incentive awards in accordance with the schedule below, with eligibility lists to be submitted by the Section payroll clerk prior to January 15 and payments to be received with the first full pay period following validation and approval by the Department of Financial Services:

0 hours used during the year	\$500.00
1-8 hours used during the year	\$400.00
9-16 hours used during the year	\$300.00
17-24 hours used during the year	\$200.00
25-32 hours used during the year	\$100.00

Section 10. Non-City Employment Injury and Use of Leaves. Any Ceity employee injured

while in the ~~former~~ employment of an ~~e~~Employer other than the City shall reimburse the City for any losses sustained by the City through ~~City (sick) leave~~ or other paid leave usage, provided **both that** the ~~e~~Employer is insured and ~~further provided that~~ a ~~W~~workers' ~~C~~ompensation settlement is consummated between the employee and the other ~~e~~Employer. The amount reimbursed shall not exceed the amount in pay ~~lost to~~ **made by** the City.

Section 11. Effect of Inter- and Intra- departmental Transfers on Sick Leave Accrual. Any employee who is transferred, promoted, demoted, reassigned, or otherwise placed in a different ~~D~~department shall be entitled to retain accrued sick leave.

Section 12. Light Duty for Injury On or Off The Job. An employee injured either on or off the job ~~and~~ who is unable to perform his or her assigned duties may be assigned to light duty as determined by the ~~City Medical Advisor~~ **CHCP**. The Section Manager shall determine whether light duty ~~activities~~ **positions** exist and the duties associated with each such ~~activities~~. The ~~City Medical Advisor~~ **CHCP** ~~shall~~ **may be asked to** determine whether the injured employee is able to perform the ~~duties~~ **tasks** associated with light duty ~~activities~~ **responsibilities**.

Employees injured on the job shall receive preference in being placed in any available light duty ~~activities~~ **assignments**. Any disputes concerning light duty ~~activities~~ **positions** or the right thereto shall be submitted to the Human Resources Department for resolution.

The Human Resources Director may, with the agreement of the employee, place the employee in a light duty ~~position~~ **capacity** in another ~~D~~department.

ARTICLE 14

HOLIDAYS

Section 1. Holidays Recognized and Observed. The following days shall be recognized and observed as paid holidays:

1. New Year's Day – January First
2. Martin Luther King, Jr.'s Birthday--Third Monday in January
3. Memorial Day -- Last Monday in May
4. Independence Day -- July Fourth
5. Labor Day -- First Monday in September
6. Veterans Day -- November eleventh
7. Thanksgiving -- Fourth Thursday in November
8. Friday after Thanksgiving
9. Christmas Eve Day -- December twenty-fourth
10. Christmas Day -- December twenty-fifth

All holidays shall commence at 12:01 a.m. on the day of the designated holiday and shall end at 12:00 midnight on the day of the designated holiday.

Eligible employees shall receive a normal day's pay for each of the holidays listed above on which they perform no work.

Whenever any of the holidays listed above shall fall on Saturday, the preceding Friday shall be observed as the holiday.

Whenever any of the holidays listed above shall fall on Sunday, the succeeding Monday shall be observed as the holiday.

~~However, if Should the Governing Body City~~ designates an alternate day other than the ~~closest~~ Friday or Monday ~~or vice versa as a holiday~~, then that will become the official designated holiday for the purposes of ~~theis~~ Section.

Section 2. Eligibility Requirements. Employees shall be eligible for holiday pay under the following conditions:

- a. The employee would have been scheduled to work on such day, if it had not been observed as a holiday, unless the employee is on approved vacation leave, and
- b. An employee being paid by Workers' Compensation shall receive holiday pay, without using sick or other types of leave, in a pro-rated amount in order to equate to a full day of pay when added to the amount of pay received from Workers' Compensation).

If the holiday is observed on an employee's scheduled day off or during his/her vacation, the employee shall be paid for the unworked holiday at straight time only.

Section 3. Holiday Work. If an employee is required to work on any one of the ten designated holidays, he/she will be paid double time for all hours worked in addition to his/her normal pay for the holiday.

ARTICLE 15

VACATION

Section 1. Eligibility and Allowance. Benefit-eligible employees shall earn vacation by pay periods according to the following chart, (prorated in relation to the average number of hours worked per week provided the employee works at least an average of twenty (20) hours per week):

Length of Service	Hours Earned Per Pay Period	Days Earned Per Year	Hours Earned Per Year
1-4 years	3.692	12	96
5-9 years	4.615	15	120
10-14 years	5.539	18	144
15-19 years	6.462	21	168
20-24 years	7.385	24	192
25-29 years	8.308	27	216
30 years & thereafter	9.231	30	240

The maximum carry-over from year to year for any forty-hour employee shall be two hundred forty (240) hours.

Employees shall be allowed use of accrued vacation time in minimum one quarter (1/4) hour increments.

Section 2. Vacation Pay. ~~The rate of V~~vacation pay shall be the employee's regular straight time rate ~~of pay~~ in effect for ~~the employee's~~ **his/her** regular job on the ~~pay~~ day immediately preceding the ~~employee's~~ vacation period. Any employee whose vacation falls during a pay day ~~may~~ **will** have his/her ~~pay~~ check mailed to a pre-designated address; **or direct** deposited in his/her bank account, **consistent with the established individual option, with the voucher being**, ~~or~~ held by the Section Manager or ~~his/her~~ designee until the employee returns ~~from his/her vacation~~. ~~Employees who desire to have their checks mailed to a predesignated address, shall advise the Section Manager or his/her designee in writing ten (10) days in advance of their scheduled vacation, of the exact address to which the check is to be mailed and provide a self-addressed, stamped envelope to the Section Manager or his/her designee. Employees who desire their checks to be deposited in their bank account shall advise the Section Manager or his/her designee in writing ten (10) days in advance of their scheduled vacation of the name of the bank, their bank account number, and provide the Section Manager or his/her designee with a properly completed deposit slip and a properly addressed, stamped envelope. Any employee who fails to advise the Section Manager as required above shall have his/her check held until the employee returns from his/her scheduled vacation.~~

~~Beginning in 2000~~ Employees may ~~be paid~~ **convert** up to a maximum of forty (40) hours of accrued vacation leave **annually into the equivalent in hourly rate compensation, with r**Requests for payment shall **therefor being due** made by December 1. Payments will be made ~~on~~ **with** the final pay ~~check~~ period of the calendar year, **but in no case will such lump sum buy-backs be treated as hours worked for the purposes of overtime calculation.**

Section 3. Choice and Selection of Vacation Period. All employee vacation choices and selections shall be by ~~classification~~ seniority and subject to ~~reasonable~~ Divisional operational needs as determined by the Section Manager. ~~All employee V~~vacation requests shall be made to the Section Manager or designee in writing. The reason(s) for any ~~vacation requests which are denied~~ by the Section Manager or designee will **also** be given to the employee in writing. Once approved, vacations shall only be canceled for just cause.

Vacation requests of ~~less than~~ two (2) work days **or less** shall be made as ~~soon as reasonably possible prior to the beginning~~ **far ahead** of the ~~requested vacation~~ **desired time off as possible**. The Section Manager or designee shall either approve or deny the vacation ~~request as soon as reasonably possible but no later than~~ **by** the close of business on the day **after** the ~~vacation~~ request is made by the employee **unless staffing requirements for the period in question cannot yet be determined.**

Vacation requests for more than two (2) work days shall, except for extreme emergencies, be made at least four (4) work days prior to the beginning of the **desired time off** ~~requested vacation~~. The Section Manager or designee shall either approve or deny the ~~vacation~~ request as ~~soon as reasonably possible but no later than~~ **within** two (2) work days after the ~~day the vacation~~ request is made by the employee. **unless staffing requirements for the period in question cannot yet be determined.**

Section 4. Holiday During Vacation Period. If a designated holiday, as provided in Article 134 of this Agreement, occurs during the work week in which a vacation is taken by an employee, the number of ~~days~~ **hours** charged against the employee's vacation period shall be reduced by the number of holiday hours that have occurred.

Section 5. Vacation Right in Case of Layoff, ~~or~~ Separation, or Retirement.

- a. Retirement. Any employee retiring ~~prior to~~ **without** taking **all of his or her** earned vacation shall be compensated ~~in cash~~ for the unused ~~accrued vacation~~ **hours**.
- b. Separation. Any employee separated from his/her employment ~~with the Employer,~~ after satisfactorily completing the initial ~~employment~~ probationary period shall be compensated ~~in cash~~ for ~~the~~ **all** unused accrued vacation.
- c. Laid-Off Employees. Any employee who is laid off ~~for any reason~~ after completion of **his/her** initial ~~employment~~ probationary period shall be paid for any unused accrued vacation. Any employee temporarily laid off may, at his/her option, ~~instruct the employer of his/her desire to~~ "bank" unused accrued vacation pending a recall.

ARTICLE 16

LEAVES OF ABSENCE

Section 1. Eligibility Requirements. Employees shall be eligible for leaves of absence after completing their initial probationary periods ~~with the Employer.~~

Section 2. Leave of Absence Without Pay ~~–Defined; Obligations of City Employee.~~ A leave of absence without pay is a predetermined amount of time away from work requested by the employee and approved by the ~~Section Manager~~ **Department Head** or designee.

~~A fact that~~ **While** such a leave is permissible, **approval** ~~does not mean that a requested leave is not obligatory. A~~ Leaves of absence without pay, except in a case of a **one brought about by a** disciplinary action, ~~shall be considered as is~~ a privilege; . **As such,** ~~and~~ the best interests of **both the City and the employee** shall be **considered in** the determining factor in deciding whether such leave ~~shall~~ **will** be granted. ~~An a~~ Approved leave of absence may **later** be canceled for just cause.

When an employee is granted a leave of absence without pay, ~~the Section Manager makes a commitment to allow the employee to~~ **he/she may** return to work at the end of the leave to the position ~~they~~ left. If business necessity requires the City to fill ~~a~~ **the** position of an employee on **an** approved leave of absence, a temporary employee may be hired.

When granted a leave of absence without pay, the employee makes a commitment to return to work at the end of the leave. Failure to return to work or to receive an extension of the leave from the ~~Section Manager~~ **Department Head** ~~at the end of the leave~~ shall be considered a resignation.

Section 3. Leave of Absence Without Pay - Conditions.

- A. During a leave of absence without pay, the employee:
1. Shall not receive pay from the City;
 2. Shall not accrue any leave;
 3. Shall not pay retirement contributions nor be accredited time toward retirement for any time the employee is not is pay status;
 4. Shall pay total health or other insurance falling due except as provided in Section 9 **below**;
 5. Shall, upon return to work, carry over sick leave accrued prior to commencement of the leave without pay; **and**
 6. Shall not receive any other benefits during the absence.
- B. Requests for unpaid leaves shall be made, in writing, to the Section Manager prior to the requested leave.
- C. Provisions of the Family **and** Medical Leave Act (FMLA) shall govern this Article when the leave of absence qualifies for such purpose.

Section 4. Military Leaves - Temporary Training Periods. An employee who is a member of a military reserve organization or a National Guard unit shall be entitled to a paid leave as hereinafter provided. If such assignment would substantially interfere with the execution of duties in the public interest, the employee may be encouraged to request a rescheduling of any such training/assignment. ~~A~~ **The maximum reimbursement for payment during** any military leave shall be the difference between the base pay an employee would normally receive in one pay period and the amount received from the military. There shall be no **compensation from the City reimbursement** if the military pay is equal to or greater than City pay. A forty (40) hour employee

may receive up to a maximum of eighty (80) hours annually for temporary training. An employee shall be ~~reimbursed~~ **paid** only for those days he/she would normally have ~~been assigned to work~~ **been assigned to work** during the time of the military assignment.

The employee shall provide appropriate documentation of orders to attend any training, ~~citation~~ **of the nature of the training, the required time away**, and any related information as may be ~~required~~ **necessary** to fully clarify the absence.

No City compensation shall be allowed for any persons called to active or extended military service, provided that, in the event of a natural disaster or civil disorder within the City limits of Topeka, the City Manager (~~CAO~~) may authorize **payment from the City reimbursement** for the duration of such active service, not to exceed the difference ~~in~~ **between** City and military pay as stated herein.

Section 5. Military Leaves - Extended Military Assignment. All requests for military leave in excess of thirty (30) days must receive prior approval by the City Manager. Employees may ~~have~~ **be entitledment** to a position with the City following completion of a military assignment, pursuant to applicable state and/or federal laws governing such leaves. It should be noted that the intent of this provision, unless superseded by state or federal law, is not to encourage voluntary induction into the service for the purpose of exploring a different career opportunity. ~~In case of involuntary conscription, the absence may be considered a leave of absence without pay, and the employee may be allowed to continue in employment following completion of such service (at a point in the salary and benefit structure where the employee left the City) unless he/she plans to resign formally from a position, at which point all obligations by the City would cease.~~

Section 6. Funeral/Family Crisis Leave.

- A. Forty (40) hour employees shall receive three (3) working days per occurrence (not to be deducted from any hourly accruals) for funeral leave and a maximum of three (3) working days for family crisis leave specifically for:
1. Making arrangements for and/or attending a funeral of an employee's spouse, children, stepchildren, parents, stepparent, grandparents, grandchildren, siblings, spouse's parents, spouse's siblings, son-in-law, daughter-in-law, aunts, uncles, or a family member of the immediate household permanently residing under the same roof.
 2. ~~Family crisis leave shall only apply to~~ **Attending to recovery (or in limited cases of advance warning, preventive) measures associated with a** disasters such as ~~a~~ fire, flood, ~~or~~ tornado, ~~etc...~~ or life threatening emergency health problems. In addition, the City and the Union agree that the City may require that an employee requesting such usage supply a statement from the attending physician verifying that the health problem is both an emergency and is life threatening.
- B. Determinations of eligibility for Funeral/Family Crisis leave use shall be made by the Section Manager and/or duly authorized supervisor, exercising reasonable discretion and judgement consistent with personnel guidelines and the guidelines set forth in this section. Additional time, if needed, approved, and justified, may be allowed from other leave accruals or pursuant to leave of absence provisions.

Section 7. Jury Duty/Court Appearances. An employee called to serve on jury duty, or required to ~~serve as~~ be a court witness, but not ~~as~~ a defendant/plaintiff in a civil matter, shall be paid

in an amount equal to the difference between the wages which would have been earned on a given day and the compensation received as a witness or juror. Alternatively, an employee may sign witness/juror fees over to the City in order to receive regular pay.

An employee on jury duty/court appearance leave shall return to work for the balance of a work day if the employee is excused by the court.

An employee shall not have deductions made from accrued leave for the purpose of provision, unless the employee is a defendant/plaintiff in a civil matter or if an employee appears as a voluntary expert witness.

An employee appearing in court under this provision may retain any travel, lodging, and/or meal reimbursements.

Section 8. Leave Agreements. An employee shall enter into a written leave agreement ~~between the employee and~~ **with** his/her ~~department~~ **Division Head** if the leave exceeds two (2) calendar weeks (including a leave of absence to pursue Union Business). The agreement shall specify the conditions of the leave, ~~to be either~~ **whether it is** with or without pay, and ~~shall include,~~ **but not be limited to, consideration and treatment of what the** employment status, salary, and other benefits ~~available~~ **will be.**

The agreement shall be approved by the Human Resources Director, ~~Section Manager and/or Department head~~ prior to the commencement of the leave. A copy of the leave agreement, excluding confidential information, shall be provided to the Union.

Section 9. Medical Disability Leave. A written request for a leave of absence with or without pay due to medical reasons must be filed with the Human Resources Department prior to the effective date of the requested medical leave. The request must be accompanied by a conclusive

medical statement concerning the problem, the probable extent of incapacitation, and any prognosis of when the employee could resume full responsibilities. The Human Resources Director may request an interim evaluation of the employee's condition during such a leave.

In the event the employee is receiving ~~Workers' Compensation~~ **Workers' Compensation** benefits as a result of an injury sustained in City employment, and such incapacitation is total and temporary ~~and but~~ not exceeding three (3) months' duration, the City may make contributions toward the employee's health benefits upon recommendation of the ~~Section Manager~~ **Division Head** and approval of the Human Resources Director if the employee is normally eligible for such benefits.

Physical incapacitation, including but not limited to, pregnancy, miscarriage, abortion, childbirth or other related medical conditions, and recovery therefrom, shall be considered as temporary medical disabilities and shall be treated as such under applicable leave provisions.

If ~~the employee's Section Manager~~ **Management** believes that ~~the an~~ employee's health or condition may be endangered by continuing employment or ~~if the Section Manager believes that~~ the employee cannot perform regular and necessary duties of the job, ~~the Section Manager~~ **it** shall refer the employee to the Human Resources Department. The Human Resources Director may **further** refer the employee to the ~~City Medical Advisor~~ **CHCP** who may require the employee to provide a statement of medical condition. The employee shall return to work at the conclusion of the medical disability leave, contingent upon a statement from the ~~City Medical Advisor~~ **CHCP** indicating that the employee is medically able to return to work. **Consistent with the provisions of Article 13, Section 12, a light duty assignment may be an option at the discretion of the Section Manager.**

An employee may use accrued sick leave on those occasions the employee is physically unable to complete the duties of his/her employment. An employee desiring to use accrued sick leave for a medical disability leave in excess of five (5) working days shall, if requested, provide a medical statement from his/her physician to the Human Resources Department. Such medical

statement may be reviewed by a medical advisor designated by the City, and further information pertaining to the specific condition may be requested from the attending physician. An employee ~~on~~ **returning from** approved medical leave shall be reinstated to the position held immediately prior to the medical leave without loss of ~~service seniority~~, **subject to medical clearance to perform those duties.**

Section 10. Voting Time. An employee, eligible and registered to vote in a primary, general, or special election held within the state shall, on the day of such election, be entitled to absent himself/herself from employment with the City for a period not to exceed two (2) consecutive hours between the time of opening and closing ~~of~~ the polls; provided, however, that if the polls are open before commencing work or after terminating work but the period ~~of time~~ the polls are so open is less than two (2) consecutive hours, the employee shall only be entitled to ~~be absentee~~ from City employment for such a period of time which, when added to the period of time the polls are ~~so~~ open, will not exceed two (2) hours. An employee shall not, because of so absenting himself/herself, be subject to any penalty, nor shall deductions be made on account of such absence; from the employee's usual salary or wages.

The ~~employee's Section~~ **Division** Manager may specify the particular times during the day which ~~said employees~~ may absent himself/herself as aforesaid **themselves for voting**, except such ~~specified~~ times shall not include ~~any time during~~ the regular lunch period.

The ~~employee's Section~~ Manager may require ~~the employees~~ to show a current ~~eligible~~ voter registration cards in order ~~for the employee~~ to be eligible for paid time off for voting.

Section 11. Civic Duty. Employees appointed to a committee of the Topeka United Way shall be granted a leave with pay to attend committee meetings during their scheduled work hours as

long as staffing levels are ~~appropriate~~ **being met**, as determined by the Section Manager.

Employees elected to any political or legislative positions who requests a leaves of absence for the time periods of their elected political or legislative positions shall be granted a **such** leaves of ~~absence~~ without pay if approved by the City Manager.

ARTICLE 17

HEALTH AND SAFETY

Section 1. Safety. It is the express policy of the ~~E~~employer and the Union to cooperate in an effort to continue to improve health and safety matters. The parties agree that it is in the best interests of the City, the Union, and the Citizens that equipment should be operated properly and safely and that all ~~reasonable~~ safety precautions and devices should be utilized at all times. In the furtherance of this policy, a joint Union-Management health and safety committee may be established ~~for the bargaining unit. A joint health and safety committee may~~ meet upon request of either party. ~~and~~ **Such committee** shall be comprised of two (2) employees from the bargaining unit selected by the Union and two (2) representatives of the ~~e~~Employer, **with one of those from each side serving as Co-Chairman.** ~~Chairmanship of this committee shall alternate between Union and Management representatives. This~~ **The** committee shall consider health and safety matters relating to all employees within the ~~d~~Division. Union ~~representatives~~ **participants** will receive their regular rates of pay for ~~the~~ time spent in the meetings during their regularly scheduled hours of employment, **as approved by the Division Head** ~~not to exceed two (2) hours per month.~~ This committee shall have the responsibility for reporting ~~to the Division or Department Head or his/her designee~~ all health and safety problems, ~~and to the Division or Department Head or his/her designee,~~ **who** may initiate such actions as necessary to see that these items are corrected.

Safety/Health Rules and Regulations shall be recommended by the joint committee to the Division ~~or Department~~ Head or his/her designee, **who** shall have the right to approve, reject, or revise ~~said rules and regulations~~ **them**. There shall not be any rules or regulations ~~promulgated~~ **implemented** until ~~said rules and regulations are approved by the head of the division and the~~

~~Department~~ **Division** Head. Said rules and regulations shall cover, but not be limited to, the following: training; personal protection; conduct; work standards; equipment; appurtenances; and sanctions for willful disregard or omissions.

~~In the event that employees of this unit has his/her Commercial Drivers' License (CDL) suspended, revoked, seized, or cancelled the employee will notify his/her supervisor, or the supervisor's designated representative of that action the very next business day. Employees are prohibited from operating commercial equipment whenever they are no longer properly licensed to do so. The Ceommittee members pledge to do whatever they can to direct employees who are suspected of abusing alcohol or legal or illegal drugs to professional counselors, (as a resource this could include~~ **those in the Employee's Assistance Program (EAP counselors)**. If ~~the an~~ employee's apparent drug or alcohol abuse persists, ~~the~~ committee members **further** pledge to inform the ~~employer's~~ Director of Human Resources in a timely manner.

Section 2. Health Insurance. The Employer agrees to make group health insurance available to ~~any~~ **all** employees who are eligible, as ~~defined set forth~~ in the ~~existing~~ provisions of the Employer's group health insurance coverage, and who sign up for such coverage.

The Employer and Union agree to discuss and consider ~~options to present~~ **changes in** coverage in continuing efforts to contain and control escalating costs of group health insurance. These discussions will take place through the Wellness Committee.

For the duration of this Agreement, the Employer agrees to pay the cost of a single membership for any eligible permanent employee. The employee ~~may~~ at his/her own cost ~~may, at his/her and discretion,~~ insure eligible dependents.

The City agrees to notify the Union in advance in the event of changes in coverage or carrier. Under no circumstances will the Employer be liable for any additional payment or cost beyond the provisions of this section.

Section 3. Pension. The Employer agrees to operate under the Kansas Public Employees Retirement System Act (**K.S.A. 74-4901, *et seq.***), as may be amended from time to time.

ARTICLE 18

WAGES

Section 1. Wage Schedules for 2004~~7~~, 2005~~8~~, and 2006~~9~~. ~~The wage schedule for 2004 shall not be adjusted. Employees who remain in their current classification will remain at the hourly rate in effect on December 31, 2003 with no step movement during the 2004 calendar year.~~

For calendar year 2007, effective with the first day of the first full pay period in January, wages for bargaining unit members classified as either Custodian or Equipment Operator shall be determined by their Competency Pay Plan (CPP) skill level placement in accordance with the provisions of Section 4 below and the 20-grade/20-step “Street Section 2007” matrix at the end of this Article, provided, however, that anyone whose beginning of the year hourly wage was higher than the initial level and step placement appropriate to his or her existing CPP qualifications shall continue to receive the same, higher rate, with no reduction. Except for the Custodian position, which will get two percent (2.0%), there shall be no additional Cost of Living Allowance (COLA), but normal hiring date anniversary step movement shall occur for all those receiving at least an overall “Meets Expectations” on their most recent annual performance appraisals immediately preceding that event.

For the calendar year 2005~~8~~, effective with the first day of the first full pay period in January, the above-referenced wage schedule shall be adjusted by a one and one-half percent (1.50%) percent COLA with no step movement for the calendar year down all grades and across all steps as reflected in the “Street Section 2008” matrix at the end of this Article. In addition to any skill level advancements achieved by bargaining unit members individually, all covered employees who receive an overall “Meets Expectations” or better on their most recent annual performance appraisals immediately preceding their hiring date anniversaries shall be entitled

to step increases.

For calendar year 2009, effective with the first day of the first full pay period in January, the above-referenced wage schedule from 2008 shall again be adjusted by a one and one-half percent (1.5%) COLA down all grades and across all steps as reflected in the “Street Section 2009” matrix at the end of this Article. In addition to any skill level advancements achieved by bargaining unit members individually, all covered employees who receive an overall “Meets Expectations” or better on their most recent annual performance appraisals immediately preceding their hiring date anniversaries shall be entitled to step increases.

During any year (after the effective date of this Agreement) in which step increases are generally granted, employees who are not eligible for such due to already being at their top level -- but receive overall annual performance appraisals of “Meets Expectations” or better -- shall in lieu of a step be given a one-time lump sum bonus of two hundred fifty dollars (\$250.00), payable with the first pay period following their hiring date anniversaries.

~~Both parties agree to re-open Article 18, Wages, in calendar year 2005 for the purpose of discussing wages, which includes step movement, for the calendar year 2006.~~

~~2004 AND 2005 HOURLY WAGE RATES~~

STREET SECTION

18-STEP PAY PLAN

Job Title	Pay Range	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Custodian	2	9.66	9.85	10.04	10.24	10.44	10.64	10.85	11.07	11.28	11.50	11.73	11.96	12.19	12.43	12.68	12.92	13.18	13.44
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Maintenance Worker II	3	10.24	10.47	10.70	10.94	11.18	11.43	11.68	11.94	12.21	12.48	12.75	13.04	13.33	13.62	13.93	14.23	14.55	14.86
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equipment Operator I	4	11.28	11.52	11.76	12.01	12.26	12.52	12.77	13.02	13.28	13.55	13.82	14.09	14.38	14.66	14.96	15.26	15.56	15.86
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equipment Operator II	6	12.66	12.90	13.15	13.40	13.66	13.92	14.19	14.46	14.74	15.02	15.31	15.61	15.91	16.21	16.52	16.84	17.16	17.48
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equipment Operator III	9	13.29	13.54	13.80	14.06	14.33	14.61	14.88	15.17	15.46	15.75	16.05	16.36	16.67	16.99	17.31	17.64	17.98	18.29

2005

STREET SECTION

18-STEP PAY PLAN

Job Title	Pay Range	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Custodian	2	9.80	10.00	10.19	10.39	10.60	10.80	11.02	11.23	11.45	11.68	11.91	12.14	12.38	12.62	12.87	13.12	13.38	13.64
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Maintenance Worker II	3	10.39	10.62	10.86	11.10	11.35	11.60	11.86	12.12	12.39	12.66	12.95	13.23	13.53	13.83	14.13	14.45	14.77	15.09
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equipment Operator I	4	11.45	11.69	11.94	12.19	12.44	12.70	12.96	13.22	13.48	13.75	14.03	14.31	14.59	14.88	15.18	15.48	15.79	16.10
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equipment Operator II	6	12.85	13.10	13.35	13.60	13.87	14.13	14.40	14.68	14.96	15.25	15.54	15.84	16.14	16.45	16.77	17.09	17.42	17.74
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equipment Operator III	9	13.49	13.75	14.01	14.28	14.55	14.82	15.11	15.40	15.69	15.99	16.29	16.60	16.92	17.24	17.57	17.90	18.24	18.56

Section 2. Pay Period. Employees shall be paid on every other Friday, **twenty-six times per year**. However, when a payday falls on a holiday, employees may be paid on the preceding Thursday.

Section 3. ~~Wage Schedule~~ Step Movement Dates. New hire employees shall **begin and** remain at Step 1 of the Wage Schedule for an initial probationary period of six (6) months. If at six (6) months the employee is rated satisfactory ("**Meets Expectations**") by ~~the Section Manager~~ **his or her Supervisor**, ~~he/she the employee~~ shall be ~~promoted~~ **advanced** to Step 2 of the Wage Schedule **in whatever grade level qualified**. ~~Wage Schedule/Step movement thereafter for all employees will be given occur on their employee's anniversary date of hire, when provided.~~ **anniversaries.**

~~Wage Schedule/Step movement for non probationary employees will be given on the employee's anniversary date of hire, when provided.~~

~~NOTE: THERE SHALL BE NO STEP MOVEMENT DURING THE CALENDAR YEAR 2004 AND 2005. STEP MOVEMENT FOR 2006 IS SUBJECT TO NEGOTIATION BETWEEN THE PARTIES.~~

Employees shall generally be rated by ~~their Supervisors~~ **Section Manager or his designee** **during the month of January for the previous calendar year, but in any event** prior to their employee's dates of eligibility for a step increases. **Consistent with Section 1 above, if an overall satisfactory ("**Meets Expectations**") rating is achieved on such an annual performance evaluation**, the effective date of the step increase shall be ~~at the beginning of the pay period closest to~~ **immediately following** the employee's **hiring** ~~date of eligibility as defined in this section~~ **anniversary**. **For the purposes of determining step entitlement, any employee who for**

whatever reason has received no yearly appraisal since his or her last hiring anniversary date shall be deemed to have been rated at least a “Meets Expectations.”

Section 4. Competency Pay Plan. Effective with the first day of the first full pay period in January 2007, the new 20-grade and step-level matrix referenced in Section 1 and appearing at the end of this Article shall be implemented. Bargaining unit members will be initially placed at the appropriate numerical level and range of that chart based on existing skill, experience, competency, and longevity, as agreed-upon by the Union and Management. In the event of an inability to reach agreement on any individual qualifications for such placements, an outside consultant may be retained to do actual testing and evaluation prior to making a binding determination.

Beginning in 2008, advancement under the pay matrix shall be based on newly-acquired competency with regard to a listed function, operation, or piece of equipment. There shall be no requirement of any particular order, but rather to the number of specific machines, titles, or endorsements available; however, unless an exception is made by Management for good cause shown, individual qualification on at least four of the five categories in Group I must be completed before any Group II training or certifying can occur -- and likewise with completion of four of the five Group II job titles before being eligible to pursue any Group III tasks, four of which must also be certified before proceeding to Group IV.

Priority for training necessary to qualify in a new competency shall be based on first, reverse seniority, and second, whether an opportunity for achieving an additional skill level has already been offered and either accepted or rejected during a particular rotation of the training order “wheel.” Accordingly, when an opening comes about to

learn, practice, and pass-off on the minimum essential procedures necessary to achieve an endorsement, the lowest-ranking (based on time of service) eligible employee who has requested to train on that piece of equipment and who has not yet taken his or her turn in the current cycle shall have first option, continuing such order of preference until all available slots are filled.

Once a bargaining unit member has committed to a specific training program, he or she will not have another chance at a new function until all those above him or her in seniority have either selected or waived the opportunity to add to their skill levels. The exception to this practice would be when a training session is scheduled on a machine for which a position is still open after those both above and below that individual on the rotation “wheel” have been offered and either accepted or declined the invitation or been passed over because of existing certification. If all other considerations are equal, participation advantage will be given to the employee with fewer skill levels.

A rotating committee, based on relevant knowledge and familiarity, of two Union and two Management representatives shall comprise the testing entity for a bargaining unit member desiring to advance. In the event a majority of that committee cannot agree through a “go/no-go” assessment of an individual’s competency rating on the function or equipment being evaluated, an outside vendor may be retained to make the final decision, as with the initial placement process described above. The minimum standards to be met with any skill or operation shall be available in written form to be utilized through both the training and testing stages.

In order to assure that employees are continually allowed to move up on the scale, any bargaining unit member (except those already maxed out) who has not had at least one chance during a calendar year, beginning in 2008, to train and qualify for a new skill level

shall be given a two hundred fifty dollar (\$250.00) compensatory payment in lieu thereof.

At the same time, Management retains the right to decertify an employee in any competency in which that individual can no longer demonstrate the minimum functional qualifications after having been assigned to and completed a refresher course. Such retraining shall not, however, count against that person's quota for new skill options.

Should the occasion arise during the term of this Agreement, the parties may by mutual consent meet to discuss the possible substitution or addition of skill categories based on the introduction to the Street Section of new items of equipment, endorsements, or tasks. While the ultimate decision as to the proper placement on the wage scale of any such modifications shall revert to Management, input from the Union shall be considered throughout the evaluation process.

Section 5. Specialty Pay.

A. **Extra-occupational Skills.** Bargaining unit members who, in addition to their placement levels associated with the CPP designations set forth in the respective yearly wage matrices at the end of this Article, are certified by the Section Manager as qualified in the categories of concrete finishing and any other extra-occupational skill as may be established by the Division Head, shall be compensated during the first pay period of January each year with an annual bonus for each such certification of two hundred fifty dollars (\$250.00).

B. **Field Training Leadworker.** Any bargaining unit member designated by the Division Head as a Field Training Leadworker (FTL) and assigned by the Section Manager to serve in that capacity shall, during the actual hours spent instructing and coaching other employees in any particular equipment-related skill or function, be entitled to a one dollar

(\$1.00) per hour bonus incentive. Such FTL specialty pay shall be a flat amount over and above that individual's normal hourly wage and not considered a premium for inclusion in any blended rate prior to calculation of overtime pay.

STREET SECTION 2007

2007

2% COLA- CUSTODIAN

JOB TITLE	LEVELS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
CUSTODIAN		10.40	10.56	10.71	10.88	11.04	11.20	11.37	11.54	11.72	11.89	12.07	12.25	12.43	12.62	12.81	13.00	13.20	13.40	13.60	13.80	
EQUIPMENT OPERATOR																						
CDL/A-DUMP TRUCK	GROUP 1	1	11.45	11.62	11.80	11.97	12.15	12.33	12.52	12.71	12.90	13.09	13.29	13.49	13.69	13.90	14.10	14.32	14.53	14.75	14.97	15.19
PATCH TRUCK/TAMPER		2	11.62	11.80	11.97	12.15	12.33	12.52	12.71	12.90	13.09	13.29	13.49	13.69	13.90	14.10	14.32	14.53	14.75	14.97	15.19	15.42
SPREADER		3	11.80	11.97	12.15	12.33	12.52	12.71	12.90	13.09	13.29	13.49	13.69	13.90	14.10	14.32	14.53	14.75	14.97	15.19	15.42	15.65
TANKER END/ FLUSH TK		4	11.97	12.15	12.33	12.52	12.71	12.90	13.09	13.29	13.49	13.69	13.90	14.10	14.32	14.53	14.75	14.97	15.19	15.42	15.65	15.89
CRACK SEAL OPERATOR		5	12.15	12.33	12.52	12.71	12.90	13.09	13.29	13.49	13.69	13.90	14.10	14.32	14.53	14.75	14.97	15.19	15.42	15.65	15.89	16.13
CONCRETE SAW																						
LOADER OPERATOR	GROUP 2	6	12.40	12.58	12.77	12.96	13.16	13.35	13.55	13.76	13.96	14.17	14.39	14.60	14.82	15.04	15.27	15.50	15.73	15.97	16.21	16.45
BOBCAT OPERATOR		7	12.64	12.83	13.03	13.22	13.42	13.62	13.83	14.03	14.24	14.46	14.67	14.89	15.12	15.34	15.57	15.81	16.04	16.29	16.53	16.78
DUROPATCH OPERATOR		8	12.90	13.09	13.29	13.49	13.69	13.89	14.10	14.31	14.53	14.75	14.97	15.19	15.42	15.65	15.89	16.12	16.37	16.61	16.86	17.11
ROLLER OPERATOR		9	13.15	13.35	13.55	13.76	13.96	14.17	14.38	14.60	14.82	15.04	15.27	15.50	15.73	15.96	16.20	16.45	16.69	16.94	17.20	17.46
TRACKHOE OPERATOR																						
BOOM MOWER OP	GROUP 3	11	13.75	13.96	14.17	14.38	14.60	14.82	15.04	15.26	15.49	15.72	15.96	16.20	16.44	16.69	16.94	17.19	17.45	17.71	17.98	18.25
ZIPPER OPERATOR		12	14.10	14.31	14.52	14.74	14.96	15.19	15.41	15.65	15.88	16.12	16.36	16.61	16.85	17.11	17.36	17.62	17.89	18.16	18.43	18.71
SWEeper (3 WHEELER)		13	14.45	14.67	14.89	15.11	15.34	15.57	15.80	16.04	16.28	16.52	16.77	17.02	17.28	17.53	17.80	18.06	18.34	18.61	18.89	19.17
SWEeper VAC		14	14.81	15.03	15.26	15.49	15.72	15.95	16.19	16.44	16.68	16.93	17.19	17.45	17.71	17.97	18.24	18.52	18.79	19.08	19.36	19.65
BACKHOE OPERATOR																						
GRADER OPERATOR	GROUP 4	16	15.64	15.87	16.11	16.35	16.60	16.84	17.10	17.35	17.61	17.88	18.15	18.42	18.69	18.98	19.26	19.55	19.84	20.14	20.44	20.75
JAMACO		17	16.11	16.35	16.59	16.84	17.09	17.35	17.61	17.87	18.14	18.41	18.69	18.97	19.26	19.54	19.84	20.14	20.44	20.74	21.05	21.37
PAVER		18	16.59	16.84	17.09	17.35	17.61	17.87	18.14	18.41	18.69	18.97	19.25	19.54	19.83	20.13	20.43	20.74	21.05	21.37	21.69	22.01
SURVEYING		19	17.09	17.34	17.60	17.87	18.13	18.41	18.68	18.96	19.25	19.54	19.83	20.13	20.43	20.73	21.05	21.36	21.68	22.01	22.34	22.67
GROUP 4																						
20																						

Group 1= 1.5% between Grades

Group 2 = 2.0% between Grades

Group 3 = 2.5% between Grades

Group 4 = 3.0% between Grades

1.5% between all Steps

STREET SECTION 2008

2008

1% COLA

JOB TITLE CUSTODIAN	LEVELS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
		10.50	10.66	10.82	10.98	11.14	11.31	11.48	11.65	11.83	12.01	12.19	12.37	12.55	12.74	12.93	13.13	13.32	13.52	13.73	13.93	
EQUIPMENT OPERATOR																						
CDL/A-DUMP TRUCK	GROUP 1	1	11.56	11.73	11.91	12.09	12.27	12.45	12.64	12.83	13.02	13.22	13.42	13.62	13.82	14.03	14.24	14.45	14.67	14.89	15.11	15.34
PATCH TRUCK/TAMPER		2	11.73	11.91	12.09	12.27	12.45	12.64	12.83	13.02	13.22	13.42	13.62	13.82	14.03	14.24	14.45	14.67	14.89	15.11	15.34	15.57
SPREADER		3	11.91	12.09	12.27	12.45	12.64	12.83	13.02	13.22	13.42	13.62	13.82	14.03	14.24	14.45	14.67	14.89	15.11	15.34	15.57	15.80
TANKER END/ FLUSH TK		4	12.09	12.27	12.45	12.64	12.83	13.02	13.22	13.42	13.62	13.82	14.03	14.24	14.45	14.67	14.89	15.11	15.34	15.57	15.80	16.04
CRACK SEAL OPERATOR		5	12.27	12.45	12.64	12.83	13.02	13.22	13.42	13.62	13.82	14.03	14.24	14.45	14.67	14.89	15.11	15.34	15.57	15.80	16.04	16.28
CONCRETE SAW																						
LOADER OPERATOR	GROUP 2	6	12.51	12.70	12.89	13.09	13.28	13.48	13.68	13.89	14.10	14.31	14.52	14.74	14.96	15.19	15.42	15.65	15.88	16.12	16.36	16.61
BOBCAT OPERATOR		7	12.77	12.96	13.15	13.35	13.55	13.75	13.96	14.17	14.38	14.60	14.81	15.04	15.26	15.49	15.72	15.96	16.20	16.44	16.69	16.94
DUROPATCH OPERATOR		8	13.02	13.22	13.41	13.62	13.82	14.03	14.24	14.45	14.67	14.89	15.11	15.34	15.57	15.80	16.04	16.28	16.52	16.77	17.02	17.28
ROLLER OPERATOR		9	13.28	13.48	13.68	13.89	14.10	14.31	14.52	14.74	14.96	15.19	15.41	15.64	15.88	16.12	16.36	16.60	16.85	17.11	17.36	17.62
		10	13.55	13.75	13.96	14.17	14.38	14.59	14.81	15.03	15.26	15.49	15.72	15.96	16.20	16.44	16.69	16.94	17.19	17.45	17.71	17.98
TRACKHOE OPERATOR																						
BOOM MOWER OP	GROUP 3	11	13.89	14.09	14.30	14.52	14.74	14.96	15.18	15.41	15.64	15.88	16.11	16.36	16.60	16.85	17.10	17.36	17.62	17.88	18.15	18.42
ZIPPER OPERATOR		12	14.23	14.45	14.66	14.88	15.11	15.33	15.56	15.80	16.03	16.27	16.52	16.76	17.02	17.27	17.53	17.79	18.06	18.33	18.61	18.89
SWEPPER (3 WHEELER)		13	14.59	14.81	15.03	15.25	15.48	15.72	15.95	16.19	16.43	16.68	16.93	17.18	17.44	17.70	17.97	18.24	18.51	18.79	19.07	19.36
SWEPPER VAC		14	14.95	15.18	15.40	15.64	15.87	16.11	16.35	16.60	16.84	17.10	17.35	17.61	17.88	18.15	18.42	18.69	18.97	19.26	19.55	19.84
		15	15.33	15.56	15.79	16.03	16.27	16.51	16.76	17.01	17.27	17.52	17.79	18.05	18.32	18.60	18.88	19.16	19.45	19.74	20.04	20.34
BACKHOE OPERATOR																						
GRADER OPERATOR	GROUP 4	16	15.79	16.02	16.26	16.51	16.75	17.01	17.26	17.52	17.78	18.05	18.32	18.60	18.87	19.16	19.44	19.74	20.03	20.33	20.64	20.95
JAMACO		17	16.26	16.50	16.75	17.00	17.26	17.52	17.78	18.05	18.32	18.59	18.87	19.15	19.44	19.73	20.03	20.33	20.63	20.94	21.26	21.58
PAVER		18	16.75	17.00	17.25	17.51	17.78	18.04	18.31	18.59	18.87	19.15	19.44	19.73	20.02	20.32	20.63	20.94	21.25	21.57	21.89	22.22
SURVEYING		19	17.25	17.51	17.77	18.04	18.31	18.58	18.86	19.14	19.43	19.72	20.02	20.32	20.62	20.93	21.25	21.57	21.89	22.22	22.55	22.89
		20	17.77	18.03	18.30	18.58	18.86	19.14	19.43	19.72	20.02	20.32	20.62	20.93	21.24	21.56	21.89	22.21	22.55	22.89	23.23	23.58

Group 1= 1.5% between Grades

Group 2 = 2.0% between Grades

Group 3 = 2.5% between Grades

Group 4 = 3.0% between Grades

1.5% between all Steps

STREET SECTION 2009

2009
1.5% COLA

JOB TITLE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
CUSTODIAN	10.66	10.82	10.98	11.15	11.31	11.48	11.66	11.83	12.01	12.19	12.37	12.56	12.75	12.94	13.13	13.33	13.53	13.73	13.94	14.15
EQUIPMENT OPERATOR																				
CDL/A-DUMP TRUCK	1	11.73	11.91	12.08	12.27	12.45	12.64	12.83	13.02	13.21	13.41	13.61	13.82	14.02	14.23	14.45	14.67	14.89	15.11	15.34
PATCH TRUCK/ TAMPER	2	11.91	12.08	12.27	12.45	12.64	12.83	13.02	13.21	13.41	13.61	13.82	14.02	14.23	14.45	14.67	14.89	15.11	15.34	15.57
SPREADER	3	12.08	12.27	12.45	12.64	12.83	13.02	13.21	13.41	13.61	13.82	14.02	14.23	14.45	14.67	14.89	15.11	15.34	15.57	15.80
TANKER END/ FLUSH TK	4	12.27	12.45	12.64	12.83	13.02	13.21	13.41	13.61	13.82	14.02	14.23	14.45	14.67	14.89	15.11	15.34	15.57	15.80	16.04
CRACK SEAL OPERATOR	5	12.45	12.64	12.83	13.02	13.21	13.41	13.61	13.82	14.02	14.23	14.45	14.67	14.89	15.11	15.34	15.57	15.80	16.04	16.28
																				16.52
CONCRETE SAW																				
LOADER OPERATOR	6	12.70	12.89	13.08	13.28	13.48	13.68	13.89	14.09	14.31	14.52	14.74	14.96	15.18	15.41	15.64	15.88	16.11	16.36	16.60
BOBCAT OPERATOR	7	12.95	13.15	13.34	13.54	13.75	13.95	14.16	14.38	14.59	14.81	15.03	15.26	15.49	15.72	15.95	16.19	16.44	16.68	16.93
DUROPATCH OPERATOR	8	13.21	13.41	13.61	13.82	14.02	14.23	14.45	14.66	14.88	15.11	15.33	15.56	15.80	16.03	16.27	16.52	16.77	17.02	17.53
ROLLER OPERATOR	9	13.48	13.68	13.88	14.09	14.30	14.52	14.74	14.96	15.18	15.41	15.64	15.87	16.11	16.35	16.60	16.85	17.10	17.36	17.88
	10	13.75	13.95	14.16	14.37	14.59	14.81	15.03	15.26	15.48	15.72	15.95	16.19	16.43	16.68	16.93	17.19	17.44	17.70	18.24
TRACKHOE OPERATOR																				
BOOM MOWER OP	11	14.09	14.30	14.52	14.73	14.95	15.18	15.41	15.64	15.87	16.11	16.35	16.60	16.85	17.10	17.35	17.61	17.88	18.15	18.42
ZIPPER OPERATOR	12	14.44	14.66	14.88	15.10	15.33	15.56	15.79	16.03	16.27	16.51	16.76	17.01	17.27	17.53	17.79	18.06	18.33	18.60	18.88
SWEeper (3 WHEELER)	13	14.80	15.02	15.25	15.48	15.71	15.95	16.19	16.43	16.67	16.93	17.18	17.44	17.70	17.96	18.23	18.51	18.78	19.07	19.64
SWEeper VAC	14	15.17	15.40	15.63	15.87	16.10	16.35	16.59	16.84	17.09	17.35	17.61	17.87	18.14	18.41	18.69	18.97	19.25	19.54	20.13
	15	15.55	15.79	16.02	16.26	16.51	16.75	17.01	17.26	17.52	17.78	18.05	18.32	18.59	18.87	19.16	19.44	19.74	20.03	20.64
BACKHOE OPERATOR																				
GRADER OPERATOR	16	16.02	16.26	16.50	16.75	17.00	17.26	17.52	17.78	18.04	18.32	18.59	18.87	19.15	19.44	19.73	20.03	20.33	20.63	21.26
JAMACO	17	16.50	16.75	17.00	17.25	17.51	17.77	18.04	18.31	18.59	18.86	19.15	19.43	19.73	20.02	20.32	20.63	20.94	21.25	21.89
PAVER	18	16.99	17.25	17.51	17.77	18.04	18.31	18.58	18.86	19.14	19.43	19.72	20.02	20.32	20.62	20.93	21.25	21.57	21.89	22.55
SURVEYING	19	17.50	17.77	18.03	18.30	18.58	18.86	19.14	19.43	19.72	20.01	20.31	20.62	20.93	21.24	21.56	21.88	22.21	22.55	23.23
	20	18.03	18.30	18.57	18.85	19.14	19.42	19.71	20.01	20.31	20.61	20.92	21.24	21.56	21.88	22.21	22.54	22.88	23.22	23.92

Group 1= 1.5% between Grades
Group 2 = 2.0% between Grades
Group 3 = 2.5% between Grades
Group 4 = 3.0% between Grades
1.5% between all Steps

ARTICLE 19

CLOSING AND SAVINGS CLAUSE

Section 1. Closing Clause. The parties ~~agree~~ **acknowledge** that this ~~Agreement~~ **Memorandum of Understanding (MOU)** shall represent the complete Agreement between the Employer and the Union.

The parties ~~acknowledge~~ **stipulate** that during the ~~meetings~~ **negotiations** which resulted in this Agreement, each had the unlimited right and opportunity to make requests and proposals with respect to any subject or matter not removed by law; **further, and** the complete understandings and agreements arrived at by the parties after ~~the~~ exercise of that right and opportunity are set forth in this ~~Agreement~~ **Contract**. Therefore, the ~~E~~employer and the Union, for ~~the~~ life of this ~~Agreement~~ **MOU**, each voluntarily and ~~unqualifiedly~~ **unequivocally** waives ~~the right, and each agrees that the other shall not be obligated~~ **any claim of obligation by the other** to meet and confer with respect to any subject or matter not specifically referred to or covered in this Agreement.

Section 2. Savings Clause. Should any part of this ~~A~~agreement or any provisions contained herein be declared invalid by ~~any~~ tribunal of competent jurisdiction, such ~~invalidation of such part of provision~~ **action** shall not ~~invalidate~~ **impact** the remaining portions hereof, **their continuing to** ~~They shall~~ remain in full force and effect. Any invalidated provision, **however**, shall be subject to the meet and confer procedure.

ARTICLE 20

TERMINATION AND AMENDMENTS

This Agreement shall be effective **for three years beginning** January 1, 2004**7 and in full force and effect until through** December 31, 2006**9. This Agreement** It shall **then** be automatically renewed from year to year thereafter, unless either party shall notify the other, in writing, at least sixty (60) days prior to the **anniversary expiration** date if **that** it desires to modify **this Agreement the terms**. In ~~the that~~ event ~~such a notice is given~~, negotiations shall begin not later than thirty (30) days after the notice is given. ~~This Agreement~~ It shall **further** remain in full force and ~~be effective~~ during ~~the any~~ period of negotiations; and until **a new contract is implemented, unless** notice of termination of this Agreement is provided to the other party in the manner set forth in the following paragraph.

In the event ~~that either party~~ **the City or the Union does** decides to **so** terminate this Agreement, written notice must be given to the other party ~~not less than~~ **at least** sixty (60) days prior to the desired termination date, which shall not be before the **anniversary expiration** date set forth in the preceding paragraph.

DATED AND ACKNOWLEDGED THIS _____ DAY OF _____ 2007

IN THE CITY OF TOPEKA, KANSAS, BY:

Kenny Clark
Business Representative, Local No. 696

Ken Benjamin
Labor Relations Director, City of Topeka

Leroy Alston
Chief Union Steward

Bill Wettengel
Street Section Manager

Richard Malloy
Negotiating Team Member

Mark Thiel
Transportation Operations Director

Terry Tillman
Negotiating Team Member

Mike Teply
Acting Director, Public Works

ATTEST:

Brenda Younger
City Clerk

Norton N. Bonaparte, Jr.
City Manager

MEMORANDUM

TO : Norton N. Bonaparte, Jr.

FROM : Ken Benjamin

RE : Changes to Teamsters (Street Section) Contract, 2007-10

DATE : November 28, 2007

On Monday of last week, Local 696 of the International Brotherhood of Teamsters, representing the some 40 members of the Street Section bargaining unit, ratified a proposed new contract for the three-year term 2007 through 2009. An edited version highlighting the myriad of changes -- most of them technical and conforming, grammatical and updating in nature -- in the contract is available for reference and review in the Council Office. The Work Session to address substantive issues regarding the Agreement is scheduled for next Tuesday, December 4, 2007, at 5:00 p.m., with Agenda consideration to follow on December 11.

The core of this proposal with the Teamsters is a very forward-looking and innovative Competency Pay Plan (CPP) that has been under development for the past two years. It will be rather unique among City labor agreements in that it shifts the emphasis away from traditional COLA adjustments and advancement based on time and focuses instead on a program driven by competency, ambition, and performance. Whereas in the past an employee may have to wait five years serving at a particular operator level before being eligible to move up, under the CPP he or she would be limited only by an individual desire to learn, practice, and qualify. For the City, it will ultimately mean a highly cross-trained, multi-skilled workforce, the increased efficiency of which might be best illustrated by the ability of a supervisor to send a single individual out to perform a job that previously would have required three.

Although the cost to implement this plan and have everyone start off at their existing qualification levels is not insubstantial (an aggregate 7.57% increase over 2006), the actual funding augmentation of \$89,725 is within the 2007 approved salaries budget of \$1,285,530. Part of the explanation for this anomaly is that higher paid workers have retired and either been replaced by entry level employees or not at all. In any event, to make the transition work, the Union has foregone any additional COLA increase for 2007 and accepted very modest increases of 1% and 1.5% for 2008 and 2009, respectively. At the same time, skill level increases are projected to average 2% per year, which coupled with step movement (for those who receive "Meets Expectations" performance appraisals) will amount to overall budget enhancements of 3.5% for 2008 and 4% for 2009. Those figures translate into dollar amounts of approximately \$44,600 and \$53,200.

Not included in those estimates, but certainly accountable items, are new \$250 compensatory payments for those already "maxed out" on steps (total \$2,000 annually); those who may not be offered a skill training opportunity during the year (total \$500 annually); and those who have extra-occupational skills such as concrete finishing (overall \$1,500 annually). There are also excess sick leave buy-back and perfect attendance day bonus (in lieu of actual days off) provisions replicated from the WPC contract that together will likely add as much as \$5,000 yearly. The agreement further creates a Field Training Leadworker add-pay of \$1.00 per hour for each hour spent in that capacity (\$500 total per year) and a compensatory time award equal to the hours spent as essential workers when other City employees are excused during weather emergencies (no revenue impact).

Besides the CPP itself, the City gains important overtime flexibility and shift differential clarification language. The Teamsters are also the very first union to incorporate both the Code of Ethics and a procedure for dealing with uninsurable drivers into their contract. Additionally, they agreed to pay an administrative fee for the dues check-off service and to allow individual, not union notification on discipline and a forfeiture of leave hours as a punishment option. The Street Section, of course, is not operated out of the General Fund, but rather from Fuel Tax Revenues. Still, the effort in this negotiated agreement was to keep them in sync with other employees in the City who are paid out of a tax-based budget approved by the City Council.



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 26, 2007

+ Back Print

DATE: December 11, 2007
CONTACT PERSON: Jim Langford/kej **DOCUMENT #:**
SECOND PARTY/SUBJECT: Weekly Expenditures **PROJECT #:**
CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of November 19, 2007, through November 25, 2007, and enumerating said expenditures therein. First and Final Reading.

POLICY ISSUE:

Approve and allow weekly payments of valid operating expenditures, pursuant to Resolution No. 7607.

STAFF RECOMMENDATION:

Adopt as presented.

BACKGROUND:

Pursuant to Resolution No. 7607, adopted on April 12, 2005, which provides authorization to pay for certain expenditures prior to approval by the Council in an expenditure ordinance, the expenditures being authorized by this ordinance have been previously paid, in accordance with established procedures and policies for such payments.

BUDGETARY IMPACT:

Approves expenditures for the period November 19, 2007, through November 25, 2007, in the amount of \$4,665,130.12.

SOURCE OF FUNDING:

Appropriated funds and fees-for-service revenues of various City departments.

ATTACHMENTS:

[Weekly Expenditures for Week Ending November 25, 2007](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte Jr., allowing and approving City expenditures for the period of November 19, 2007, through November 25, 2007, and enumerating said expenditures herein.

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

Section 1. All expenditures made or authorized to be made by issuance of checks or electronic transfers as enumerated herein, are in accordance with City of Topeka Resolution No. 7607.

Section 2. The claims and expenditures listed in Exhibit A, which is on file in the City Council Office and the City Clerk's Office and incorporated herein by said reference, are hereby allowed and approved for payment.

<u>Section 3.</u>	Total for 325 vendor checks written in this period	\$2,049,859.69
	Total vendor checks voided in this period (net)	(0.00)
	Total electronic transfers to vendors in this period	77,551.63
	Total net payroll to employees this period	1,571,684.74
	Total payroll related electronic transfers this period	<u>966,034.06</u>
	Total for expenditures in this period	<u>\$4,665,130.12</u>

Section 4. This ordinance shall take effect and be in force after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council _____.

ATTEST:

William W. Bunten, Mayor

Brenda Younger, City Clerk



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 20, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: Bill Fiander/David Thurbon **DOCUMENT #:** Z07/25

SECOND PARTY/SUBJECT: Fidelity State Bank and Trust Company **PROJECT #:**

CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 007 Zoning

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 901 SW Topeka Boulevard from "O&I-2" Office and Institutional District TO "C-2" Commercial District. Final Reading. (Z07/25) (Council District No. 1) (Planning Commission recommended approval 5-2-0.) (Planning Department recommended disapproval.)

(Approval would allow development of the property for neighborhood commercial use.)

POLICY ISSUE:

Request for "C-2" Commercial District is inconsistent with the land use principles of the Old Town Neighborhood Plan element of the Comprehensive Plan which discourages further commercial strip development along a gateway to Downtown and one of the city's major arterials. In addition, the proposal is inconsistent with the character of the Capital Plaza area office uses and several nearby historic properties.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of **5-2-0** at their November 19, 2007 meeting as referenced in their attached minutes. The Planning Department recommended that this request be **DISAPPROVED** as referenced in the attached staff report.

BACKGROUND:

- See Staff Report.
- City Council options:
 - **Adopt** the recommendation of the Planning Commission by Ordinance. *(The property is located in the Capital Area Plaza Authority area. If City Council approves, the ordinance must then be approved by the Capital Area Plaza Authority in order to take effect.);*
 - **Override** the Planning Commission's recommendation by a two-thirds majority (6 votes) of the City Council membership; or,
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

Item #20

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

[Staff Report](#)

[Old Town Map](#)

[Aerial Large](#)

[Aerial](#)

[Zoning Map](#)

[Application \(4 pages\)](#)

[Planning Commission Minutes](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 901 SW Topeka Boulevard from "O&I-2" Office and Institutional District **TO** "C-2" Commercial District. **(Z07/25) (Council District No. 1)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by classifying the following described property:

Lots 289, 291 and 293 on Topeka Avenue, in the City of Topeka, Shawnee County, Kansas.

from "O&I-2" Office and Institutional District **TO** "C-2" Commercial District.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka, _____, 2007.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X

November 19, 2007
Agenda Item #G-4

ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: Z07/25

by: Fidelity State Bank and Trust Company

PROPOSAL: Amend the District Zoning Classification from "O&I-2" Office and Institutional District, TO "C-2" Commercial District.

LOCATION: 901 SW Topeka Boulevard.

PARCEL ID NUMBER: 1093103009001000.

PRESENT USE: The property is an approximate 11,250 square foot tract, which had been the site of a branch of the Fidelity State Bank and Trust Company. The property is now vacant.

PROPOSED USE: The applicant is seeking the rezoning to accommodate redevelopment of the property for commercial retail uses.

CHARACTER OF NEIGHBORHOOD: The surrounding area is predominately office uses. The subject property fronts a major arterial street (SW Topeka Boulevard) and is across from the Docking State Office Building with the Senate Luxury Suites immediately to the west across the alley. The site is located on the eastern edge of the Old Town Neighborhood and the western edge of the Downtown District.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	"O&I-2" Office and Institutional District	Office
South:	"O&I-2" Office and Institutional District	Parking Lot
East:	"O&I-2" Office and Institutional District	Docking State Office Building
West:	"M-3" Multiple-Family Dwelling District	Senate Luxury Suites

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: The current bank building dates from 1964. The property was formerly zoned "E" Multiple-Family Dwelling District. In 1994 when the

November 19, 2007
Agenda Item #G-4

current zoning designations were adopted property classified as "E" Multiple-Family Dwelling District was converted to either the current "M-3" Multiple-Family Dwelling District or "O&I-2" Office and Institutional District depending on which classification was most appropriate based on the then existing land use.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: The site's present classification is consistent with the established pattern of zoning and land use in the area. Accepted planning principles dictate that established patterns of land use must be recognized as a basic factor which strongly influences rezoning decision. Based upon the character of the area and the surrounding uses, the subject property is suited to the uses to which it has been restricted.

CONFORMANCE TO COMPREHENSIVE PLAN: The subject property is located within the boundaries of the Old Town Neighborhood Plan. The plan's Future Land Use designation for the subject property is for *Downtown* land uses, (see area outlined in red on partial portion of the Old Town Future Land Use map). The plan states these *"...land uses, zoning districts, and densities are the "maximum recommended" and do not preclude lower-intensity land uses, zoning districts, or densities from being appropriate."* The Old Town Neighborhood Plan recognizes the mixed-use nature and higher intensity of the area between Tyler Street and Topeka Boulevard, the plan also indicates that *"Topeka Boulevard, as described in the Downtown Topeka Redevelopment Plan, is envisioned to return as the classic urban "address" for office space and downtown dwellers alike. To that end, this classification should promote taller buildings, new apartment/condominium houses, pedestrian-oriented retail, etc. as part of a high density mixed use corridor."* Any retail envisioned by the plan should be part of a mixed use development with office or living units above the retail on the ground floor which caters to the pedestrian.

The proposed "C-2" Commercial District would allow by right the establishment of free-standing retail uses such as "drive-in" and/or "carry-out" type restaurants offering goods or services directly to customers in motor vehicles. These types of uses are viewed as being inappropriate for this location. Rezoning the property for commercial uses would only serve to disrupt and threaten the integrity of a node of established office uses located within the environs of several historic properties. Such action would also promote further commercial strip development along a gateway to Downtown and one of the city's major arterials which the Comprehensive Plan discourages. The proposal is therefore, found by staff to be inconsistent with the established goals and objectives of the Old Town Neighborhood Plan element of the Comprehensive Plan.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: The removal of present restrictions would permit the subject property to develop for commercial uses which are found to be inconsistent with Old Town Neighborhood Plan element of the Comprehensive Plan and accepted planning principles which dictate that established patterns of land use must be recognized as a basic factor which strongly influences rezoning decision.

The only commercially zoned property in the immediate area is the parking lot that lies northwest of the subject site. This property was originally zoned "E" Multiple-Family Dwelling District and was the site of the historic *"Horner House"*. In 1984 this property was rezoned with a resolution of intent to "G" Commercial to facilitate the adaptive reuse of this historic home for use as a restaurant. Subsequent to this property being rezoned, the *"Horner House"* was demolished and the current parking lot was

November 19, 2007
Agenda Item #G-4

established on the property which is now used by the Senate Luxury Suites. In 1994 when the current zoning designations were adopted a "G" Commercial designation converted to the current "C-4" Commercial classification by virtue of the parking lot use activating the ROI. It is therefore, only by default that this site is zoned commercial. The nearest retail uses exist at the intersection of two arterials (SW 8th Street and SW 10th Avenue) a block away in a nodal development pattern.

The subject property lies within the environs of several historic properties; the "*Women's Club Building*", the "*Dillon House*" (both of which front onto SW 9th Street) and are located northeast of the subject property and the "*Gem Building*" (which fronts onto SW 10th Avenue) and is located south of the subject property within the same block. In addition, the Senate Luxury Suites (ca. 1928) lies immediately to the west across the alley and is proposed as a preservation overlay district in the Old Town Neighborhood Plan. The plan states: "*This overlay District is intended to recognize the special character of structures within certain districts and protect their viability.*"

The property is also in direct view of the State Capitol Building which lies east of the subject property on SW 9th Street. Any development on the subject site would have an impact along this viewing corridor which must be considered. Given the rich historic nature of this area any redevelopment of the subject site should be compatible in design with the established character of the area. Any development should not only enhance but preserve the character and flavor of Old Town and the neighboring Downtown area with careful consideration given to the architectural character of any building in order to provide the desired gateway to Downtown and in proximity to the Capitol Complex. Any development of the subject site therefore, takes on added significance with regard to the sites design as stated in the Old Town Neighborhood Plan: "*Parking should be hidden from Topeka Boulevard and elegant streetscapes incorporated into this new gateway to Downtown.*" The Old Town Neighborhood Plan further states: "*Design guidelines and performance standards should follow recommendations found with the Downtown Plan.*"

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER: The site's present classification was established in 1994 when the current zoning designations were adopted. The property under the old designation "E" was classified as Multiple-Family Dwelling District, this was converted to either the current classification "M-3" Multiple-Family Dwelling District or "O&I-2" Office and Institutional District depending on which classification was most appropriate based on the then existing land use. The subject property is quite suitable as currently zoned and there would appear to be no particular gain to the public health, safety, and welfare in removing the present restrictions. On the contrary, if the present restrictions were removed the property could develop for commercial retail uses that are inconsistent with the surrounding uses, the adopted Old Town Neighborhood Plan, and accepted planning principles.

AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area and will not be overburdened by this proposal. Any development of the site should however, consider eliminating the existing access on Topeka Boulevard or if retained, limiting it to a right-in only.

November 19, 2007
Agenda Item #G-4

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS:

Application: **Complete.**

Minimum Lot Area: **Compliant.**

Setbacks: **Compliant.**

Platting: **Compliant** – Lots 289, 291 and 293 Original Town.

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request has been submitted to all applicable reviewing agency staff for consideration and comment. A concern expressed by reviewing staff relative to code compliance or the provisions of public services was the site's ability to accommodate a new commercial building or drive-through on such a small corner lot given setback, parking, access and landscaping requirements. If the site is converted for a high-traffic use such as a restaurant, it is recommended that full access to SW Topeka Boulevard be prohibited.

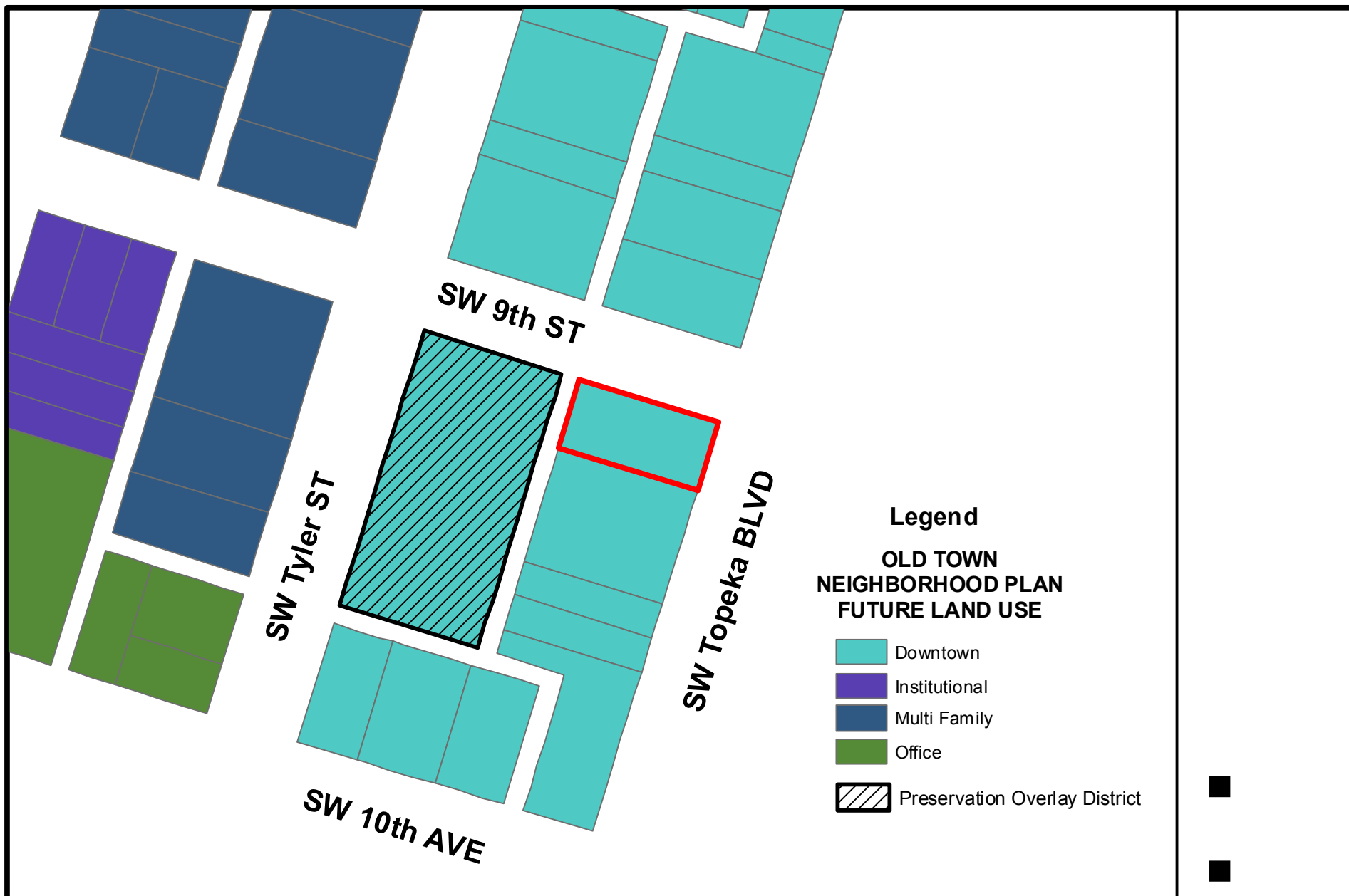
ADDITIONAL FACTORS:

- | | |
|--|---|
| 1. Neighborhood Improvement Association: | Old Town. (No response received as of November 5, 2007) |
| 2. Capitol Plaza Area: | Subject property is within the jurisdiction of the Capitol Plaza Authority which also is required to approve any rezoning upon City Council action. |
| 3. Flood Hazard Area: | Not Applicable. |
| 4. Airport Hazard Area: | Not Applicable. |
| 5. Historic Properties: | Subject property is within the environs of " <i>Women's Club Building</i> ", " <i>Dillon House</i> " and " <i>Gem Building</i> ". |

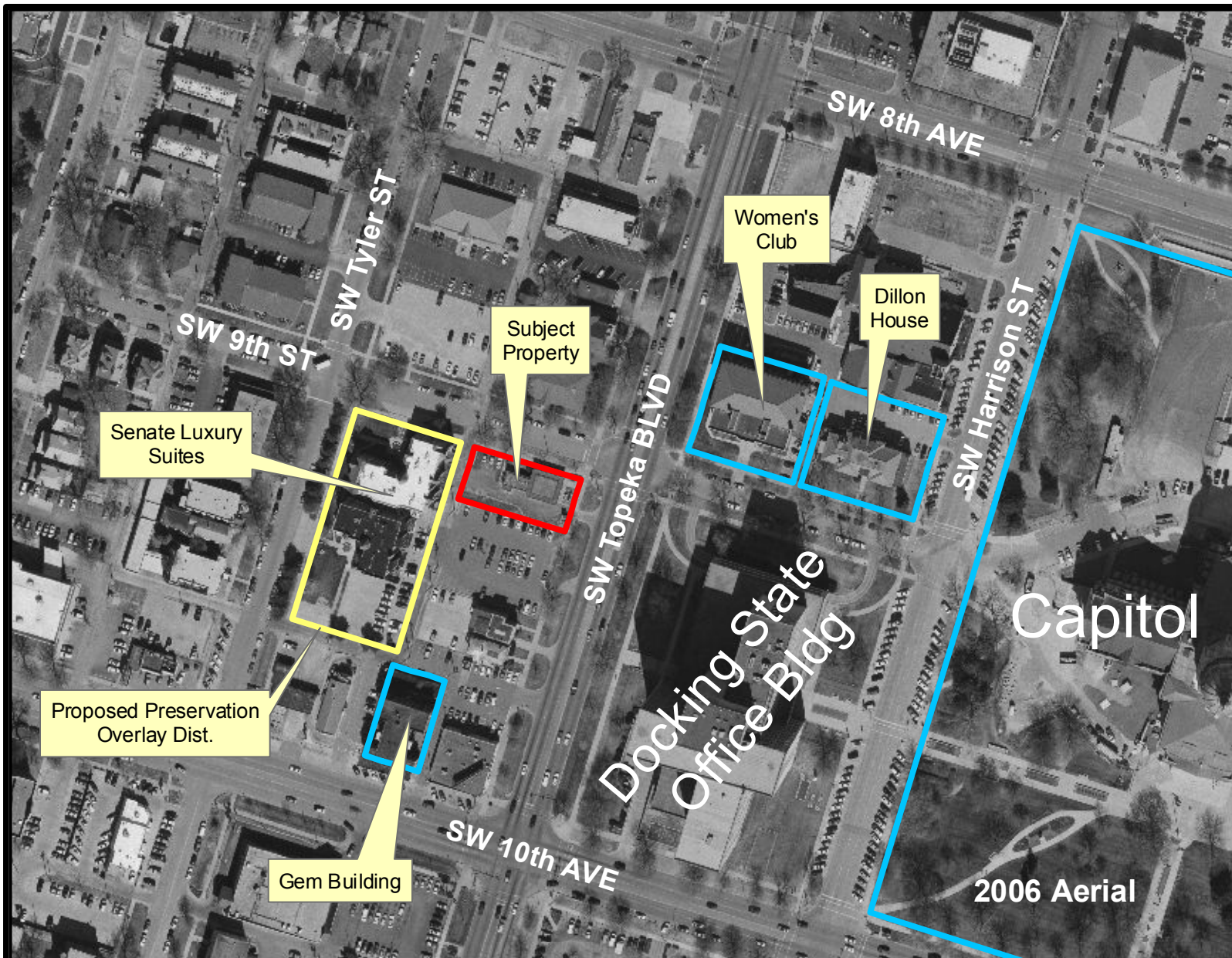
STAFF RECOMMENDATION:

Based upon the above findings and analysis Planning Staff recommends **DISAPPROVAL** of this proposal. The Planning Department could support a mixed use project as discussed in the Old Town Neighborhood Plan.

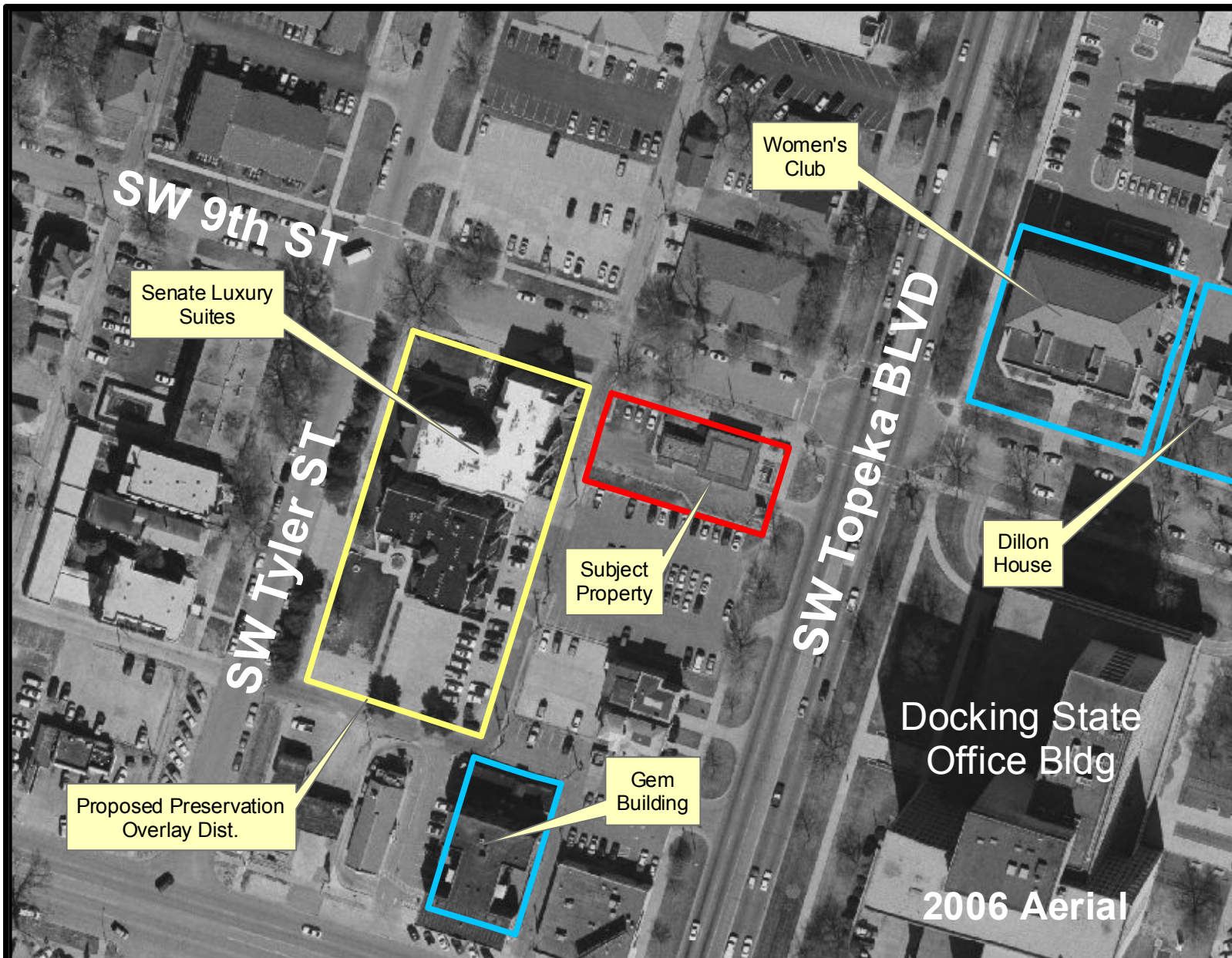
Prepared by: Dean W. Diediker
Planner II



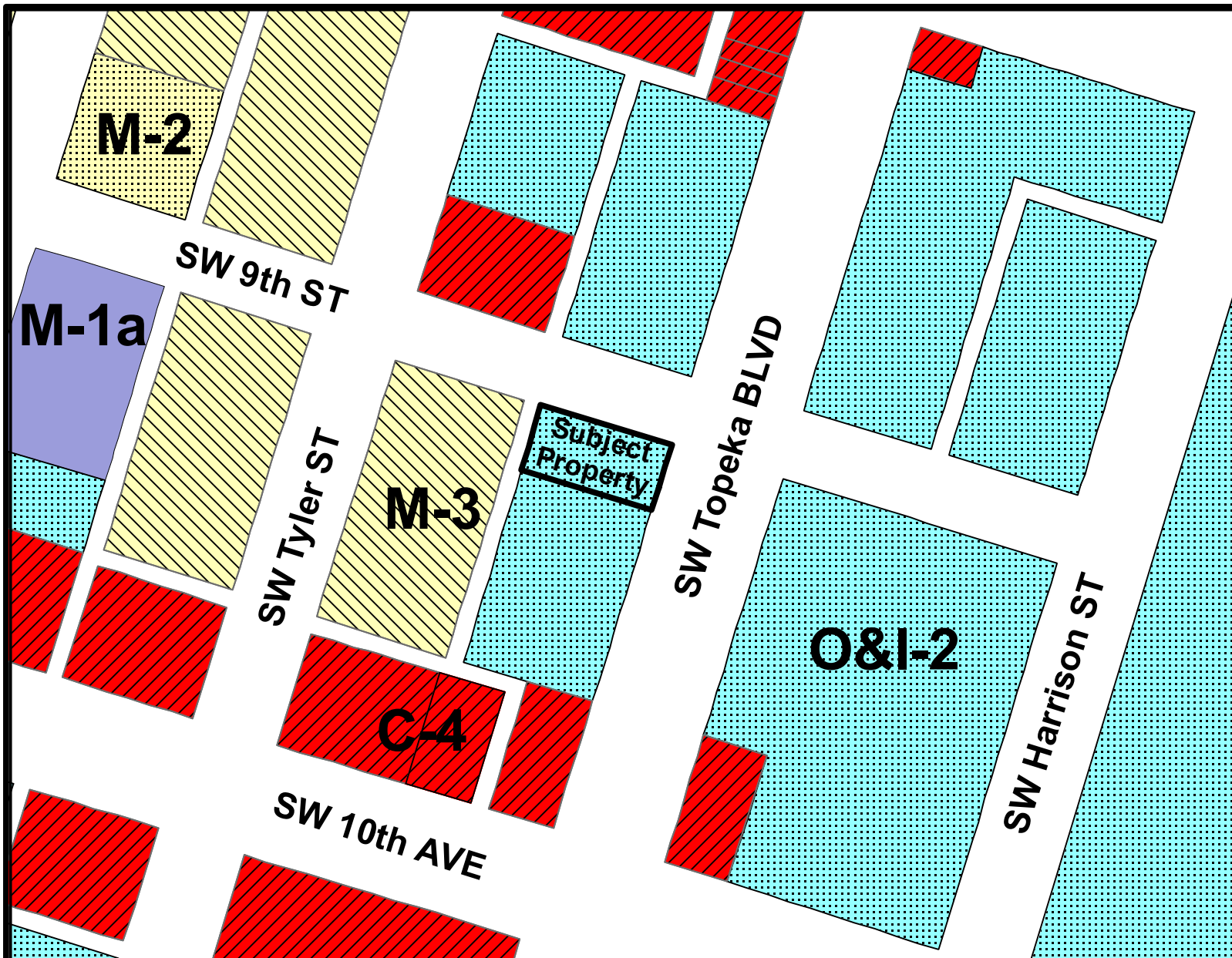
Z07/25 by Fidelity State Bank and Trust Co.



Z07/25 by Fidelity State Bank and Trust Co.



Z07/25 by Fidelity State Bank and Trust Co.



Z07/25 by Fidelity State Bank and Trust Co.



Application Form Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): Fidelity State Bank and Trust Company

Anderson Chandler

Street Address: 600 S. Kansas Avenue

City: Topeka State: KS Zip: 66603 E-mail: awc@fidelitytopeka.com

Business phone: (785) 295-2100 Home phone: _____ Fax: (785) 233-7571

Authorized Owner Representative (if any): Henry McClure

Street Address: 214 SW 6th Street Suite 300

City: Topeka State: KS Zip: 66603 E-mail: mcre@cox.net

Business phone: 235.3353 Home phone: 357.7980 Fax: 234.5729

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

Street Address: _____

City: _____ State: _____ Zip: _____ E-mail: _____

Business phone: _____ Home phone: _____ Fax: _____

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: Fidelity State Bank Trust Company Topeka Kansas

Owner 1 Signature: Anderson Chandler Chair Pres Date: OCT 5 2007

Owner 2: _____

Owner 2 Signature: _____ Date: _____

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): 901 S Topeka Blvd
Topeka, Kansas 66612

Legal Description of Property: lot(s) _____ block _____ subdivision Attached
(if unplatted, attach metes and bounds description)

Total Area (acres/square feet): 11,250

Type of Application:
1. *Re-zoning from:* O & I 2 *to:* C 2

2. *Conditional Use Permit proposed use:* _____

Existing Use (# of dwelling units, square feet, etc.): 1,755

How long has the existing use been on the property? 43 years

Proposed Use (# of dwelling units, square feet, etc.): Commercial / Retail

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? Yes *If Yes, when?* 10/4/07

FOR OFFICE USE ONLY

Date submitted: 10/5/07

Date notice sent: 10/26/07

Application no.: 207/25

Date advertised: 10/26/07

Filing fee: 150.00 **Receipt no.:** 111642

Date of hearing: 11/19/07

Quarter section map no.: F-9

Council district: #1

CHECK YES OR NO

Capital Plaza Area: Yes ☒ No ☐

Within Historic Site Environs: Yes ☒ No ☐

If Yes, what is it?: Womens Club Building, Dillon House, Gem Building

100 yr Floodplain: Yes ☐ No ☒

National/State Historic Register: Yes ☐ No ☐

Airport Hazard Area: Yes ☐ No ☒

Local Historic Resource: Yes ☐ No ☒

Neighborhood Association: Yes ☒ No ☐

Name of N.I.A./N.A.: Old Town NIA

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. Why is the land not suitable for the uses to which the property is currently zoned?

The zoning is obsolete.

The evolution of this area likens itself to more of an intensive zoning. The success of Walgreens, pizza hut and other retailers in the area prove the need for these uses in the area. The decline of the existing business and the two offices to the south show the market for office uses are obsolete.

2. What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?

No.

A retail or commercial use will enhance the area. This will serve the state employees, the guests at the Senate Suites, Topeka High students, any of the 36,000 day time population downtown and any future additions too the area.

3. How does this request relate to any adopted neighborhood/land use plans by the City?

Perfect.

The future land use as shown in Map # 6 of the adopted Old Town Neighborhood Plan contemplates "Downtown" uses.

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

- a. Location and size of water main serving site:

One 6' DI on the north side of 9th - 6' on the west side of Topeka Blvd

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

Yes

- c. If other than City of Topeka, identify water district provider: _____

2. Sanitary Sewer

- a. Location and size of sewer main serving site:

12' in the alley to the west.

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

Yes

- c. If other than City of Topeka, identify sewer district provider: _____

3. Storm Drainage

- a. How will storm water run-off be handled on site?

42' on the west side of Topeka blvd.

Inlet on the corner

- b. Does the current storm sewer system have adequate capacity for proposed use?

Yes

4. Traffic Circulation

- a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?

Yes - 5 lane on Topeka blvd and 2 lane on 9th street

- b. What are the site's existing or proposed access points?

One on 9th on the west end of the lot - One on Topeka Blvd on the south 2/3 of the lot

- c. Will any street improvements or traffic control improvements be required?

NO

DRAFT

**Minutes of the
Topeka Planning Commission
November 19, 2007**

207/25 by Fidelity State Bank and Trust Company requesting to amend the District Zoning Classification from "O&I-2" Office and Institutional District **TO** "C-2" Commercial District on property located at 901 SW Topeka Boulevard. (**Diediker**) Bill Fiander summarized the staff report.

Discussion by members:

Michelle Hoferer asked what affect does this proposal have to historic buildings in the area? Mr. Fiander said the zoning really doesn't have any affect on them it is what is built on the property that will. He said when a building permit is applied for it will have to be reviewed by SHPO. If SHPO denies the permit then the applicant can appeal to the City Council. The property is within in the Capital Area Plaza Authority. The process is the Planning Commission makes their recommendation to City Council, then if City Council approves the rezoning it has to be reviewed by CAPA. They make the final determination. Mark Boyd asked why do we go through this whole process and then send it to the state (CAPA)? Mr. Fiander said CAPA doesn't have a set schedule so it is hard to present something to them. If they applicant wants to pursue presenting the proposal to them they can. Fred Sanders asked if staff knew the last time CAPA met? Mr. Fiander said the last time that we know of is 1 ½ years ago when there was another rezoning downtown. David Thurbon added we aren't sure if they meet for other reasons. Mr. Sanders said these office buildings could have a use, are we sure a fast food restaurant is going in here? Mr. Thurbon said he would let the applicant answer that. Mr. Sanders said it is stated as drive in and carry out I don't see that is anything different than what the bank was. Mr. Thurbon said a drive in restaurant creates the most traffic on average.

Proponents:

Henry McClure, McClure Real Estate, spoke in favor of the proposal. He said he is now the owner of the property. He said as far as CAPA is concerned they don't want to review the rezoning until after it has been presented to the Planning Commission and City Council. He stated this building already has a drive thru and that won't change. It is a well built building. It is a special use building. We are going to renovate it we have a national coffee business interested in the building. We aren't changing the use but letting it adapt to the area. The parking lot next door is zoned commercial. If they don't go here they could buy the parking lot and build what they want because they will have the zoning they need. I think the best use for this property is commercial. There is a market for this at this location. There are already users for this building. This location has a lot of pedestrian traffic. Lets make the zoning fit for what is there today. Mr. Boyd asked what the parking lot is for? Mr. McClure replied it is parking for the Senate Suites. Mr. Boyd asked why it is zoned C-4? Mr. Fiander stated that was the site of the old Horner House and in the 1980's there was a proposal for a restaurant but the building was torn down. There was a resolution of intent on the property for C-4 and was activated for a parking lot. Mr. McClure said he wants to renovate the property nicely for this national tenant.

Mr. Sanders said C-2 is appropriate for this property. The drive thru is already there, it is on a major arterial, it serves the offices in the area and the walking paths are already there for them.

Mr. Boyd said he sees it a little different. I see this as a sensitive area. CAPA will evaluate how appropriate it will be. I follow staffs recommendation for disapproval. I don't see C-2 sitting in the middle of the block all alone. It is one of those lots that don't fit into the current code. Maybe with some performance standards it might fit.

Terry Simnitt said there is C-4 zoning along 10th Street, the State Office Building is zoned C-4, Pizza Hut on the corner of 10th & Topeka Boulevard is C-4 and there is also some C-4 along 8th Street. He said he thinks C-2 would be appropriate on this property.

No one spoke in opposition to the proposal.

Exparte communications: none

Fred Sanders moved approval, seconded by Jim Brown. **APPROVAL. (5-2-0) Commissioners Boyd and Hoferer voted no.**



A Capital City Government Working For You...

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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 20, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: David Thurbon/Bill Fiander **DOCUMENT #:** Z07/26

SECOND PARTY/SUBJECT: K-Air, Inc. **PROJECT #:**

CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 007 Zoning

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 518 and 522 SW 39th Street and property located at the southwest corner of SW Topeka Boulevard and SW 39th Street from “R-1” Single Family Dwelling District TO “C-4” Commercial District. **Final Reading.** (Z07/26) (Council District No. 5) (Planning Commission recommended approval by a vote of 7-0-0.) (Planning Department recommended approval.)

(Approval of the rezoning and corresponding plat would allow the property to develop for an automobile sales lot in conjunction with the vacant properties to the north.)

POLICY ISSUE:

The request is consistent with the land use policies and principles of the Land Use and Growth Management Plan- 2025 element of the Comprehensive Plan.

STAFF RECOMMENDATION:

The Planning Commission recommended this request be **APPROVED** by a vote of **7-0-0** at their November 19, 2007 public hearing as referenced in their attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report.

BACKGROUND:

- See staff report.
- City Council options:
 - **Adopt** the recommendation of the Planning Commission by Ordinance;
 - **Override** the Planning Commission's recommendation by a two-thirds majority (6 votes) of City Council membership; or,
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

Item #21

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

[staff report](#)

[zoning map](#)

[aerial map](#)

[application](#)

[Planning Commission Minutes](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 518 and 522 SW 39th Street and property located at the southwest corner of SW Topeka Boulevard and SW 39th Street from "R-1" Single Family Dwelling District **TO** "C-4" Commercial District. **(Z07/26) (Council District No. 5)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by classifying the following described property:

**A TRACT OF LAND IN THE NORTHEAST QUARTER, SECTION 24, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE 6TH P.M., CITY OF TOPEKA, SHAWNEE COUNTY KANSAS, DESCRIBED AS FOLLOWS;
COMMENCING AT THE NORTHEAST CORNER OF FOSTORIA SUBDIVISION; THENCE ON AZIMUTH 179 DEGREES 59 MINUTES 39 SECONDS (WGS84), COINCIDENT WITH THE EAST LINE OF SAID FOSTORIA SUBDIVISION, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING. SAID POINT BEING 645.00 FEET ON AZIMUTH 00 DEGREES 01 MINUTES 05 SECONDS AND 662.57 FEET ON AZIMUTH 269 DEGREES 49 MINUTES 07 SECONDS FROM THE SOUTHEAST CORNER OF SAID QUARTER SECTION; FIRST COURSE, THENCE ON AZIMUTH 89 DEGREES 49 MINUTES 07 SECONDS, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 544.34 FEET; SECOND COURSE, THENCE ON AZIMUTH 192 DEGREES 06 MINUTES 36 SECONDS, A DISTANCE OF 168.20 FEET; THIRD COURSE, THENCE ON AZIMUTH 265 DEGREES 55 MINUTES 28 SECONDS, A DISTANCE OF 510.33 FEET TO THE SOUTHEAST CORNER OF LOT 1 BLOCK 'A' OF SAID FOSTORIA SUBDIVISION; FOURTH COURSE, THENCE ON AZIMUTH 359 DEGREES 59 MINUTES 39 SECONDS COINCIDENT WITH THE EAST LINE OF SAID LOT 1, A DISTANCE OF 198.99 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 2.19 ACRES MORE OR LESS.
THE GRANTOR HEREBY RETAINS ANY AND ALL ABUTTER'S RIGHTS OF ACCESS TO TOPEKA BOULEVARD (SECOND COURSE), AND KANSAS TURNPIKE/I-470, (THIRD COURSE).**

AND

A TRACT LYING IN THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE 6TH P.M., SHAWNEE COUNTY, KANSAS: BEGINNING AT A POINT 20 FEET NORTH AND 379.8 FEET WEST OF THE SOUTHEAST CORNER OF THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 24; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION, 116 FEET; THENCE WEST 124 FEET; THENCE SOUTH 116 FEET TO A POINT 20 FEET NORTH OF THE SOUTH LINE OF THE NORTH HALF OF THE SOUTH HALF OF THE

NORTHEAST QUARTER, THENCE EAST 124 FEET TO THE POINT OF BEGINNING,

AND

BEGINNING AT A POINT 20 FEET NORTH AND 503.8 FEET WEST OF THE SOUTHEAST CORNER OF THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE 6TH P.M., SHAWNEE COUNTY, KANSAS; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION, 116 FEET; THENCE WEST 124 FEET; THENCE SOUTH 116 FEET TO A POINT 20 FEET NORTH OF THE SOUTH LINE OF THE NORTH HALF OF THE SOUTH HALF, OF THE NORTHEAST QUARTER; THENCE EAST 124 FEET TO THE POINT OF BEGINNING.

AND

ALL OF THE RIGHT-OF-WAY FOR SOUTHWEST 39TH STREET DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 1, BLOCK A, FOSTORIA SUBDIVISION EXTENDED; THENCE EASTERLY TO THE WEST RIGHT-OF-WAY LINE OF SOUTHWEST TOPEKA BOULEVARD.

from "R-1" Single Family Dwelling District TO "C-4" Commercial District.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka, _____, 2007.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X

November 19, 2007
Agenda Item # G-3a

ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: Z07/26

by: K-Air, Inc.

PROPOSAL: Zone change from “R-1” Single-Family Dwelling District TO “C-4” Commercial District

LOCATION: 518 and 522 SW 39th Street and the southwest corner of SW Topeka Blvd and SW 39th Street

PARCEL ID NUMBER: 1462401001018000, 1462401001019000, and 1462401004002000

PRESENT USE: Existing single-family residences are located at 518 and 522 SW 39th Street. The property at the southwest corner of Topeka Blvd and SW 39th was previously Kansas Turnpike right-of-way and is presently vacant.

PROPOSED USE: Auto sales lot in conjunction with the properties to the north (vacant).

CHARACTER OF NEIGHBORHOOD: The property is located along a regional commercial corridor (SW Topeka Blvd) at the Interstate-470 interchange.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	“C-4” Commercial District	Vacant (will be part of auto sales lot)
South:	Highway right-of-way	Interstate-470
East:	“C-4” Commercial District	Vacant
West:	“R-1” Single-Family Dwelling District	Two single-family residences

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: Existing zoning records indicate the properties have been zoned “R-1” Single-Family Dwelling District since annexed in the 1950s. The existing residences have remained on the property since built (1926 and 1950). The property at the southwest corner of Topeka Blvd and SW 39th has remained vacant since used as right-of-way by the Kansas Turnpike Authority.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: The property classification as Single-Family Dwelling District is no longer suitable for this area. The properties are located along a regional commercial corridor. The four remaining single-family residences along SW 39th Street may no longer be suitable at this location as they are entirely surrounded by commercial and industrial land uses and located near the Interstate-470 frontage road.

November 19, 2007
Agenda Item # G-3a

CONFORMANCE TO COMPREHENSIVE PLAN: The Comprehensive Plan designates this area for *Commercial/Office* land uses. The pattern of surrounding land uses along Topeka Blvd. has developed for commercial uses. Therefore, this proposal is in conformance with the Comprehensive Plan.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: The proposed reclassification should have no detrimental effect on the surrounding area and would allow this property to develop consistent with the pattern of surrounding land uses.

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER: The proposed reclassification would accommodate the redevelopment of this property for commercial uses consistent with those in the surrounding area. As no detrimental effects are anticipated, there would appear to be no particular loss to public health, safety, and welfare by the reclassification of this area.

AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area and will be provided at the time of site development.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS:

Minimum Lot Area: **Compliant-** The properties at 518 and 522 SW 39th Street will be combined with properties to the north.

Setbacks: **Compliant-** New structures will meet required setbacks in the "C-4" District.

Platting: **Compliant-** A plat for Briggs 1st Addition has been submitted in conjunction with this application to merge existing lots and vacate a portion of SW 39th Street (P07/35)

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request was submitted to all applicable reviewing agency staff for consideration and comment. All issues or concerns that were expressed by reviewing staff relative to code compliance or provisions of public service have been resolved or will be resolved at the site development stage.

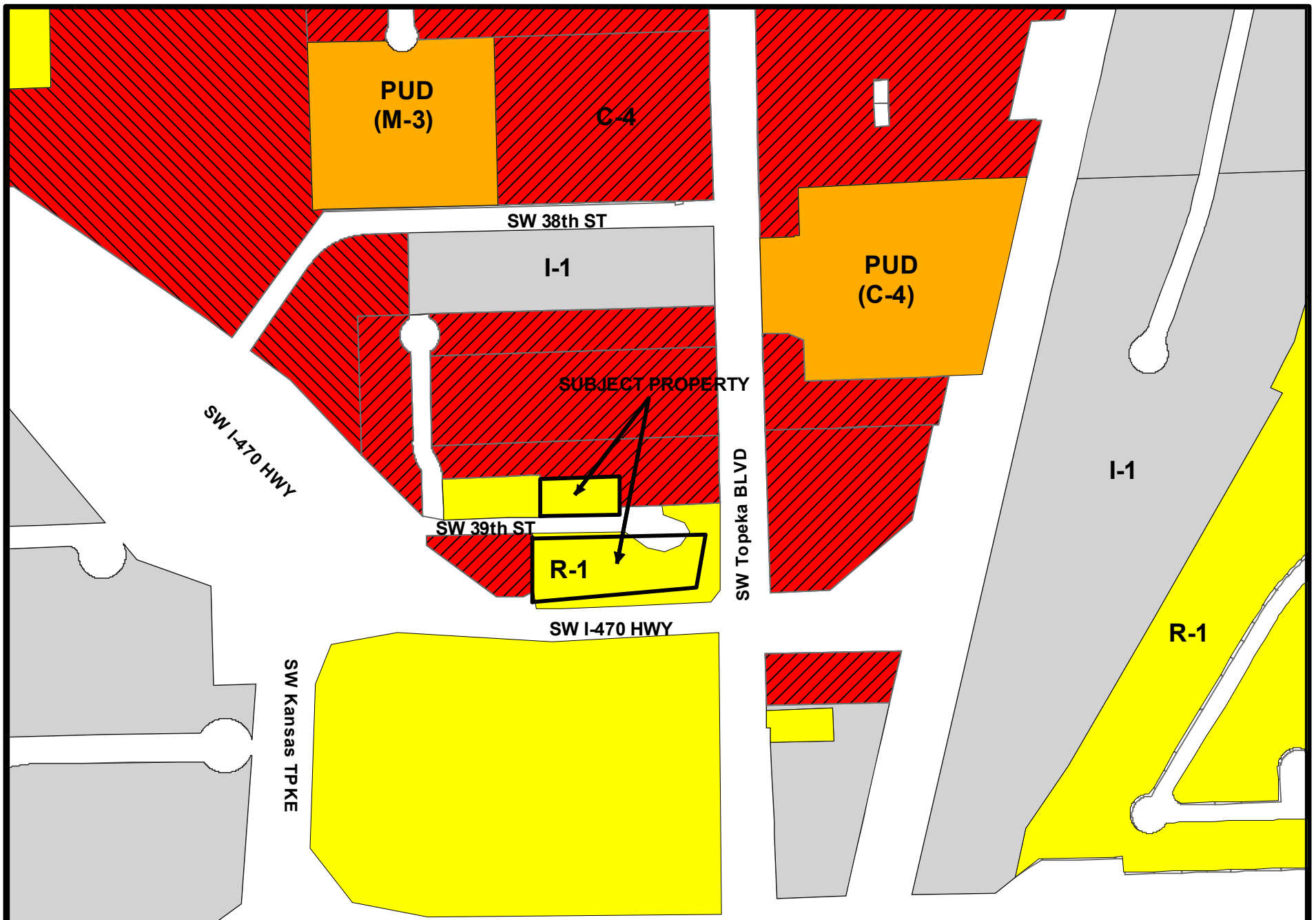
ADDITIONAL FACTORS:

1. Neighborhood Improvement Association: N/A
2. Capitol Area Plaza Authority: N/A
3. Flood Hazard Area: N/A
4. Airport Hazard Area: N/A
5. Historic Properties: N/A

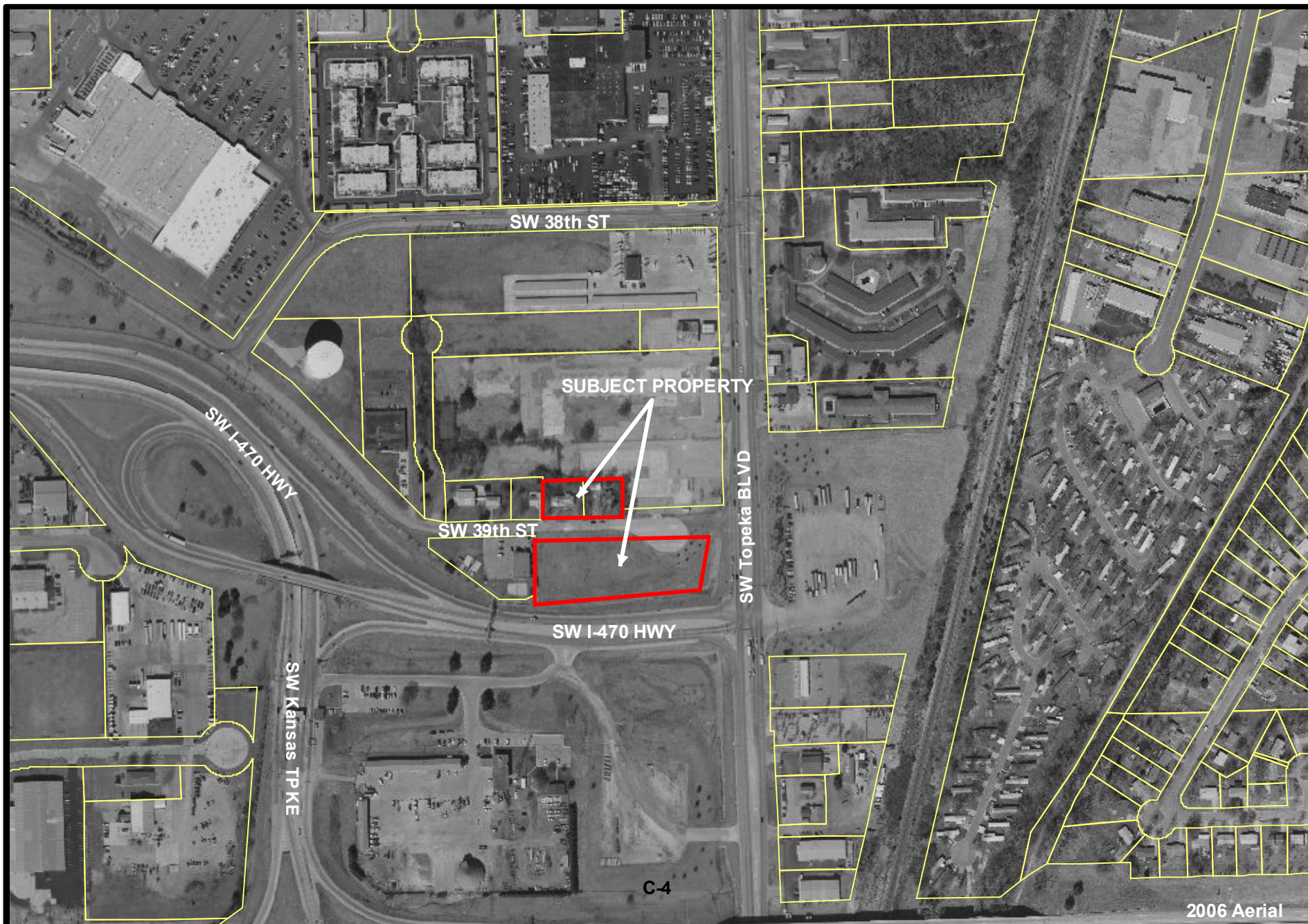
STAFF RECOMMENDATION: Based upon the above findings and analysis, the planning staff recommends **APPROVAL** of this proposal.

Prepared by: Annie Driver, Planner I

November 19, 2007
Agenda Item # G-3a



Z07/26 by: K-Air, Inc.



2006 Aerial

Z07/26 by: K-Air, Inc.

City of Topeka Planning Department



Application Form Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): K-Air Inc.

Street Address: 2312 Stagg Hill Road

City: Manhattan State: KS Zip: 66502 E-mail: _____

Business phone: _____ Home phone: _____ Fax: _____

Authorized Owner Representative (if any): _____

Street Address: _____

City: _____ State: _____ Zip: _____ E-mail: _____

Business phone: _____ Home phone: _____ Fax: _____

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

Bartlett & West Inc., by John Ladson, P.E.

Street Address: 1200 SW Executive Drive

City: Topeka State: KS Zip: 66615-3850 E-mail: john.ladson@bartwest.com

Business phone: 785-272-2252 ext 309 Home phone: 785-806-2806 cell Fax: 785-273-8735

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: Russell K. Briggs, President, K-Air Inc.

Owner 1 Signature:  Date: 10-3-07

Owner 2: _____

Owner 2 Signature: _____ Date: _____

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): SW Topeka Blvd & SW 39th Street

Legal Description of Property: lot(s) _____ block _____ subdivision see attached
(if unplatted, attach metes and bounds description)

Total Area (acres/square feet): 2.85 AC. +/-

Type of Application:

1. Re-zoning from: R-1 to: C-4

2. Conditional Use Permit proposed use: _____

Existing Use (# of dwelling units, square feet, etc.): 2 residential units to be demolished and old KTA right-of-way

How long has the existing use been on the property? plus 20 years

Proposed Use (# of dwelling units, square feet, etc.): Car dealership auto plaza

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? yes If Yes, when? 9/06/2007

FOR OFFICE USE ONLY

Date submitted: 10/5/07

Date notice sent: 10/26/07

Application no.: 207/26

Date advertised: 10/26/07

Filing fee: 1050⁰⁰ Receipt no.: 11043

Date of hearing: 11/19/07

Quarter section map no.: _____

Council district: #5

CHECK YES OR NO

Capital Plaza Area: Yes _____ No X

Within Historic Site Environs: Yes _____ No X

If Yes, what is it?: _____

100 yr Floodplain: Yes _____ No X

National/State Historic Register: Yes _____ No X

Airport Hazard Area: Yes _____ No X

Local Historic Resource: Yes _____ No X

Neighborhood Association: Yes _____ No ✓

Name of N.I.A./N.A.: _____

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. Why is the land not suitable for the uses to which the property is currently zoned?

Need to zone C-4 with the remainder of the plat to accomodate the proposed auto plaza.

2. What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?

Consistent with surrounding zoning.

3. How does this request relate to any adopted neighborhood/land use plans by the City?

Consistent with city land use plan.

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

a. Location and size of water main serving site:

12" water line & 6" water line in the west right of way of SW Topeka Blvd.

12" water line in the south and north right of way of SW 39th Street.

b. Does the current system have adequate capacity? If not, are improvements anticipated?

NO,

c. If other than City of Topeka, identify water district provider: _____

2. Sanitary Sewer

a. Location and size of sewer main serving site:

8" Sanitary sewer in west right of way of SW Topeka Blvd, line only goes south of SW 38th Street approximately 250 feet, various sewer line trough out site in platted easements.

b. Does the current system have adequate capacity? If not, are improvements anticipated?

NO,

c. If other than City of Topeka, identify sewer district provider: _____

3. Storm Drainage

a. How will storm water run-off be handled on site?

Existing 18" RCP along west right of way of SW Topeka Blvd. and 15" RCP along SW 39th Street.
Storm system constructed on site.

b. Does the current storm sewer system have adequate capacity for proposed use?

NO, storm waster detention on site.

4. Traffic Circulation

a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?

YES, SW Toepka Blvd. right of way varies, maximum of 145 feet. SW 39th Street right of way is 50 feet.

b. What are the site's existing or proposed access points?

2 access points onto SW Topeka Blvd. First access point is 448 feet south of SW 38th Street, proposed entrance is 60'.
Second access point is 744 feet from SW 38th Street, proposed entrance 30'. Two private drive off of SW 39th Street, street width is 24' back of curb to back of curb.

c. Will any street improvements or traffic control improvements be required?

YES, curb cuts and entrances will be removed and 2 new entrances will be constructed.

DRAFT

**Minutes of the
Topeka Planning Commission
November 19, 2007**

Brigg's Development – Bill Fiander summarized the staff report for both the zoning and subdivision cases discussion is for both as well.

Z07/26 by K-Air, Inc. requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District **TO** "C-4" Commercial District on property located at 518 and 522 SW 39th Street and property located at the southwest corner of SW Topeka Boulevard and SW 39th Street. **(Driver)**

Proponents:

John Ladson, Bartlett & West, spoke in favor of the proposal. He said the two single family homes in this area and the KTA right of way have been purchased and are ready to move forward. Theron Sims asked if they couldn't acquire the other two single family homes? Mr. Ladson replied, not at this point. Mr. Sims asked if the applicant agrees with the conditions listed in the staff report? Mr. Ladson replied yes. Mark Boyd asked if 39th Street being shortened? Mr. Ladson replied yes, it will be a cul-de-sac. Mr. Boyd asked what about access to the two remaining properties? Mr. Ladson said they can be accessed from the cul-de-sac. Mr. Sanders asked if you acquire the other two properties will the street remain? Mr. Ladson replied yes.

No one spoke in opposition of the proposal.

Exparte communications - none

Theron Sims moved approval, seconded by Fred Sanders. **APPROVAL. (7-0-0)**



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 16, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: Mark Schreiner **DOCUMENT #:**

SECOND PARTY/SUBJECT: Improvement at Garfield Community Center **PROJECT #:** 30268-00

CATEGORY/SUBCATEGORY: 014 Ordinances – Non-Codified / 004 Public Improvements

CIP PROJECT: Yes

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30268-00, which provides for a new air conditioning system for the gymnasium at Garfield Community Center, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka. First Reading.
(Council District No. 2)

(Approval of \$105,300 would provide for the design and construction of a new high efficiency air conditioning system within the gymnasium at Garfield Community Center located at 1600 NE Quincy.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Adopt the Project Budget
Approve the Ordinance as presented

BACKGROUND:

This project was approved in the 2006 CIB. This 1957 Community Center gymnasium currently does not have air conditioning. This project will provide for the design and construction of a new high efficient air conditioning system within the gymnasium and if funding is available, this project will include providing high efficient upgrades to the existing air conditioning system throughout the remainder of the facility.

BUDGETARY IMPACT:

Project Budget: \$105,300.00
Annual debt service is estimated at \$8,802 for 20 years. Debt service will be paid from the Bond and Interest Fund.

SOURCE OF FUNDING:

General Obligation Bonds or any other lawfully available funds.

Item #22

ATTACHMENTS:

[Project Budget](#)

[Debt Service](#)

[Vicinity Map](#)

[Ordinance](#)

PROJECT BUDGET

Project No. 30268-00

LOCATION:

Parks and Recreation
Garfield Community Center
1600 N.E. Quincy

Contact Person: Ron Cathey

DESCRIPTION OF PROJECT:

This project consists of the design and construction of a new high efficient air conditioning system within the gymnasium at Garfield Community Center located at 1600 N.E. Quincy. If funding is available, this project will include providing high efficient upgrades to the existing air conditioning system throughout the remainder of the facility.

SOURCE OF FUNDS:

GOB

	City of Topeka GOB	Funding Source 2	Total
<u>COST ESTIMATE:</u>			
Construction:	\$73,441		\$73,441
Design:	\$8,813		\$8,813
Construction Services Fees:	\$7,344		\$7,344
Administrative Fees:	\$1,469		\$1,469
Right-of Way Acquisition:	\$0		\$0
Contingency Amount:	\$7,344		\$7,344
Interim Interest Plus Bond Issuance	\$6,889		\$6,889
Total:	\$105,300		\$105,300

PUBLIC HEARING:

PROJECT AUTHORITY:

- a. Statutes: _____
- b. Ord./Res. No.: _____
- c. Improvement District: _____
- d. City at Large: _____
- e. Method of Assessment: _____

PROJECT ENGINEER: Mark Schreiner, P.E.

PROJECT: Garfield Community Center Air Conditioning Project

Project No. 30268-00

Interest rate 5.25%

Number of Years 20

Cost of Issuance 2.00%

Temp Note interest 5.000%

Principal (project cost)	\$100,286
--------------------------	-----------

Plus Temp Note Interest (unless included in Principal) \$5,014

Subtotal \$105,300

Plus Cost of Issuance \$2,106

Total \$107,406

Annual Debt Service **\$8,802**

Annual Debt Service as Percent of Total 8.2%

Total Debt Service (principal and interest) \$176,043

Difference Project Cost and Total Debt Service \$75,758

GO Bonded Indebtedness as of January 2007 \$165,635,000

Bond projects \$11,470,000

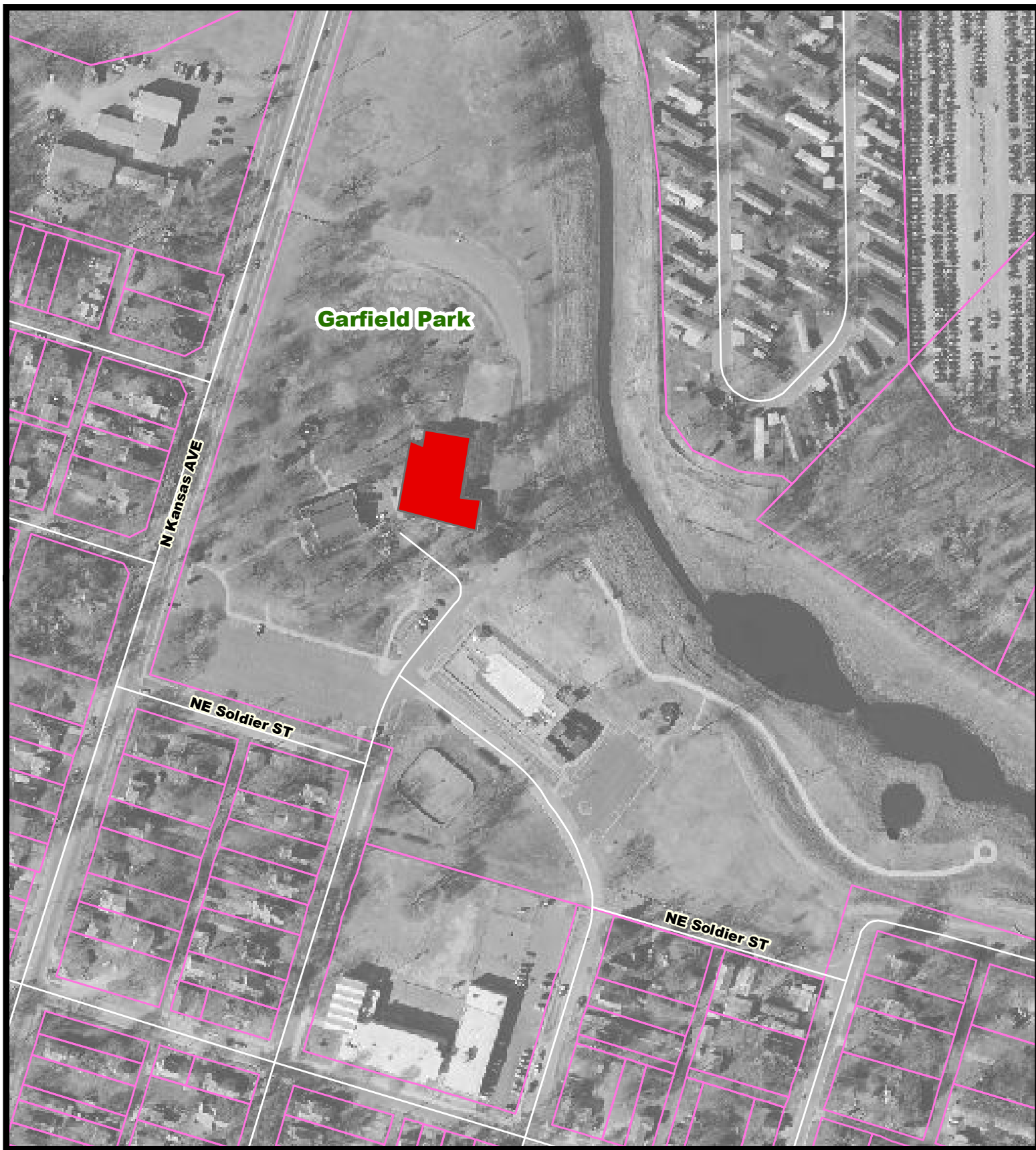
Temporary Notes--City Projects \$10,976,214

Temporary Notes--Special Assessment Projects \$2,552,885

Total Indebtedness \$190,634,099

Plus Project \$190,741,505

Garfield Community Center Project # 30268-00



Legend

- 2007 Surplus City Property
- snroads
- parcels



Map Produced On:
November 15, 2007
Revised On:

Map Printed On:
November 15, 2007

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30268-00, which provides for a new air conditioning system for the gymnasium at Garfield Community Center, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That it is hereby deemed advisable and necessary and is also hereby authorized, pursuant to Section A12-1 of the Code of the City of Topeka that the following public improvement be made:

A. GENERAL NATURE OF IMPROVEMENT:

This project will provide for the design and construction of a new high efficiency air conditioning system within the gymnasium at Garfield Community Center located at 1600 N.E. Quincy. If funding is available, this project will include providing upgrades to the existing air conditioning units to provide for high efficiency HVAC systems throughout the remainder of the facility.

B. TOTAL PROJECT BUDGET COST:

\$105,300.00

C. SOURCE OF FUNDS:

City of Topeka General Obligation Bonds or any other lawfully available funds	\$105,300.00
---	--------------

Section 2. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

37 PASSED and APPROVED by the City Council _____.

38

39 CITY OF TOPEKA, KANSAS

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William W. Bunten, Mayor

44 ATTEST:

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49 _____
Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 15, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: David Thurbon/Bill Fiander **DOCUMENT #:** V07E/16

SECOND PARTY/SUBJECT: Kansas Medical Mutual **PROJECT #:**
Insurance Company et al

CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 006 Vacations

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of a 20-foot utility easement in the Original Town of Topeka and located west of 1021 SW Tyler Street, City of Topeka, Shawnee County, Kansas. **First Reading.** (V07E/16) (Council District No. 1)

(Approval would vacate a 3-foot portion of a utility easement covering the vacated alley for the expansion of an office building.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Planning Department recommends **APPROVAL** of the proposed vacation.

BACKGROUND:

- The Kansas Statutes and Topeka Code Section 130-476(b) requires a public hearing in conjunction with proposed vacation petitions which have been filed in accordance with a prescribed procedure.
- AT&T, Westar, and Cox Communications have utility lines within the west 3' of the existing 20' easement requested to be vacated. However, the applicant has granted a utility easement by separate instrument that covers the eastern 17' of the requested area to be vacated. The applicant is working with these utilities to relocate their lines within this 17' easement.
- The City has a sanitary sewer main within the 20' utility easement. However, the City Engineering Division has stated the 17' easement is sufficient for maintenance of the existing sanitary sewer main.
- Approval of the vacation should not be construed to imply support for existing or subsequent land development.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

Item #23

ATTACHMENTS:

[Utility approvals](#)

[aerial photo](#)

[Vacation boundary area](#)

[application](#)

[Copy of 17' utility easement granted by separate instrument](#)

[Ordinance](#)

[legal ad](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO.

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to a 20' utility easement within the vacated alley located west of 1021 SW Tyler Street in the Original Town of Topeka, Shawnee County, Kansas (V07A/3)(Council District No. 1)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That pursuant to the requirements of K.S.A. 12-504 as amended, a petition by Kansas Medical Mutual Insurance Company and Kansas Medical Society as property owners, has been filed with the office of the City Clerk, requesting the vacation of the following described utility easement located within the City of Topeka, Shawnee County, Kansas:

vacated alley in the Original Town of Topeka, Shawnee County, Kansas; described second in Ordinance No. 18914, record of the City of Topeka, described herein for reference only; "Beginning at the Southwest corner of Lot 35 on Tenth Avenue West in the Original Town of Topeka; thence west-northwesterly to the Southeast corner of Lot 37 on Tenth Avenue; thence south-southwesterly to the Northeast corner of Lot 348 on Polk Street; thence south-southwesterly to the Southeast corner of Lot 348 on Polk Street; thence east-southeasterly to the Southwest corner of Lot 347 on Tyler Street; thence north-northeasterly to the Northwest corner of Lot 337 on Tyler Street; thence north-northeasterly to the point of beginning." Said tract contains 2,892 Sq. Ft. of land, more or less.

Section 2. That said petition has been duly published for two (2) consecutive weeks in a newspaper of general circulation and on December 18, 2007, the petition is ready for determination by the Council of the City of Topeka, Kansas.

Section 3. That the Council of the City of Topeka, after being duly informed and hearing the

evidence presented finds that:

- a. Legal notice was given as required by K.S.A. 12-504 as amended.
- b. No private rights will be injured or endangered by such vacation.
- c. The public will suffer no loss or inconvenience by such vacation.

Section 4. That the Council of the City of Topeka does hereby find that justice requires the petition of vacation be granted and does hereby order the vacation of the below described utility easement located within the City of Topeka, Kansas:

vacated alley in the Original Town of Topeka, Shawnee County, Kansas; described second in Ordinance No. 18914, record of the City of Topeka, described herein for reference only; "Beginning at the Southwest corner of Lot 35 on Tenth Avenue West in the Original Town of Topeka; thence west-northwesterly to the Southeast corner of Lot 37 on Tenth Avenue; thence south-southwesterly to the Northeast corner of Lot 348 on Polk Street; thence south-southwesterly to the Southeast corner of Lot 348 on Polk Street; thence east-southeasterly to the Southwest corner of Lot 347 on Tyler Street; thence north-northeasterly to the Northwest corner of Lot 337 on Tyler Street; thence north-northeasterly to the point of beginning." Said tract contains 2,892 Sq. Ft. of land, more or less.

Section 5. The City Clerk is hereby directed to certify a copy of this ordinance to the Shawnee County Register of Deeds Office for appropriate recording.

Section 6. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka _____, 2007.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified
Not To Be Codified X

Please have the attached published in the Topeka Metro News in the Legal Advertising Section on November 28, 2007 and December 5, 2007.

IN THE MATTER OF THE PROPOSED VACATION OF:

A 20' utility easement located west of 1021 SW Tyler Street in the Original Town of Topeka, Shawnee County, Kansas **(V07E/16) (Council District No. 1)**

NOTICE OF PUBLIC HEARING

(Pursuant to K.S.A. 12-504 et seq.)

To Whom It May Concern:

Public notice is hereby given that a petition has been filed by Kansas Medical Mutual Insurance Company and Kansas Medical Society of the concerned property, which includes the vacated alley in the Original Town of Topeka, Shawnee County, Kansas; described second in Ordinance No. 18914, record of the City of Topeka, described herein for reference only; "Beginning at the Southwest corner of Lot 35 on Tenth Avenue West in the Original Town of Topeka; thence west-northwesterly to the Southeast corner of Lot 37 on Tenth Avenue; thence south-southwesterly to the Northeast corner of Lot 348 on Polk Street; thence south-southwesterly to the Southeast corner of Lot 348 on Polk Street; thence east-southeasterly to the Southwest corner of Lot 347 on Tyler Street; thence north-northeasterly to the Northwest corner of Lot 337 on Tyler Street; thence north-northeasterly to the point of beginning."

Said tract contains 2,892 Sq. Ft. of land, more or less.

The petition will be presented to the Council of the City of Topeka for hearing **December 18, 2007** at 6:00 P.M. or as soon thereafter as the same may be heard in the City Council Chambers, Municipal Building, 2nd Floor, 8th and Monroe Streets, Topeka, Kansas, at which time and place all interested persons may appear and be heard, either for or against granting the prayer of said Petition.

**BY THE GOVERNING BODY,
CITY OF TOPEKA, KANSAS**

STREET/ALLEY/EASEMENT/SUBDIVISION VACATION

Case No.: V07E/16
SW Tyler

Location: Utility easement west of 1021

DEPARTMENTS:

- **Water Division:** X No Objection Objection
- **Engineering:** X No Objection Objection
Comments: The existing sanitary sewer is located within the 17' easement to be re-established by separate instrument across the existing 20' easement proposed to be vacated by this Ordinance.
- **Parks Department:** X No Objection Objection
- **County Refuse:** X No Objection Objection
- **Fire Department:** X No Objection Objection
- **Police Department:** X No Objection Objection

UTILITY COMPANIES:

- **AT&T:** X No Objection Objection
Comments: No objectives provided the telephone line is relocated from the west 3' of the existing easement to the new 17' easement. The applicant is in the process of pursuing this relocation.
- **Westar:** X No Objection Objection
Comments: No objectives provided the electric line is relocated from the west 3' of the existing easement to the new 17' easement. The applicant is in the process of pursuing this relocation.
- **Kansas Gas Service:** X No Objection Objection
- **Cox Communications:** X No Objection Objection
Comments: No objectives provided the fiber optic cable line is relocated from the west 3' of the existing easement to the new 17' easement. The applicant is in the process of pursuing this relocation.

Annie Driver, Planner I

Prepared: November 14, 2007

TOPEKA PLANNING DEPARTMENT

620 SE Madison Street-3rd Floor
Topeka, Kansas 66607

Office: (785) 368-3728
Fax: (785) 368-2535

Date Submitted	12-25-07	Date Advertised	
Application No.	V87E/16	Date of Public Hearing	
Filing Fee \$	200.00	Receipt No.	38373

APPLICATION

City Vacation of Streets, Alleys and Easements

Kansas Medical Mutual Insurance Company/KAMMCO/ KMS (Kansas Medical Society)

1. Applicant(s): _____
2. Applicant's Mailing Address: 623 SW 10th Street
City Topeka State: KS Zip: 66604/66615
3. Telephone: Area Code: 785 No.: 235-2383
4. Legal description of property requested to be vacated as prepared by the City of Topeka
Department of Public Works: See attached

5. Check type of vacation: Street ☐ Alley ☐ Easement ☒ Other ☐
6. Legal description of property owned by the applicant which adjoins the street, alley or easement
to be vacated: 338-348, even, Polk Street and 337-347,
Lots odd, Tyler Street Block No. _____
In Original Town Subdivision _____

Metes and Bounds Description, if unplatted: _____

7. Are there other owners of land who own property adjoining the subject street, alley or easement proposed to be vacated who, pursuant to K.S.A. 12-504, would be a property party to the petition to vacate?

Yes ☐ No ☒

If yes, please list said owner's name(s) and mailing address.

8. Briefly, describe the proposed development of the subject property and your reasons for vacating the property: The Kansas Medical Society building exists on Lots 37-47, odd, SW 10th Street.

A building expansion to the south is proposed which necessitates the requested vacation

9. Will the area proposed for vacation preclude, restrict, hamper or lessen ingress-egress to other similarly abutting properties? No

10. Do you concur with the retention of the subject area as an easement should the reviewing utility or public agency request such to cover existing or proposed utility lines? Attached is a utility easement granted by separate instrument that covers the east 17 feet of the requested area.

11. Will any permanent structures be constructed within the area proposed for vacation? Yes

12. Will the area proposed for vacation create any unique, adverse or undesirable traffic conditions? No

13. How are adjoining properties used? A restaurant to the northeast and multi-family residential to the south of the KMS property.

14. In your opinion, would the proposed vacation injure or endanger any private rights? No

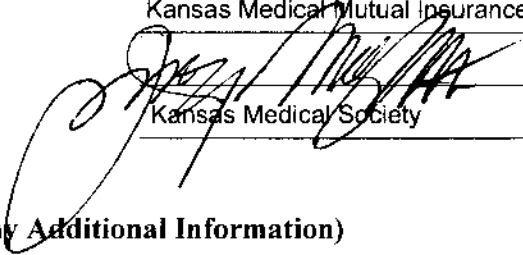
15. In your opinion, would the public suffer any loss or inconvenience should the petition to vacate be approved? No

16. In the event this proposed vacation is to vacate street or alley right-of-way, are you aware of the applicability of the district zoning on the subject property? Please briefly explain: _____

Signature of Applicant(s)



Kansas Medical Mutual Insurance Company



Kansas Medical Society

(Please Attach Any Additional Information)

If the owner(s) of record is to be represented by legal counsel or an authorized agent, please complete the following so that communications pertaining to this application may be forwarded to the appropriate individual.

Name of Representative Angela Sharp, Bartlett & West, Inc.

Street Address 1200 SW Executive Drive

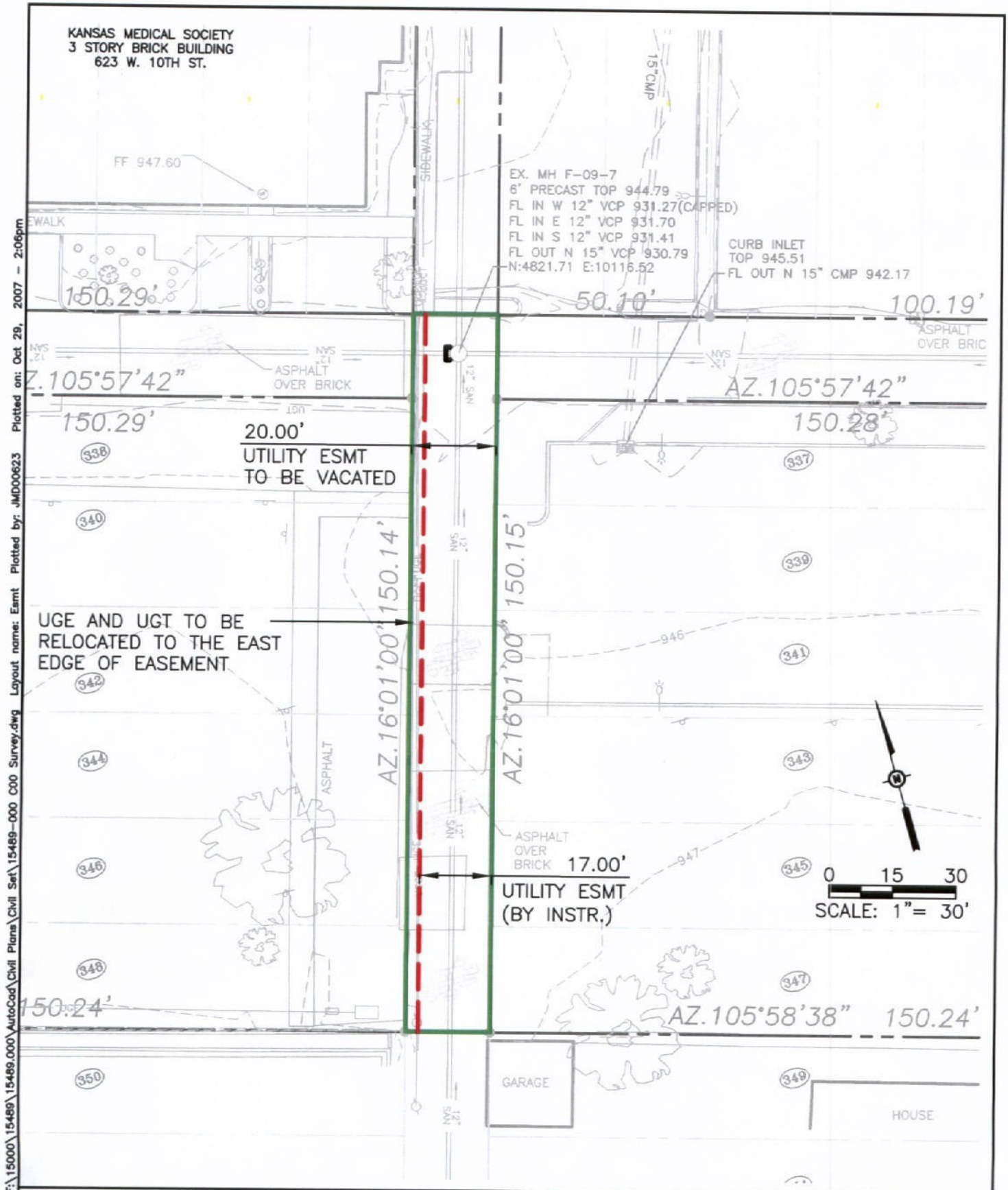
City Topeka State KS Zip Code 66615

Telephone No. (785) 272-2252 - Ext. 313 Fax No. (785) 273-8735

Easement Vacation
Legal Description :

vacated alley in the Original Town of Topeka, Shawnee County, Kansas; described second in Ordinance No. 18914, record of the City of Topeka, described herein for reference only; "Beginning at the Southwest corner of Lot 35 on Tenth Avenue West in the Original Town of Topeka; thence west-northwesterly to the Southeast corner of Lot 37 on Tenth Avenue; thence south-southwesterly to the Northeast corner of Lot 348 on Polk Street; thence south-southwesterly to the Southeast corner of Lot 348 on Polk Street; thence east-southeasterly to the Southwest corner of Lot 347 on Tyler Street; thence north-northeasterly to the Northwest corner of Lot 337 on Tyler Street; thence north-northeasterly to the point of beginning."

Said tract contains 2,892 Sq. Ft. of land, more or less.



Drawing name: F:\15000\15489\15489.000\AutoCad\Civil Plans\Civil Set\15489-000 C00 Survey.dwg Layout name: Easmt Plotted by: JMD06623 Plotted on: Oct 29, 2007 - 2:06pm

BARTLETT & WEST
PHONE 888.200.6464

UTILITY EASEMENT VACATION
KaMMCO/KMS
TOPEKA, KANSAS

PROJ NO:
15489.000
DATE:
10-29-07

SHEET NUMBER
1
OF 1



V07E/16 by: Kansas Medical Mutual Insurance Co., et. al.

■
■
City of Topeka Planning Department

**PERMANENT PUBLIC
IMPROVEMENT
EASEMENT**

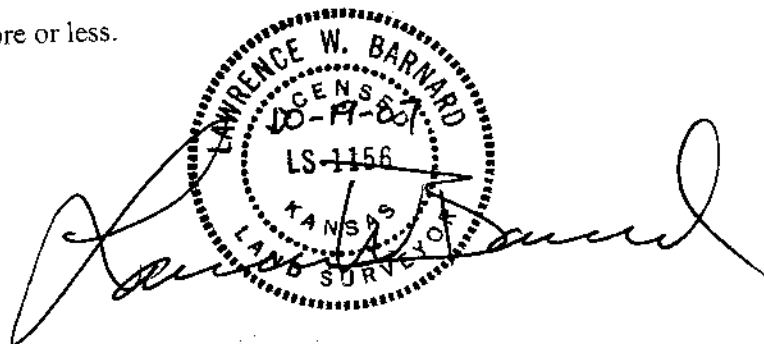
THIS INDENTURE, Made this 22nd day of October, 2007 by and between Kansas Medical Mutual Insurance Company (KaMMCO) and Kansas Medical Society (KMS) hereinafter referred to as Landowner; and THE CITY OF TOPEKA, a municipal corporation, hereinafter referred to as City.

Attachment number 7

WITNESSETH, That Landowner in consideration of One Dollar and no/100 (\$1.00) and other valuable considerations, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the City, an easement for Utilities over and through the following described real estate in the City of Topeka, County of Shawnee, and State of Kansas, to-wit:
(Signature, date and seal of a Registered Land Surveyor certifies that the following real property legal description is an original description and has been prepared by or under the direct supervision of subscribed Registered Land Surveyor. K.S.A. 74-7003)

The East 17.00 feet of the vacated alley in the Original Town of Topeka, Shawnee County, Kansas; described second in Ordinance No. 18914, record of the City of Topeka, described herein for reference only; "Beginning at the Southwest corner of Lot 35 on Tenth Avenue West in the Original Town of Topeka; thence west-northwesterly to the Southeast corner of Lot 37 on Tenth Avenue; thence south-southwesterly to the Northeast corner of Lot 348 on Polk Street; thence south-southwesterly to the Southeast corner of Lot 348 on Polk Street; thence east-southeasterly to the Southwest corner of Lot 347 on Tyler Street; thence north-northeasterly to the Northwest corner of Lot 337 on Tyler Street; thence north-northeasterly to the point of beginning."

Said tract contains 2,892 Sq. Ft. of land, more or less.



Together with the right of entering on said premises for the purpose of constructing, reconstructing, inspecting, repairing and doing such things as are necessary to use and maintain same forever.

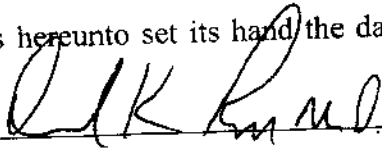
Should one or more of the Landowners be natural persons not joined by their respective spouses, it is conclusively presumed that the land conveyed is not the residence, homestead, or principal business or falls within the footprint of the principal business of such Landowners. Should one or more of the Landowners be a legal entity other than a natural person, it shall be conclusively presumed that the person signing on behalf of that entity has been duly and legally authorized to so sign and there shall be no necessity for a seal or attestation.

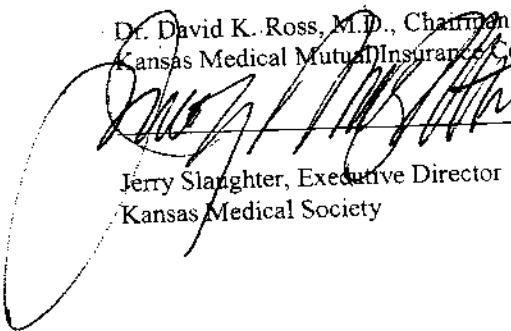
This Permanent Public Improvement Easement shall run with the land and be binding upon the grantees, lessees, successors, and assigns of the parties hereto, unless terminated by the abandonment of the Public Improvement Easement by the City.

IN WITNESS WHEREOF, Landowner has hereunto set its hand the day and year first above written.

Easement No. _____

For Project No. _____


Dr. David K. Ross, M.D., Chairman of the Board & President
Kansas Medical Mutual Insurance Company


Jerry Slaughter, Executive Director
Kansas Medical Society

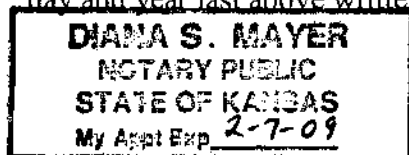
STATE OF KANSAS, COUNTY OF SHAWNEE, ss.

BE IT REMEMBERED, That on this 22nd day of October, 2007, before me, the undersigned, a notary public in and for the County and State aforesaid, came Jerry Plaugher, Executive Director, KMS

who _____ personally known to me to be the same person _____ who executed the within instrument of writing, and such person _____ duly acknowledged the execution of the same.

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

Attachment number 7
Page 2 of 2



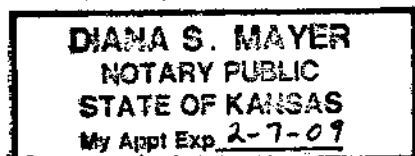
Diana S. Mayer
Notary Public

My commission expires: 2-7-09

STATE OF KANSAS, COUNTY OF SHAWNEE, ss.

BE IT REMEMBERED, That on this 22nd day of October, 2007, before me, the undersigned, a notary public in and for the County and State aforesaid, came David Ross, MD President of Kammco, a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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



Diana S. Mayer
Notary Public

My commission expires: 2-7-09

STATE OF KANSAS, COUNTY OF SHAWNEE, ss.

BE IT REMEMBERED, That on this _____ day of _____, 2007, before me, the undersigned, a notary public in and for the County and State aforesaid, came _____ of _____ L.L.C. who is personally known to me to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same on behalf of said Limited Liability Company.

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

Notary Public

My commission expires:



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 19, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: Bill Fiander, AIPC, David Thurbon, Director **DOCUMENT #:** HL07/07

SECOND PARTY/SUBJECT: Little Property Services, Inc. **PROJECT #:** N/A

CATEGORY/SUBCATEGORY: 014 Ordinances – Non-Codified / 007 Zoning

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as an historic landmark and presently zoned “C-5” Downtown Commercial District and located at 716 and 720 SW Jackson Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. **First Reading.** (HL07/07) (Council District No. 1) (Planning Commission recommended approval by a vote of 6-0-0.) (Landmarks Commission recommended approval by a vote of 6-0-0.) (Planning Department recommended approval.)

(Approval would add historic landmark overlay zoning to the property located at 716 and 720 SW Jackson Street.)

POLICY ISSUE:

Approval of the request will reinforce the goals and objectives of the Downtown Topeka Redevelopment Plan and the Topeka-ShawneeCounty Historic Preservation Plan.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of **6-0-0** at their November 19, 2007 meeting as referenced in the attached minutes. The Topeka Landmarks Commission considered this request on April 12, 2007, and recommended that it be **APPROVED** by a vote of **6-0-0**. Planning Department Staff recommended that this request be **APPROVED**.

BACKGROUND:

- See attached staff report
- City Council Options:
 - **Adopt** the recommendation of the Planning Commission by Ordinance;
 - **Override** the Planning Commission’s recommendation by a two-thirds majority vote (6 votes) of the City Council membership; or
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council’s failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

Item #24

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Staff Report](#)

[Aerial Photo](#)

[Historical Photo](#)

[Current Photo](#)

[Vicinity Map](#)

[Application](#)

[Historical Information](#)

[Ordinance](#)

November 19, 2007
Agenda G.1

Presented to the Topeka Landmarks Commission September 13, 2007

HISTORIC LANDMARKS REPORT

TOPEKA PLANNING DEPARTMENT

CASE NO: HL07/07

by: Little Property Services, Inc.

PROPOSAL: Requesting to amend the District Zoning Classification by granting the “HL” Historic Landmark Overlay District to property currently zoned “C-5” Commercial District and located at 716-720 SW Jackson Street in the City of Topeka, Kansas.

HISTORICAL SIGNIFICANCE: The building in question is commonly known as The Commonwealth Building, to commemorate the building’s original use as the publication offices of the *Kansas Daily Commonwealth* newspaper. Construction on the building began in 1873 after a fire had destroyed the original *Commonwealth* building. Shortly after the 2nd *Commonwealth* building was completed, it shared occupancy with the Brush Electric Company, which tested electric lighting. Beginning in 1913, and for most of the building’s history, however, it was home to the Crosby Brothers Department Store, which remained its principle use until 1975, when it closed.

The present owner of the building undertook a complete remodeling of the structure in 1998, replacing the upper façade with an appearance more in keeping with the building’s original appearance as a 19th Century Victorian storefront. Bronze Jayhawk gargoyles were added under the cornice of 716-718 SW Jackson Street to commemorate the building’s relationship to the Historic Jayhawk Theatre, which is adjacent to the building to the north.

Please refer to the supplement documentation for additional historical information regarding this building.

STAFF SUMMARY: The applicant seeks authorization to designate the property located at 716-720 SW Jackson Street as a local historic landmark. Local landmark designation is strictly voluntary and requires the recipient to maintain their property in accordance with certain historic standards and prevent them from deteriorating. This designation does not impose any restrictions or limitations on adjoining properties. Principally, landmark designation is a matter of pride to the property owner and demonstrates a commitment to historic preservation.

The applicant has sufficiently satisfied the requirements of the landmark designation process as set out by Shawnee County Resolution No. 98-206 and City of Topeka Ordinance No. 17292, by qualifying in three categories: 1) property is associated with events that have made a significant contribution to the broad pattern of history of the city; 2) the building embodies distinctive characteristics of a type, period or method of construction; and 3) possesses integrity of location, design, setting, materials and workmanship.

Therefore, the Planning Staff Recommends **APPROVAL** of this proposal.

RECOMMENDATION OF THE LANDMARKS COMMISSION: At their September 13, 2007 meeting, the Topeka Landmarks Commission recommended **APPROVAL** of this proposal by a vote of **6-0-0**.

Prepared by: Tim Paris
Planner II



3

HL07/07 by Little Property Services, Inc.

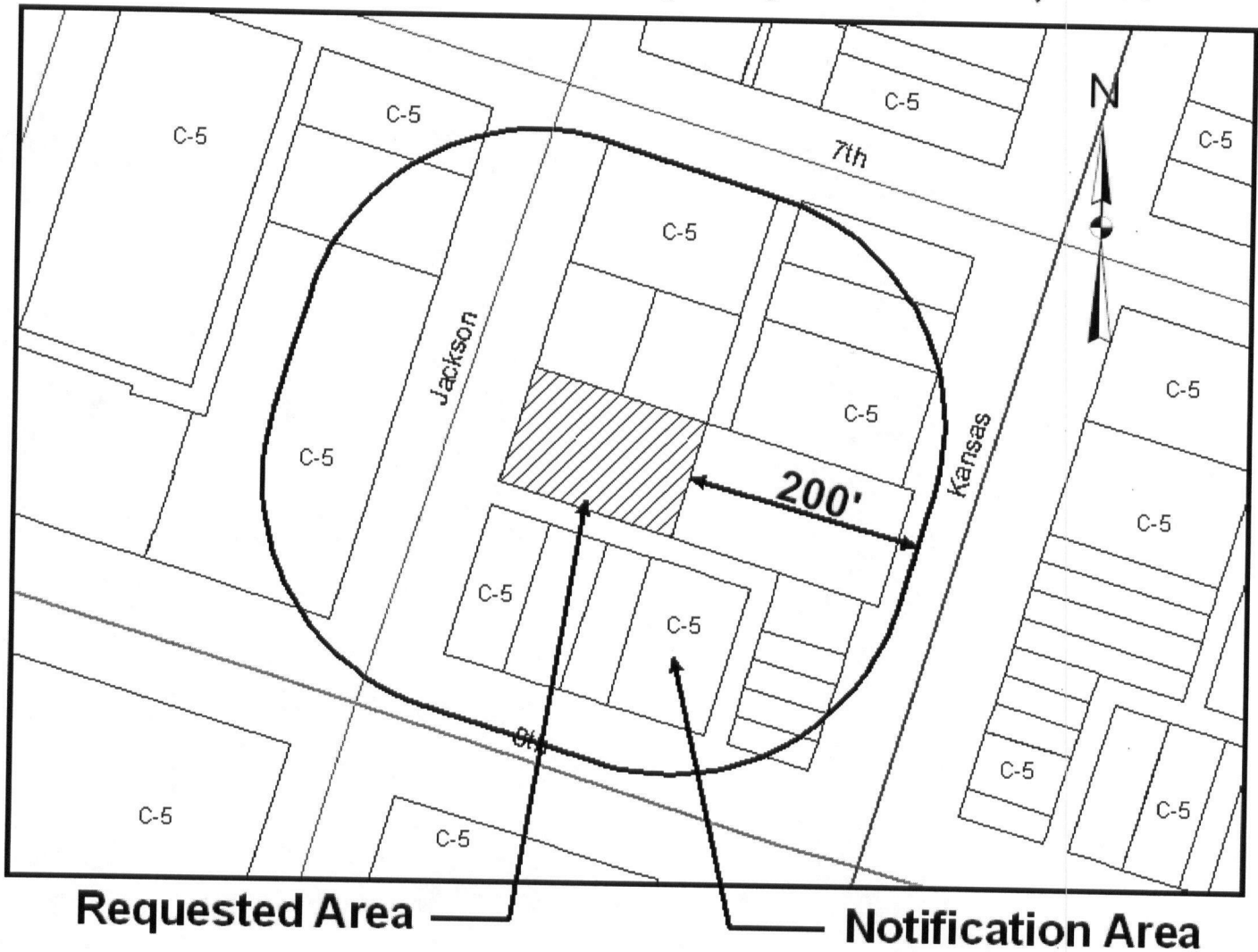
Topeka Planning Department
2007





Front (West side)

HL07/07 by Little Property Services, Inc.



HL07/7 by Little Property Services, Inc. requesting Historic Landmark zoning overlay for property currently zoned "C-5" Commercial District and located at 716-720 S Jackson Street (Commonwealth Building).

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor ~ Topeka, Kansas 66607
(785) 368-3728

**NOMINATION FOR HISTORIC LANDMARK DESIGNATION INDIVIDUAL PROPERTY
INVENTORY FORM**

I (We) hereby nominate the following described property to become designated as HISTORIC LANDMARK, as established by City of Topeka Ordinance No. 18420 on April 19, 2005.

1. Location / Address: 716-722 SW Jackson, Topeka, K S 66603
2. Owner(s): Little Property Services, Inc *
3. Address of Owner (if different): 700 SW Jackson
Suite 200
Topeka, KS 66603
4. Telephone number for Owner: 785/233-5411
Daytime Evening
5. Real Estate Tax Identification Number: 1093104006003032, 42 & 52
6. a. Approximate date of (original] construction: 1869
b. Approximate date(s) of major alterations, if known: 1997-1998
7. Builder and/or architect, if known: unknown
8. Architectural Style: Traditional
9. Primary building materials: Stone and mortar
10. Comments: The Commonwealth Daily News, the first daily newspaper published in Topeka, Kansas, was first published on this site in 1869

* Little Property Services, Inc. is the majority owner (73%) of the three unit Commonwealth Office Condominium created in December 1997.

Topeka Landmarks Commission

620 SE Madison Street, 3rd Floor - Topeka, Kansas 66607
(785) 368-3728

11. In the designation of buildings, structures and objects as historic landmarks, certain criteria must be met. The property normally must be 50 or more years old. In addition, the historic resources must meet one or more of the following criteria.

Please indicate the category under which you are submitting this property for designation. (Check all that apply.)

A. Property is fifty (50) years old or older, and meets one or more of the following criteria:

- XX a. Property is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state, or nation.
- _____ b. Property is associated with a significant person or group of persons in the history of the city, county, state, or nation.
- _____ c. Embodies distinctive characteristics of a type, period or method of construction; represents the work of a master builder/architect; possesses high artistic values; or represents a distinguishable entity whose components may lack individual distinction.
- _____ d. Yields or is likely to yield information important in prehistory or history.
- XX e. Possesses integrity of location, design setting, materials and workmanship.

B. Properties less than fifty (50) years old may be eligible provided that they are of extreme historical significance. All other criteria listed above also apply.

_____ If your nomination is based upon this provision, please check at left and attach supporting information.

12. Attach to this nomination inventory form the following supportive documents:

- A. Copy of the last deed filed for record in the office of the Register of Deeds of Shawnee County, Kansas.
- B. Photographs, at least one each of the front, rear, and each side.
- C. Additional information to describe historical significance (optional).

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor N Topeka, Kansas 66607
(785) 368-3728

DECLARATION

I (We), the owner(s) of the property described herein request that the Topeka Landmarks Commission designate the above described property to be a parcel within a historic district as established by ordinance.

OWNER

Signature: _____

Print Name: Thomas L. Little, President

Little Property Services, Inc.

Date: July 19, 2007

OWNER

Signature: _____

Print Name: _____

Date: _____

RETURN THIS FORM AND REQUESTED SUPPORTIVE DOCUMENTATION TO:

**Topeka Planning Department
Landmarks Commission
620 SE Madison Street, 3rd Floor
Topeka, KS 66607-1118**

QUESTIONS? Call: (785) 368-3728 Fax: (785) 368-2535

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor ~ Topeka, Kansas 66607
(785) 368-3728

**NOMINATION FOR HISTORIC LANDMARK DESIGNATION INDIVIDUAL PROPERTY
INVENTORY FORM**

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2. Owner(s): Little Property Services, Inc *
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Suite 200
Topeka, KS 66603
4. Telephone number for Owner: 785/233-5411
Daytime Evening
5. Real Estate Tax Identification Number: 1093104006003032, 42 & 52
6. a. Approximate date of (original] construction: 1869
b. Approximate date(s) of major alterations, if known: 1997-1998
7. Builder and/or architect, if known: unknown
8. Architectural Style: Traditional
9. Primary building materials: Stone and mortar
10. Comments: The Commonwealth Daily News, the first daily newspaper published in Topeka, Kansas, was first published on this site in 1869

* Little Property Services, Inc. is the majority owner (73%) of the three unit Commonwealth Office Condominium created in December 1997.

Topeka Landmarks Commission

620 SE Madison Street, 3rd Floor - Topeka, Kansas 66607
(785) 368-3728

11. In the designation of buildings, structures and objects as historic landmarks, certain criteria must be met. The property normally must be 50 or more years old. In addition, the historic resources must meet one or more of the following criteria.

Please indicate the category under which you are submitting this property for designation. (Check all that apply.)

A. Property is fifty (50) years old or older, and meets one or more of the following criteria:

- XX a. Property is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state, or nation.
- _____ b. Property is associated with a significant person or group of persons in the history of the city, county, state, or nation.
- _____ c. Embodies distinctive characteristics of a type, period or method of construction; represents the work of a master builder/architect; possesses high artistic values; or represents a distinguishable entity whose components may lack individual distinction.
- _____ d. Yields or is likely to yield information important in prehistory or history.
- XX e. Possesses integrity of location, design setting, materials and workmanship.

B. Properties less than fifty (50) years old may be eligible provided that they are of extreme historical significance. All other criteria listed above also apply.

_____ If your nomination is based upon this provision, please check at left and attach supporting information.

12. Attach to this nomination inventory form the following supportive documents:

- A. Copy of the last deed filed for record in the office of the Register of Deeds of Shawnee County, Kansas.
- B. Photographs, at least one each of the front, rear, and each side.
- C. Additional information to describe historical significance (optional).

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor N Topeka, Kansas 66607
(785) 368-3728

DECLARATION

I (We), the owner(s) of the property described herein request that the Topeka Landmarks Commission designate the above described property to be a parcel within a historic district as established by ordinance.

OWNER

Signature: _____

Print Name: Thomas L. Little, President

Little Property Services, Inc.

Date: July 19, 2007

OWNER

Signature: _____

Print Name: _____

Date: _____

RETURN THIS FORM AND REQUESTED SUPPORTIVE DOCUMENTATION TO:

**Topeka Planning Department
Landmarks Commission
620 SE Madison Street, 3rd Floor
Topeka, KS 66607-1118**

QUESTIONS? Call: (785) 368-3728 Fax: (785) 368-2535

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr. designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Commercial District and located at 716-720 S Jackson Street (Commonwealth Building) in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. (HL07/7) (Council District No. 1)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by designating the "HL" Historic Landmark Overlay zoning to property zoned "C-5" Commercial District and described as follows:

Lots 234, 236, 238 and 240 on Jackson Street, all in the Original Town of Topeka, Shawnee County, Kansas.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

Section 4. This Ordinance shall be recorded with the Shawnee County Register of Deeds Office.

PASSED AND APPROVED by the Council of the City of Topeka, _____,
2007.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 19, 2007

+ Back Print

DATE: December 11, 2007

CONTACT PERSON: Bill Fiander, AIPC, David Thurbon, Director **DOCUMENT #:** HL07/08

SECOND PARTY/SUBJECT: Shawnee County Historical Society **PROJECT #:**

CATEGORY/SUBCATEGORY: 014 Ordinances – Non-Codified / 007 Zoning

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as an historic landmark and presently zoned “M-2” Multiple-Family Dwelling District and located at 1118 SE Madison Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. **First Reading.** (HL07/08) (Council District No. 3) (Planning Commission recommended this proposal be approved by a vote of 6-0-0.) (Landmarks Commission recommended this request be approved by a vote of 5-1-0.) (Planning Department recommended approval.)

(Approval would add historic landmark overlay zoning to the property located at 1118 SE Madison Street.)

POLICY ISSUE:

Approval of the request will reinforce the goals and objectives of the Downtown Topeka Redevelopment Plan and the Topeka-ShawneeCounty Historic Preservation Plan.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of **6-0-0** at their November 19, 2007 meeting as referenced in the attached minutes. The Topeka Landmarks Commission considered this request on September 13, 2007, and recommended that it be **APPROVED** by a vote of **5-1-0**. Planning Department Staff recommended that this request be **APPROVED**.

BACKGROUND:

- See attached staff report
- City Council Options:
 - **Adopt** the recommendation of the Planning Commission by Ordinance;
 - **Override** the Planning Commission’s recommendation by a two-thirds majority vote (6 votes) of the City Council membership; or
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council’s failure to approve or disapprove.

Item #25

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

[Staff Report](#)

[Aerial Photo](#)

[Historical Photo](#)

[Current Photo](#)

[Application](#)

[Vicinity Map](#)

[Historical Information](#)

Presented to the Topeka Landmarks Commission September 13, 2007

HISTORIC LANDMARKS REPORT

TOPEKA PLANNING DEPARTMENT

CASE NO: HL07/08

by: Shawnee County Historical Society

PROPOSAL: Requesting to amend the District Zoning Classification by granting the “HL” Historic Landmark Overlay District to property currently zoned “M-2” Multi-Family Dwelling District and located at 1118 SE Madison St. in the City of Topeka, Kansas.

HISTORICAL SIGNIFICANCE: The home at 1118 SE Madison St., commonly known as the Hale Ritchie House, was built in 1887 by John Ritchie and his son, Hale Ritchie. The home was originally occupied by Hale Ritchie, and is representative of the Italianate style of architecture. The primary building material of the structure is wood. The home of John Ritchie is located immediately to the north and is believed to be Topeka’s oldest standing residence. The John Ritchie House is listed on the Registry of Historic Kansas Places and is designated as a Local Historic Landmark.

John Ritchie was one of the 1st settlers to the city of Topeka and was one of the leading figures of the era to assert Kansas as a “Free State,” as opposed to a “slave state.” He worked closely with John Brown in operating the “underground railroad” as a secret passage for escaped slaves seeking freedom, and gave substantial acreage of land to both African American and white settlers in the immediate vicinity.

The property is currently being restored, along with the adjacent property to the north, to be used as a heritage tourism destination to commemorate the legacy of John Ritchie in the establishment of Topeka and the Free State of Kansas. The Hale Ritchie House will be used to accommodate office and classroom space in support of the John Ritchie House.

STAFF SUMMARY: The applicant seeks authorization to designate the property located at 1118 SE Madison St. as a local historic landmark. Local landmark designation is strictly voluntary and requires the recipient to maintain their property in accordance with certain historic standards and prevent them from deteriorating. This designation does not impose any restrictions or limitations on adjoining properties. Principally, landmark designation is a matter of pride to the property owner and demonstrates a commitment to historic preservation.

The applicant has sufficiently satisfied the requirements of the landmark designation process as set out by Shawnee County Resolution No. 98-206 and City of Topeka Ordinance No. 17292, by qualifying in three categories: 1) property is associated with events that have made a significant contribution to the broad pattern of history of the city; 2) property is associated with a significant person in the history of the City of Topeka; 3) the house embodies distinctive characteristics of a type, period or method of construction; and 4) possesses integrity of location, design, setting, materials and workmanship.

Therefore, the Planning Staff Recommends **APPROVAL** of this proposal.

RECOMMENDATION OF THE LANDMARKS COMMISSION: At their September 13, 2007 meeting, the Topeka Landmarks Commission recommended **APPROVAL** of this proposal by a vote of **5-1-0**.

Prepared by: Tim Paris
Planner II

NOMINATION FOR HISTORIC LANDMARK DESIGNATION INDIVIDUAL PROPERTY APPLICATION FORM

I (We) hereby nominate the following described property to become designated as HISTORIC LANDMARK, as established by City of Topeka Ordinance No. 18420 on April 19, 2005.

1. Location / Address: 1118 SE Madison, Topeka, KS 66607
2. Property Legal Description: See attached

3. Owner(s): The Shawnee County Historical Society, Inc.
4. Address of Owner (if different): PO Box 2201, Topeka, KS 66601

5. Telephone number for Owner: 785-845-5976 785-845-5976
Daytime Evening
6. Real Estate Tax Identification Number: 1330601009003000
7. a. Approximate date of (original) construction: 1887-1888
b. Approximate date(s) of major alterations, if known: small addition
added in early 1900s to include a bathroom
8. Builder and/or architect, if known: Hale Ritchie & John Ritchie
9. Architectural Style: Italianate-style residence
10. Primary building materials: wood

11. Comments: see attached

12. In the designation of buildings, structures and objects as historic landmarks, certain criteria must be met. The property normally must be 50 or more years old. In addition, the historic resources must meet one or more of the following criteria.

Please indicate the category under which you are submitting this property for designation. (Check all that apply.)

- A. Property is fifty (50) years old or older, and meets one or more of the following criteria:

- ☒ a. Property is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state, or nation.
☒ b. Property is associated with a significant person or group of persons in the history of the city, county, state, or nation.
☐ c. Embodies distinctive characteristics of a type, period or method of construction; represents the work of a master builder/architect; possesses high artistic values; or represents a distinguishable entity whose components may lack individual distinction.
☐ d. Yields or is likely to yield information important in prehistory or history.
☐ e. Possesses integrity of location, design setting, materials and workmanship.

- B. Properties less than fifty (50) years old may be eligible provided that they are of extreme historical significance. All other criteria listed above also apply.

☐ If your nomination is based upon this provision, please check at left and attach supporting information.

13. Attach to this nomination inventory form the following supportive documents:

- A. Copy of the last deed filed for record in the office of the Register of Deeds of Shawnee County, Kansas.
B. Photographs, at least one each of the front, rear, and each side.
C. Additional information to describe historical significance (optional).

DECLARATION

I (We), the owner(s) of the property described herein request that the Topeka Landmarks Commission designate the above described property to be a parcel within a historic district as established by ordinance.

OWNER

Signature: Anna D. Spiess

Print Name: Anna D. Spiess

Date: 8/7/07

OWNER

Signature: _____

Print Name: _____

Date: _____

RETURN THIS FORM AND REQUESTED SUPPORTIVE DOCUMENTATION TO:

**Topeka Planning Department
Landmarks Commission
620 SE Madison Street, 3rd Floor
Topeka, KS 66607-1118**

QUESTIONS? Call: (785) 368-3728 Fax: (785) 368-2535

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr. designating real property more specifically described herein as a historic landmark and presently zoned "M-2" Multi-Family Dwelling District and located at 1118 SE Madison Street (Hale Ritchie House) in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. (HL07/8) (Council District No. 3)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by designating the "HL" Historic Landmark Overlay zoning to property zoned "M-2" Multi-Family Dwelling District and described as follows:

Lots 378 and 380 on Madison Street in Ritchie's Addition, except: Beginning on the SE corner of Lot 380, thence northerly 50 feet along the east line of Lots 378 and 380; thence westerly 25 feet; thence southerly and parallel with said east line 25 feet; thence southwesterly 26.02 feet, more or less, to a point 32.22 feet westerly of the point of beginning; thence easterly to the point of beginning, all in the City of Topeka, Shawnee County, Kansas.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

Section 4. This Ordinance shall be recorded with the Shawnee County Register of Deeds Office.

PASSED AND APPROVED by the Council of the City of Topeka, _____,
2007.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

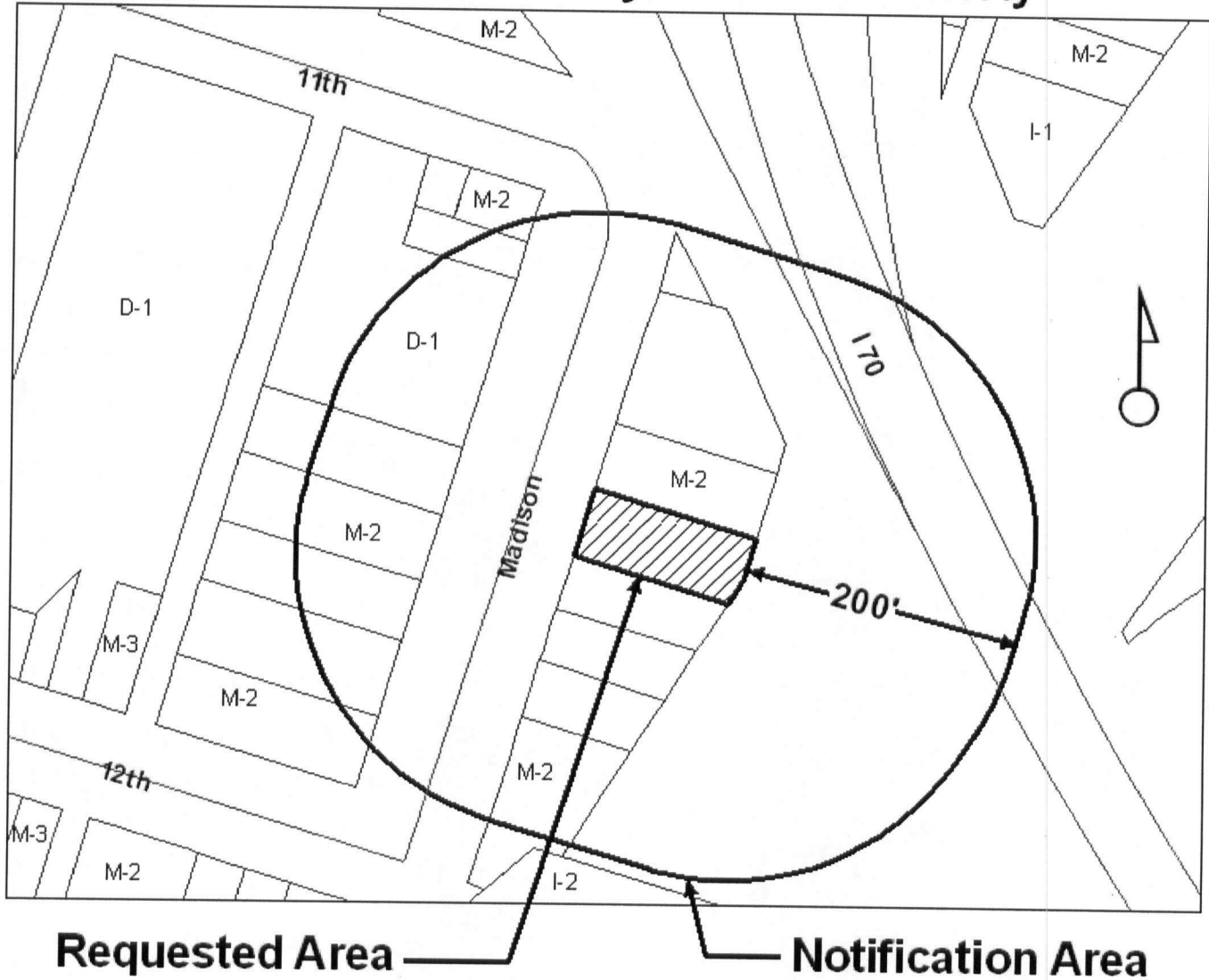
Not To Be Codified X



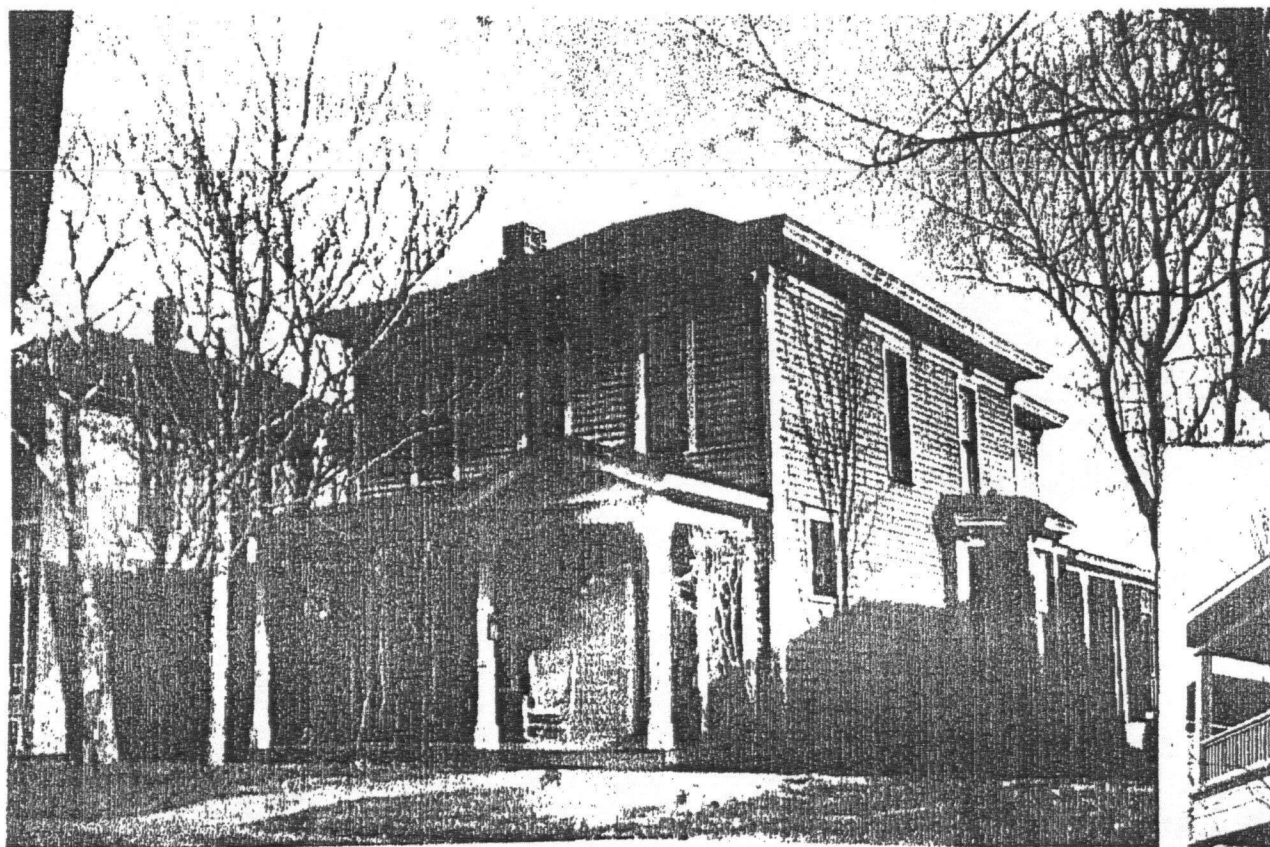
HL07/08 by Shawnee County Historical Society

Topeka Planning Department
2007

HL07/08 by Shawnee County Historical Society



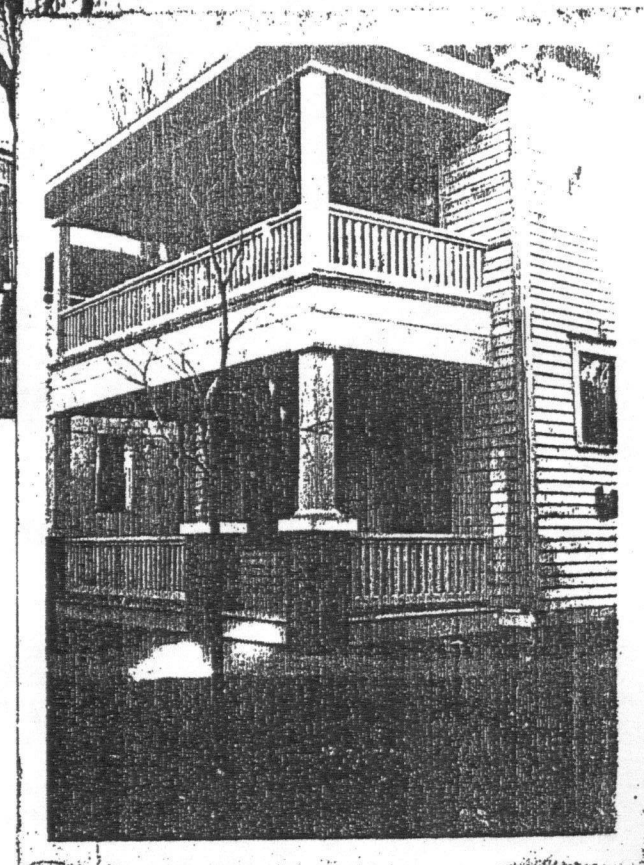
HL07/8 by Shawnee County Historical Society requesting Historic Landmark zoning overlay for property currently zoned "M-2" Multi-Family Dwelling District and located at 1118 SE Madison Street (Hale Ritchie House).



The house Hale and Anna Ritchie built at 1118 Madison St. between 1882 and 1886.

On the back of the picture at right, Anna has written, "My house with porch".

In the upper picture, the original reveals the stone of 1116 Madison, next door (the much older Ritchie house). A porch has been added, but the stucco is a curse of the future.



Exterior Pictures of the Hale Ritchie House



Above: Front exterior picture of the John Ritchie House & the Hale Ritchie House.



Left: Front exterior picture of the Hale Ritchie House

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Daytime Evening
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added in early 1900s to include a bathroom
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☒ b. Property is associated with a significant person or group of persons in the history of the city, county, state, or nation.
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C. Additional information to describe historical significance (optional).

DECLARATION

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OWNER

Signature: Anna D. Spiess

Print Name: Anna D. Spiess

Date: 8/7/07

OWNER

Signature: _____

Print Name: _____

Date: _____

RETURN THIS FORM AND REQUESTED SUPPORTIVE DOCUMENTATION TO:

**Topeka Planning Department
Landmarks Commission
620 SE Madison Street, 3rd Floor
Topeka, KS 66607-1118**

QUESTIONS? Call: (785) 368-3728 Fax: (785) 368-2535



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

 + Back  Print

DATE: December 11, 2007

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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No Attachments Available



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STAFF RECOMMENDATION:

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ATTACHMENTS:

No Attachments Available