

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Amended Agenda

WEDNESDAY, OCTOBER 15, 2014

4:00 p.m.

-Consider approval of the minutes for August 14 and October 1, 2014.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider a contract with Treanor Architects for the jail expansion (McGovern/Weinaug)-POSTPONED
- (c) Consider approval of a resolution amending Section 5.29 of the Douglas County Personnel Policy dealing with Smoke-Free Work Place; (Sarah Plinsky);
- (d) Consider approval of a Home Rule Resolution amending Resolution 93-15 and Article 9 of Chapter 1 of the Douglas County Code dealing with Smoke-Free Work Place (Sarah Plinsky);
- (e) Consider approval of Supplemental Agreement No. 2 to original Agreement No. 157-11 for interchange construction project at Bob Billings Parkway/K-10 Highway (Keith Browning);
- (f) Consider approval of annual purchase of crack seal material (Keith Browning); and
- (g) Consider acquisition of easement for Project No. 23C-4640-01; Route 1055 between Vinland and Baldwin (Michael Kelly);

REGULAR AGENDA

- (2) Consider a request from the City of Lawrence for a NRA 9 Del Lofts NRA (Britt Crum-Cano)
- (3) Consider request from the City of Eudora for economic development funds for a marketing study (Gary Ortiz, City Manager of Eudora)
- (4) Presentation on CarmaHop, a road side ride sharing program (Jenny O'Brien)
- (5) Consider recommendations for Heritage Grant Program Revisions (Bobbi Radher)
- (6) Consider approval of a resolution prohibiting the use of engine braking on portions of N 1000 Road for the duration of the construction of the South Lawrence Trafficway (Craig Weinaug)
- (7) (a) Consider approval of Accounts Payable (if necessary)
- (b) Appointments
 - Board of Zoning Appeal (2) eligible for reappointment 10/2014**
 - Building Code Board of Appeals (1) eligible for reappointment 12/2014**
 - Fire District No. 1 – 12/2014**
 - Jayhawk Area Agency on Aging Board of Directors – (2) vacancies**
 - Jayhawk Area Agency on Aging Tri-County Advisory Council – (2) vacancies**
- (c) Public Comment
- (d) Miscellaneous

RECESS

RECONVENE

6:35 p.m.

- (8) Annual review of Hamm-Buchheim Quarry/Hamm Quarry No. 69, Conditional Use Permit CUP-11-5-76, a Mining and Excavation use located on approximately 73 acres at 1453 E 550 Road. Mary Miller is the Planner.
- (9) Adjourn

WEDNESDAY, OCTOBER 22, 2014

-CUP-14-00304 Central Soyfoods LLC

WEDNESDAY, OCTOBER 29, 2014

WEDNESDAY, NOVEMBER 5, 2014 –Light Agenda

4:00 p.m. only

-Recognition for Emergency Management Volunteers (Teri Smith)

WEDNESDAY, NOVEMBER 12, 2014-CANCELED

THURSDAY, NOVEMBER 13, 2014

-9:00 a.m. – General Election Canvass

WEDNESDAY, NOVEMBER 19, 2014

4:00 p.m.

-KDOT presentation on proposed interchange at US-40/K-10 (Aaron Frits, P.E., KDOT – Bureau of Road Design)-No backup

WEDNESDAY, NOVEMBER 26, 2014-CANCELED

***Note:** The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*

EXHIBIT 'A'

September 12, 2014

Craig Weinaug
County Administrator
Douglas County
11th and Massachusetts Streets
Lawrence, KS 66549

Craig,

Thank you for the opportunity to provide services associated with the Douglas County Jail. As the designer of the original facility, I have a special sense of stewardship over the facility and the Sheriff's department. As our first and arguably best jail facility, it launched a focused career that over the last 15 years has been dedicated exclusively to the practice of Justice Architecture. I have included a brochure of Treanor Justice and a list of our projects since the Douglas County Jail was complete. We have grown to be the dominate Justice Architect in Kansas and have completed justice projects in 7 states, ranging in size from \$200,000 to \$122,000,000.

We understand the service needed for this effort will be a sequential process of specific steps to narrow the possible solutions to the problems identified, and to conclude with the complete architectural services for the implementation of the final solution. As discussed we have prepared a brief scope of work for each of these steps that describe the purpose and outcome of each step.

- **Needs Confirmation:**

This first step would evaluate the effect of the creation of a Mental Health Court and Mental Health Crisis Intervention Center on the mental health bed space projections for the current detention facilities. It would begin by profiling the client type that would benefit from access to alternatives to the current system and make projections for how many individuals may be diverted from detention for those with mental health issues. The study will include information obtained from facility records regarding classification and treatment, as well as interactions and discussions with mental health professionals from Bert Nash and other agencies to understand how the proposed systems would function.

To complete this task, we intend to use the services of a consultant that has national experience in mental health in jail facilities. One of these whom we have worked together with in the past is Huskey Associates from Chicago. Bobbie Huskey is a renowned authority on mental health issues and diversionary programs in detention. We have worked with Bobbie in the completion of many projects, and the care and knowledge she brings will give Douglas County the ability to understand the effects of a Mental Health Court and Crisis Center on the jail needs.

Additionally, Margaret Severson, J.D., M.S.W. at the University of Kansas has studied the issues associated with mental health in prisons and would be an asset to this project. The opportunity exists to utilize either or both of these experts to study this issue, and Treanor Architects will engage them in more specific discussion to refine this proposal within 21 days of approval.

The deliverables would be a report outlining the findings and providing recommendations for future bed space in the jail as well as a description of the function of the Mental Health Court and the profile of the individuals that could be diverted from detention.

The scheduled duration for this portion of the study will be 90 days from approval to start. Professional fees for this service will range between \$60,000 and \$75,000. We will present a refined proposal within the next 21 days.

- **Benchmarking and Public Education:**

The second step would be to benchmark what has been successful in other communities related to Mental Health Courts and detention solutions. This effort will include researching projects that have been completed in other areas of the country and documenting the attributes that make them successful. It will include visits to select facilities to see and discuss the reasons why the facility works well and understand specific elements that can be emulated by Douglas County to ensure success.

Public understanding of the issues and solutions for this problem will be critical to the success of the project. Treanor Architects may utilize information gathered in these studies to assist the county in a public education campaign, including town hall type discussions and information distribution to media outlets to ensure accurate reporting.

Deliverables for this study will be a report on facilities that have implemented a mental health court and facilities that have successfully built mental health beds in detention environments. It will include plans and information regarding site visits to the facilities studied.

The scheduled duration for this portion of the study will be 90 days from approval to start. Professional fees for this service will be a lump sum of \$14,500. This service could overlap in time to run somewhat concurrently with the Needs Confirmation. This service will also incur travel costs for teams to visit other facilities. This cost is not part of this fee but should not exceed \$10,000

- **Concept Design:**

With the completion of the first two steps, there will be a better understanding of what should be built to accommodate the need. This next step will focus on the preparation of a building design solution that will solve that need. We will work with the Sheriff Office staff to first complete a programmatic list of all spaces necessary to determine a building area need. From this information the building solution will be completed in a workshop with stakeholders to determine the best solution. This solution will involve the addition of any needed Mental Health unit as well as the space needs for the Re-Entry program and work release spaces.

The deliverables for this step will include plans and renderings of the concept in a manner that will allow stakeholders and the public to easily understand the building additions that would be proposed. Schedule planning and cost estimates will be included. It will also include a written program list of spaces with a cost estimate to allow the commission to understand the costs prior to the concept design generation.

The scheduled duration for this portion of the study will be 120 days from completion of the first two steps. Professional fees for this service will be a lump sum of \$72,250.

- **Operational Impact Study:**

Understanding the impact on staffing is paramount to a good solution. The concept design will determine the number of staff that will be needed to adequately serve the detention needs. We will work with the Sheriff's Office to determine the number of full time and part time posts and project the associated costs for this solution. Treanor Architects will also work with Mechanical Engineers to ascertain the probable cost of operating the building from a facilities maintenance stand point.

The deliverable for this step will be a description of the projected staffing need and a cost estimate including staff and other operational costs.

The scheduled duration for this portion of the study will be 30 days and will run concurrently with the Concept Design. Professional fees for this service will be a lump sum of \$12,900

- **Architecture/Engineering Services:**

Upon approval of the concept design and once the County has funding mechanism put in place for the building solution, the final step would be the architectural implementation of the concept. This phase would provide the architectural and engineering design and documents necessary to seek competitive bidding and represent the County during construction of the project.

The schedule for this step will vary dependent on a number of factors; however construction documents should be completed approximately 9 months from approval to proceed. Bidding and construction for this project should be anticipated to take between 18-24 months.

Professional fees for this work are typically determined as a percentage of the construction costs. Regionally, fees for the specialty design of jail facilities involving additions and renovation ranges between 7% and 10%. Because of the relationship built with Douglas County, and our documentation and knowledge of this facility, Treanor Architects proposes a fee of 7.4% of the cost of construction for all necessary Architectural, Structural, Mechanical, Electrical, and Security Electronic Engineering. This would not include Civil Engineering, the extents of which are unknown at this time.

We believe these services will allow Douglas County to have very deliberate and careful steps to understanding the need and to finding a solution that is sized appropriately. Following these steps will allow the County to consider alternatives to expanding the facilities, as well as ensuring good stewardship of County resources to know the facility will serve the County for years to come.

Please review this proposal and if you should have any questions or comments please do not hesitate to contact me at your convenience. Again, we look forward to assisting Douglas County on this project.

Sincerely,



Daniel R. Rowe, AIA
President
Treanor Architects, P.A.

AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 6th day of October in the year 2014
(*In words, indicate day, month and year.*)

BETWEEN the Architect's client identified as the Owner:
(*Name, legal status, address and other information*)

Douglas County, Kansas
11th and Massachusetts Street
Lawrence, KS 66044

and the Architect:
(*Name, legal status, address and other information*)

Treanor Architects, P.A.
1040 Vermont Street
Lawrence, KS 66044

for the following Project:
(*Name, location and detailed description*)

The Project will include the study of alternatives to Mental Health Detention and solutions for additions of Mental Health and Re-entry to the Douglas County Jail. Services and scope will be as described in Exhibit "A".

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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(1701082674)

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

(Paragraphs deleted)

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

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§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability
\$2,000,000.00
- .2 Automobile Liability
\$1,000,000.00
- .3 Workers' Compensation
\$500,000.00
- .4 Professional Liability
\$3,000,000.00

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

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§ 3.1.7 See Exhibit A for scope of pre-design services including research and concept design.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and

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- 3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)	Architect	Exhibit "A"
§ 4.1.2 Multiple preliminary designs	Architect	Exhibit "A"
§ 4.1.3 Measured drawings	Not provided	
§ 4.1.4 Existing facilities surveys	Architect	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Architect	Exhibit "A"
§ 4.1.6 Building Information Modeling (E202™-2008)	Architect	Basic services
§ 4.1.7 Civil engineering	Not provided	Added services
§ 4.1.8 Landscape design	Not provided	Added services
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	Basic services
§ 4.1.10 Value Analysis (B204™-2007)	Architect	Basic services
§ 4.1.11 Detailed cost estimating	Architect	Basic services

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§ 4.1.12	On-site Project Representation (B207™–2008)	Owner	Added services
§ 4.1.13	Conformed construction documents	Not provided	Added services
§ 4.1.14	As-Designed Record drawings	Architect	Basic services
§ 4.1.15	As-Constructed Record drawings	Architect	Basic services
§ 4.1.16	Post occupancy evaluation	Not provided	Added services
§ 4.1.17	Facility Support Services (B210™–2007)	Not provided	Added services
§ 4.1.18	Tenant-related services	Not provided	Added services
§ 4.1.19	Coordination of Owner’s consultants	Not provided	Added services
§ 4.1.20	Telecommunications/data design	Architect	Basic services
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	Architect	Basic services
§ 4.1.22	Commissioning (B211™–2007)	Owner	
§ 4.1.23	Extensive environmentally responsible design	Owner	
§ 4.1.24	LEED® Certification (B214™–2012)	Owner	
§ 4.1.25	Fast-track design services	Not provided	Added services
§ 4.1.26	Historic Preservation (B205™–2007)	Not provided	Added services
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	Not provided	Added services

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .5 Preparing digital data for transmission to the Owner’s consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

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- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 2 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 36 (Thirty six) visits to the site by the Architect over the duration of the Project during construction
- .3 2 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 1 (One) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within 36 (Thirty six) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic

evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the

Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

Init.

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(Paragraphs deleted)

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

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§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Phase I – Needs confirmation – A lump sum to be determined
Phase II – Benchmarking - \$14,500.00
Phase III - Concept Design - \$72,250.00
Phase IV -Operational study - \$12,900.00
Phase V – Architectural services – 7.4% of the Cost of Construction

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Hourly rates

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Init.

Hourly rates

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (20%
Design Development Phase	Twenty	percent (20%
Construction Documents Phase	Thirty five	percent (35%
Bidding or Negotiation Phase	Five	percent (5%
Construction Phase	Twenty	percent (20%
<hr/>			
Total Basic Compensation	one hundred	percent (100

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See attached

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

Init.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

Six percent 6%

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit A – Scope proposal
Exhibit B – Hourly rates

Init.

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

Daniel R. Rowe, AIA Principal

(Printed name and title)

Init.

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User Notes:

(1701082674)

Additions and Deletions Report for AIA® Document B101™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:19:21 on 10/06/2014.

PAGE 1

AGREEMENT made as of the 6th day of October in the year 2014

...

Douglas County, Kansas
11th and Massachusetts Street
Lawrence, KS 66044

...

Treanor Architects, P.A.
1040 Vermont Street
Lawrence, KS 66044

...

The Project will include the study of alternatives to Mental Health Detention and solutions for additions of Mental Health and Re-entry to the Douglas County Jail. Services and scope will be as described in Exhibit "A".

PAGE 2

~~§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:~~

~~1 — Commencement of construction date:~~

~~2 — Substantial Completion date:~~

PAGE 3

\$2,000,000.00

...

\$1,000,000.00

...

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User Notes:

(1701082674)

\$500,000.00

...

\$3,000,000.00

PAGE 4

§ 3.1.7 See Exhibit A for scope of pre-design services including research and concept design.

PAGE 8

§ 4.1.1	Programming (B202™-2009)	<u>Architect</u>	<u>Exhibit "A"</u>
§ 4.1.2	Multiple preliminary designs	<u>Architect</u>	<u>Exhibit "A"</u>
§ 4.1.3	Measured drawings	<u>Not provided</u>	
§ 4.1.4	Existing facilities surveys	<u>Architect</u>	
§ 4.1.5	Site Evaluation and Planning (B203™-2007)	<u>Architect</u>	<u>Exhibit "A"</u>
§ 4.1.6	Building Information Modeling (E202™-2008)	<u>Architect</u>	<u>Basic services</u>
§ 4.1.7	Civil engineering	<u>Not provided</u>	<u>Added services</u>
§ 4.1.8	Landscape design	<u>Not provided</u>	<u>Added services</u>
§ 4.1.9	Architectural Interior Design (B252™-2007)	<u>Architect</u>	<u>Basic services</u>
§ 4.1.10	Value Analysis (B204™-2007)	<u>Architect</u>	<u>Basic services</u>
§ 4.1.11	Detailed cost estimating	<u>Architect</u>	<u>Basic services</u>
§ 4.1.12	On-site Project Representation (B207™-2008)	<u>Owner</u>	<u>Added services</u>
§ 4.1.13	Conformed construction documents	<u>Not provided</u>	<u>Added services</u>
§ 4.1.14	As-Designed Record drawings	<u>Architect</u>	<u>Basic services</u>
§ 4.1.15	As-Constructed Record drawings	<u>Architect</u>	<u>Basic services</u>
§ 4.1.16	Post occupancy evaluation	<u>Not provided</u>	<u>Added services</u>
§ 4.1.17	Facility Support Services (B210™-2007)	<u>Not provided</u>	<u>Added services</u>
§ 4.1.18	Tenant-related services	<u>Not provided</u>	<u>Added services</u>
§ 4.1.19	Coordination of Owner's consultants	<u>Not provided</u>	<u>Added services</u>
§ 4.1.20	Telecommunications/data design	<u>Architect</u>	<u>Basic services</u>
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	<u>Architect</u>	<u>Basic services</u>
§ 4.1.22	Commissioning (B211™-2007)	<u>Owner</u>	
§ 4.1.23	Extensive environmentally responsible design	<u>Owner</u>	
§ 4.1.24	LEED® Certification (B214™-2012)	<u>Owner</u>	
§ 4.1.25	Fast-track design services	<u>Not provided</u>	<u>Added services</u>
§ 4.1.26	Historic Preservation (B205™-2007)	<u>Not provided</u>	<u>Added services</u>
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	<u>Not provided</u>	<u>Added services</u>

PAGE 10

- .1 2 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 36 (Thirty six) visits to the site by the Architect over the duration of the Project during construction
- .3 2 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 1 (One) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within 36 (Thirty six) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 13

[X] Litigation in a court of competent jurisdiction

PAGE 14

§ 8.3 ARBITRATION

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

PAGE 15

- Phase I – Needs confirmation – A lump sum to be determined
- Phase II – Benchmarking - \$14,500.00
- Phase III - Concept Design - \$72,250.00
- Phase IV -Operational study - \$12,900.00
- Phase V – Architectural services – 7.4% of the Cost of Construction

...

Hourly rates

PAGE 16

Hourly rates

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

...

Schematic Design Phase	<u>Twenty</u>	percent (<u>20%</u>	<u>%)</u>
Design Development Phase	<u>Twenty</u>	percent (<u>20%</u>	<u>%)</u>
Construction Documents	<u>Thirty five</u>	percent (<u>35%</u>	<u>%)</u>

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User Notes:

(1701082674)

Phase				
Bidding or Negotiation Phase	<u>Five</u>	percent (<u>5%</u>	<u>%)</u>
Construction Phase	<u>Twenty</u>	percent (<u>20%</u>	<u>%)</u>

...

Total Basic Compensation	one hundred	percent (100	%)
--------------------------	-------------	-----------	-----	----

...

See attached

Employee or Category	Rate
-----------------------------	-------------

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

PAGE 17

§ 11.10.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

~~% Six percent~~ 6%

...

Exhibit A – Scope proposal

Exhibit B – Hourly rates

PAGE 18

Daniel R. Rowe, AIA Principal

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Daniel R. Rowe, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:19:21 on 10/06/2014 under Order No. 4312675832_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

RESOLUTION NO. HR 14-___

A Home Rule Resolution of the Board of County Commissioners of Douglas County, Kansas, Amending Resolution 93-15 and Article 9 of Chapter 1 of the Douglas County Code, Dealing with Smoke-Free Work Place.

WHEREAS, K.S.A. 19-101a, *et seq* authorizes the Board of County Commissioners of each county to transact all county business and perform all powers of local legislation and administration it deems appropriate, including the levy of certain taxes, excise fees, and other charges; and

WHEREAS, the governing body of the County of Douglas, Kansas adopted Resolution No. 93-15 prohibiting smoking within all county-owned or leased buildings and vehicles; and

WHEREAS, Resolution No. 93-15 determined that smoking is hazardous to the health of all persons who may come in contact with the smoke generated thereby; and

WHEREAS, Resolution No. 93-15 is codified in Article 9 of Chapter 1 of the Douglas County Code; and

WHEREAS, the Board of County Commissioners has determined it is in the best interests of the health, safety and welfare of the public that smoking within county-owned and leased buildings and vehicles be prohibited, and that prohibition includes e-cigarettes and vaporizers.

NOW THEREFORE BE IT RESOLVED, by the governing body of Douglas County, Kansas:

Section 1. Article 9 of Chapter 1 of the Douglas County Code is amended and restated to read as follows:

ARTICLE 9. SMOKING IN PUBLIC BUILDINGS AND VEHICLES

1-901 It shall be unlawful for any person to smoke within a building or vehicle which is owned or leased by Douglas County, Kansas.

1-902 There shall be no areas within buildings or vehicles which are owned or leased by Douglas County, Kansas, designated as smoking areas. The County Administrator may designate areas outside of buildings owned or leased by the County as areas in which smoking is permitted.

1-903 Smoking shall be defined as the use of cigarettes, cigars, pipes, and shall include nicotine delivery devices that create a smoke or vapor, such as e-cigarettes and vaporizers.

1-904 Violation of this Article shall be deemed to be in violation of the provisions of the Kansas Indoor Clean Air Act, K.S.A. 21-6109 through 21- 6116,

inclusive, as amended. To the extent that the prohibitions in this Article are broader than the foregoing act, violations may be prosecuted the same as violations of county codes and regulations, and the penalty shall be the same as for violations of K.S.A. 21-6110, as amended.

Section 2. This Resolution shall take effect and be in full force from and after its adoption and publication one time in the official County newspaper.

IN WITNESS WHEREOF, the foregoing Resolution was adopted on _____, 2014.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:

Nancy Thellman, Chair

Mike Gaughan, Member

Jim Flory, Member

ATTEST:

Jameson D. Shew, County Clerk

RESOLUTION NO. 14-__

A Resolution of the Board of County Commissioners of Douglas County, Kansas, Amending Section 5.29 of the Douglas County Personnel Policy, Dealing with Smoke-Free Work Place.

WHEREAS, the governing body of the County of Douglas, Kansas desires to make certain amendments to the Douglas County, KS Personnel Policy.

NOW THEREFORE BE IT RESOLVED, by the governing body of Douglas County, Kansas, that the Personnel Policy be amended as follows:

1. Changes to Section 5.29 Smoke-Free Work Place. 5.29 of the Douglas County, KS Personnel Policy is amended as follows:

5.29 SMOKE-FREE WORK PLACE. Employees shall not violate the Smoke-Free Work Place regulation established by the County Commissioners in Resolution HR14-__, as codified at Article 9 of Chapter 1 of the Douglas County Code, as amended. This regulation prohibits smoking within a building or vehicle which is owned or leased by Douglas County, and specifies that there will be no designated smoking areas within any Douglas County owned or leased buildings or vehicles. This regulation defines smoking to include the use of cigarettes, cigars, pipes, and including nicotine delivery devices that create a smoke or vapor, such as e-cigarettes and vaporizers.

2. Effective Date. This Resolution shall take effect and be in force from and after its adoption.

IN WITNESS WHEREOF, the foregoing Resolution was adopted on _____, 2014.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:

Nancy Thellman, Chair

Mike Gaughan, Member

Jim Flory, Member

ATTEST:

Jameson D. Shew, County Clerk



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcopubw@douglas-county.com
www.douglas-county.com

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer

Date : October 8, 2014

Re : Consent Agenda approval of Supplemental Agreement No. 2
Supplement to original three-party agreement
Interchange construction at Bob Billings Parkway/K-10 highway

KDOT, the City of Lawrence, and Douglas County entered into Agreement No. 157-11 dated September 4, 2013 for the referenced interchange construction project. Under terms of the original agreement, Douglas County's sole obligation is to be responsible for \$528,000 of the project costs. In January 2014, the three parties entered into Supplemental Agreement No. 1, which reflected the City's participation in additional project work and did not change Douglas County's responsibilities under the original agreement.

The attached Supplemental Agreement No. 2 contains provisions regarding construction of an entrance at the west end of Lake Pointe Drive to provide access to the Breithaupt property. This work involves KDOT and the City of Lawrence only. Since the original agreement is a three-party agreement, KDOT requests all three parties sign the supplemental agreement.

Action Required: Consent Agenda approval of Supplemental Agreement No. 2 to original Agreement No. 157-11 for interchange construction project at Bob Billings Parkway/K-10 highway. The BoCC should sign three (3) original copies of the supplemental agreement.

PROJECT NO. 10-23 KA-1826-01
NHPP-A182(601)
INTERCHANGE CONSTRUCTION
CITY OF LAWRENCE, KANSAS
DOUGLAS COUNTY, KANSAS

S U P P L E M E N T A L A G R E E M E N T N o . 2

This Agreement, made and entered into effective the date signed by the Secretary or designee, is by and between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”), the **City of Lawrence, Kansas** (“City”), and **Douglas County, Kansas** (“County”), **collectively**, the “Parties.”

RECITALS:

- A. The Parties entered into an Agreement dated September 4, 2013 for interchange construction at K-10 and Bob Billings Parkway in Lawrence, Kansas (the “Original Agreement”).
- B. The Parties entered into a Supplemental Agreement No. 1 dated January 28, 2014 (“Supplemental No. 1”) to reflect the City’s participation in the following additional work at the NE corner of Bob Billings Parkway and Langston Way.
- C. The Parties now desire to supplement the Original Agreement: to increase the Secretary’s participation in the construction of gravel access (driveway) at the West end of Lake Point Drive, Lawrence, Kansas; and to provide for City reimbursement of actual costs associated with construction of City utility relocations for the Project.

NOW, THEREFORE, in consideration of this premise, the Parties agree as follows:

1. On page 6 of the Original Agreement, Article IV, SPECIAL CONDITIONS, paragraph 3, be replaced in its entirety to read as follows:

3. **Reimbursement Payment to City.** The Secretary will pay the City an amount not to exceed \$14,000.00 in state funds, as reimbursement for the City’s performance through its own forces or by its contractor, of the following work: construction of gravel access (driveway) at the West end of Lake Pointe Drive, Lawrence, Kansas, for purposes of providing Lake Pointe Drive cul-de-sac access to the Breithaupt property. The Secretary agrees to make partial payments to the City for amounts not less than \$1,000.00 and no more frequently than monthly. Such payments will be made after receipt of proper billing.

2. On page 7 of the Original Agreement, Article IV, SPECIAL CONDITIONS, is revised to add new paragraph 6 to read as follows:

6. **City Utility Relocations.**

(a) Notwithstanding Article II, paragraph 6(b)(ii), the Secretary and the City have determined that for purposes of efficient utility relocation sequencing, the Secretary will cause the contractor for Project No. 10-23 KA-1826-01 to complete the relocation of City sanitary sewer work at K-10 and 1500 Road crossing and at K-10 and Bob Billings Parkway (collectively, “City Sanitary

Sewer Improvements”), as shown in the Design Plans. The City agrees to reimburse the Secretary for 63.1% of the actual costs to design and construct the City Sanitary Sewer Improvements. The estimated cost for the City Sanitary Sewer Improvements is \$775,000.00. It is mutually agreed this estimated cost figure is to be used for encumbrance purposes only and adjustments will be made based on the actual measured contract quantities. The City will deposit with the Secretary \$489,140.25 for the City Sanitary Sewer Improvements within thirty (30) days after the Secretary’s approval of the contractor change order(s). If any further payment is due to the Secretary, the City shall make such payment within thirty (30) days after receipt of a billing from the Secretary’s Chief of Fiscal Services. The Secretary agrees to refund any overpayment, as determined by audit.

THIS SUPPLEMENTAL AGREEMENT shall not be construed to alter, modify, or void the terms, provisions or conditions of the Original Agreement, incorporated herein by reference, except as herein specifically provided.

IN WITNESS WHEREOF the Parties have caused this Supplemental Agreement to be signed by their duly authorized officers.

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

Signatures continue on following page

IN WITNESS WHEREOF the Parties have caused this Supplemental Agreement to be signed by their duly authorized officers.

ATTEST:

DOUGLAS COUNTY, KANSAS

COUNTY CLERK (Date)

(SEAL)

CHAIRPERSON

MEMBER

MEMBER

Signatures continue on following page

IN WITNESS WHEREOF the Parties have caused this Supplemental Agreement to be signed by their duly authorized officers.

ATTEST:

THE CITY OF LAWRENCE, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcopubw@douglas-county.com
www.douglas-county.com

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer
Doug Stephens, Operations Division Manager

Date : October 9, 2014

Re : Consent Agenda approval of annual purchase of crack seal material

We received a quote from PMSI (Paving Maintenance Supply, Inc.) to furnish Douglas County 48,000 pounds of crack seal material at \$0.612/pound. This is a routine purchase that is done annually. We have tried several other materials over the last 20 years and found this material to be the most durable, easiest to apply and allows us to turn traffic over faster. Sealing cracks is one of the most cost effective and important preventative maintenance techniques for hard surfaced roads.

Sufficient funds are available in Road and Bridge Fund 201 Line Item 71222.

Action Required: Consent agenda approval for Public Works to purchase 48,000 pounds of crack seal material at \$0.612/pound (Total \$29,376.00).



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcopubw@douglas-county.com
www.douglas-county.com

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

TO : Douglas County Commission

FROM : Keith A. Browning, P.E., Director of Public Works/County Engineer
Michael D. Kelly, P.S., County Surveyor

DATE : October 10, 2014

RE : Project No. 23C-4640-01; County Route 1055; Acquisition of Easement;
Consent agenda

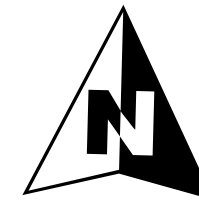
As you are aware Douglas County plans to improve County Route 1055, between Baldwin City and Vinland, by replacing crossroad culverts, some shoulder addition, and milling/replacing pavement.

Negotiations with landowners (for easement) are underway and agreements have been concluded for seventeen of the twenty parcels. The total amount for the attached contracts is \$37,100.00 and the funds for this project are coming from the CIP and federal funding sources.

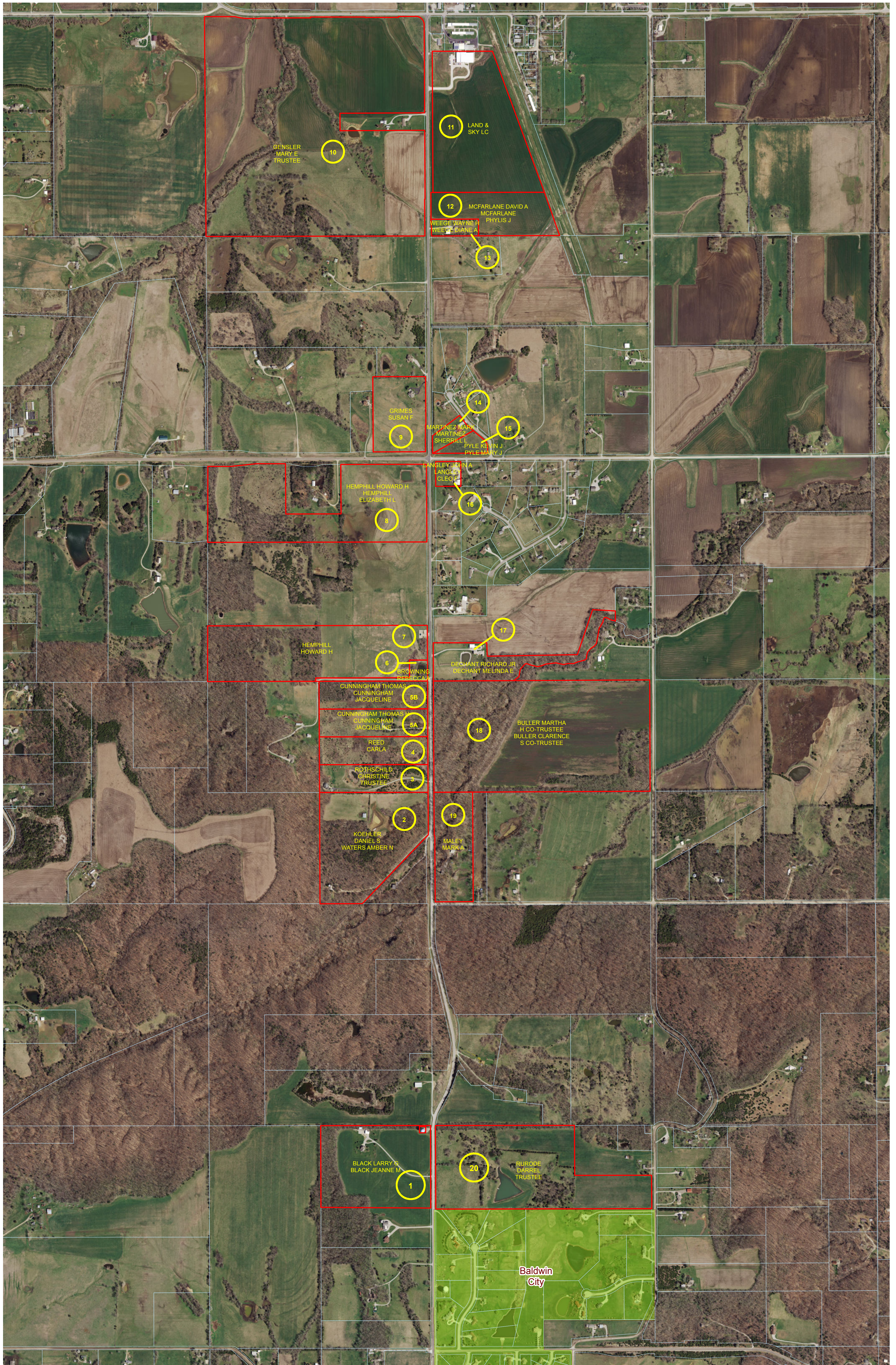
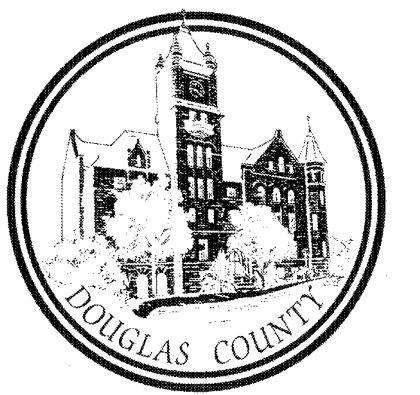
To ensure the proper completion of a necessary construction project approval is recommended for the attached CONTRACT's FOR HIGHWAY PURPOSES.

ACTION REQUIRED: Consent agenda approval to authorize the Chair to affix her signature to the CONTRACT's FOR HIGHWAY PURPOSES for Project No. 23C-4640-01.

Project No. 23C-4640-01



1 inch = 500 feet
500 250 0 500 Feet



INDEX TO SHEETS

- 1 Title Sheet
- 2 Typical Sections, Quantities, and General Notes
- 3-7 General Layout / R/W
- 8-9 Tree Removal Plan
- 10 Survey Control
- 11 04381700 Crossroad Pipe Plan & Profile
- 12 05291700 Crossroad Pipe Plan & Profile
- 13 05381700 Crossroad Pipe Plan & Profile
- 14 Pond Grading Plan
- 15 05491700 Crossroad Pipe Plan & Profile
- 16 Route 1055 Plan & Profile
Sta. 113+70 to Sta 118+20
- 17 05861700 Crossroad Pipe Plan & Profile
- 18 06061700 Crossroad Pipe Plan & Profile
- 19 06001701 Crossroad Pipe Plan & Profile
- 20 Cross Sections (Route 1055 - E 1700 Rd.)
Sta. 114+50 to Sta.119+00
- 21 06491700 Crossroad Pipe Plan & Profile
- 22 06901700 Crossroad Pipe Plan & Profile
- 23 Concrete End Section For Concrete Pipes
- 24 Summary of Pipe Culverts
- 25 Summary of Quantities
- 26 Summary of Quantities (Surfacing)
- 27 Ditch Lining
- 28-36 Temporary Erosion and Pollution Control
- 37 Erosion Control Mat Details
- 38 Permanent Seeding
- 39-49 Traffic Control Detail Sheets

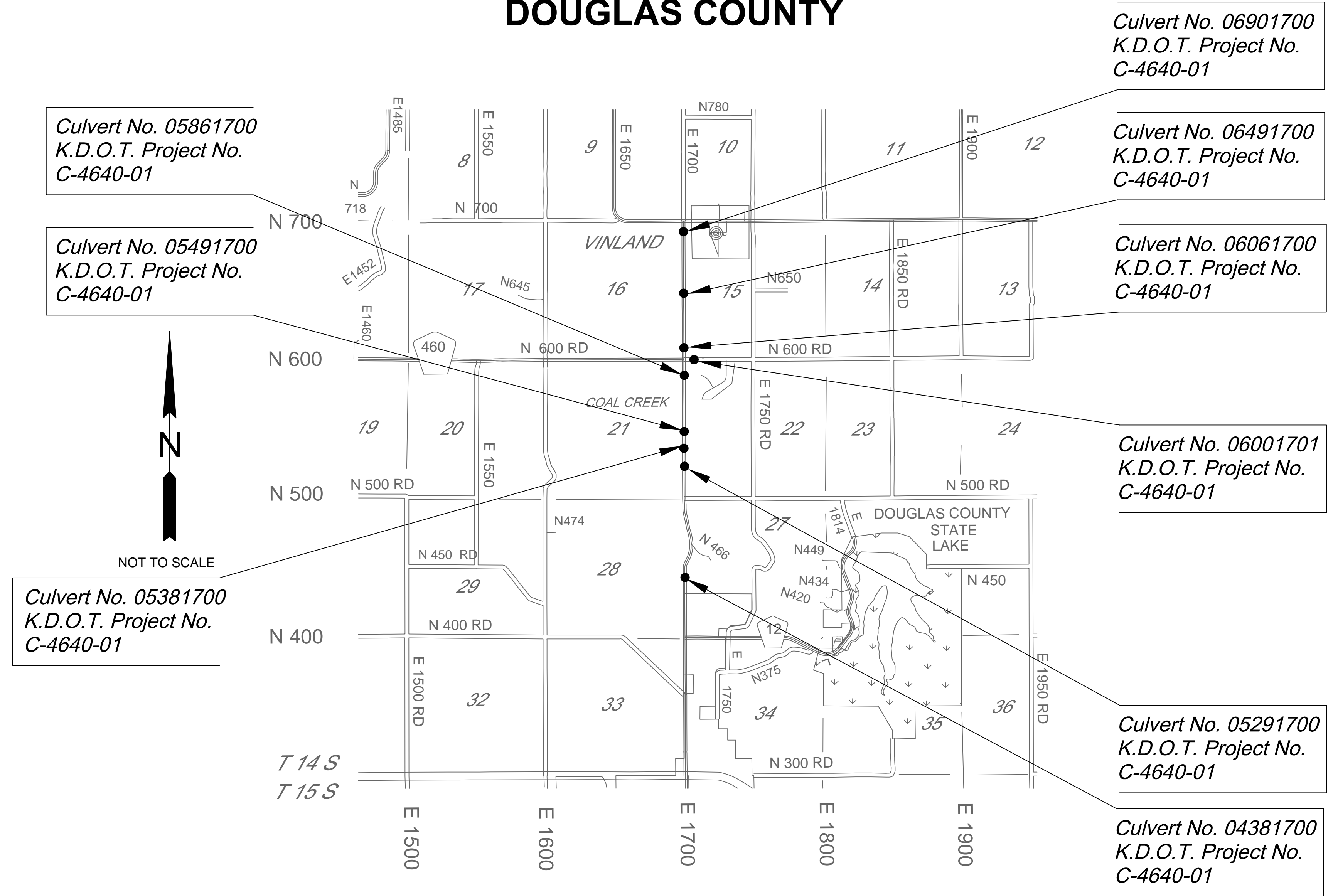
DESIGN DESIGNATION

AADT (2013) = 4779 VPD
 DHV = 513
 D = 50/50
 T = 9%
 V = 55 MPH
 C OF A = NONE
 CLEAR ZONE = 20 FEET

LEGEND

COUNTY LINE	_____	CENTER LINE OF PROJECT	_____
CITY LIMITS	_____	TERRACE	_____
STATE OR NATIONAL LINE	_____	CULVERTS	_____
TOWNSHIP, SECTION OR GRANT LINE	_____	DROP INLET & STORM SEWER	_____
PROPERTY LINE	_____	ACCESS CONTROL	_____
HIGHWAY LINE	_____	POWER POLE	_____
EXISTING FENCE	_____	TELEPHONE POLE	_____
GUARD FENCE	_____	MARSH	_____
CONSTRUCTION LIMITS	_____	HEDGE	_____
EXISTING RIGHT OF WAY LINE	_____	TREES	_____
PROPOSED RIGHT OF WAY LINE	_____	TREES TO BE REMOVED	_____
TRAVELED WAY	_____	PROFILE ELEVATION	_____
RAILROADS	_____	STREAM OR CREEK	_____
WATERLINE	_____	UNDERGROUND TELEPHONE	_____
UNDERGROUND FIBER OPTICS	_____	OVERHEAD ELECTRIC LINE	_____
		GAS LINE	_____

STATE OF KANSAS
DEPARTMENT OF TRANSPORTATION
CULVERT REPLACEMENTS FOR ROUTE 1055
C-4640-01
FEDERAL AID PROJECT
DOUGLAS COUNTY



LOCATION MAP
DOUGLAS COUNTY, KANSAS

Gross Length of Project	13,231.58 L.F.	2.506 MILE
Additions		
Exceptions	12,547 L.F.	2.376 MILE
Net Length of Project	684.58 L.F.	0.130 MILE
Net Length of Bridges		
Net Length of Road	684.58 L.F.	0.130 MILE

- Culvert No. 06901700
K.D.O.T. Project No. C-4640-01
- Culvert No. 06491700
K.D.O.T. Project No. C-4640-01
- Culvert No. 06061700
K.D.O.T. Project No. C-4640-01
- Culvert No. 06001701
K.D.O.T. Project No. C-4640-01
- Culvert No. 05291700
K.D.O.T. Project No. C-4640-01
- Culvert No. 04381700
K.D.O.T. Project No. C-4640-01

STATE	PROJECT NO.	YEAR	SHEET NO.	TOTAL SHEETS
KANSAS	C-4640-01	2014	1	49

Federal Aid No. HSIP-C464(001)

PROJECT NO. C-4640-01
 GRADING
 SURFACING
 SEEDING

TELEPHONE CONTACTS

City of Baldwin	(785) 594-3261
University of Kansas	(785) 864-5620
RWD #4	(785) 594-3847
Kansas Gas Service	(800) 794-4780
KCP&L	(800) 223-0755
Centurylink	(800) 201-4099
Mediacom	(888) 635-5545
Douglas County Public Works	(785) 832 5293
Dig Safe	(800) 334 7233

TRAFFIC DETOURED DURING CONSTRUCTION

PLANS PREPARED AND SUBMITTED BY

Douglas County Public Works
 1242 Massachusetts
 Lawrence, Kansas 66044

RECOM. FOR APPROVAL

KEITH A. BROWNING, P.E.
 DOUGLAS COUNTY PUBLIC WORKS DIRECTOR

DATE

KANSAS DEPARTMENT OF TRANSPORTATION



City of Lawrence

DAVID L. CORLISS
CITY MANAGER

City Offices
PO Box 708 66044-0708
www.lawrenceks.org

6 East 6th St
785-832-3000
FAX 785-832-3405

CITY COMMISSION

MAYOR
MIKE AMYX

COMMISSIONERS
JEREMY FARMER
DR. TERRY RIORDAN
ROBERT J. SCHUMM
MICHAEL DEVER

October 7, 2014

Craig Weinaug
County Administrator
Douglas County
1100 Massachusetts Street
Lawrence, KS 66044

Dr. Rick Doll
Superintendent of Schools
USD 497, Lawrence Public School
110 McDonald Drive
Lawrence, KS 66044

Sent via e-mail

Dear Mr. Weinaug and Dr. Doll,

The City of Lawrence is in receipt of a request to establish a neighborhood revitalization area (NRA):

Tony Krisnich of 9 Del Lofts, LLC, (project Developer) is requesting a 15-year, 95% rebate of the incremental tax revenues for the property at 900 Delaware Street to redevelop the property into an affordable, multi-family housing complex.

The City, County, and School District separately determine their participation and level of rebate in the NRA. The City Commission held a public hearing on September 23, 2014 to consider the City's participation in establishing the NRA district. During that time, the City Commission voted (5-0) to approve City participation in the NRA at the 15-year, 95% rebate level.

In visiting with you, we have scheduled October 13th at 7 pm as the date and time for the School Board to consider their participation in the NRA and October 15th at 4:00 pm as the date and time for the County Commission to consider their participation in the NRA. The City Commission is scheduled to take final action on the NRA on October 21st, 2014.



Attached is analysis and supporting materials for the request. Please let me know if you have any questions.

Sincerely,

Britt Crum-Cano, Economic Development Coordinator

c: David L. Corliss, City Manager
Diane Stoddard, Assistant City Manager
Tony Krsnich, 9 Del Lofts LLC
Tom Larkin, 9 Del Lofts LLC

Memorandum

City of Lawrence

City Manager's Office

TO: David L. Corliss, City Manager
CC: Diane Stoddard, Assistant City Manger
Casey Toomay, Assistant City Manger
FROM: Britt Crum-Cano, Economic Development Coordinator
DATE: October 7, 2014
RE: County & School District Consideration: 9 Del Lofts, LLC request for 900 Delaware Street

*Please see **List of Attachments** at the end of this memo.*

Overview

The City has received a request letter and application from 9 Del Lofts, LLC to establish a 15-year, 95% Neighborhood Revitalization Area (NRA) at 900 Delaware Street. Tony Krisnich (project Developer) is proposing the development of vacant land, located at 900 Delaware Street into a mixed-income, multi-family housing complex. Located on the southeast corner of 9th Street and Delaware Street, adjacent to the East Lawrence Historic Industrial Warehouse District, in Lawrence, Kansas, the project calls for approximately 43 apartment units: 18, one-bedroom units (five at market rate); 16, two-bedroom units (three at market rate); and four, three-bedroom units (one at market rate).

The City, County, and School District individually decide their participation in the NRA and each will conduct a public meeting to consider the request. The City considered and authorized participation in a 15-year, 95% NRA during a public meeting held on September 23, 2014. Meetings for the School District and County to consider the request and their participation in the NRA have been scheduled in October.

Background:

Kansas Law enables cities to establish neighborhood revitalization areas in order to encourage redevelopment under the Neighborhood Revitalization Act (NRA). The establishment of a revitalization area enables a property owner to receive a rebate on a portion of the incremental increase of property taxes associated with an improvement project within the area.

9 Del Lofts, LLC is requesting that the City, Douglas County and USD 497 all participate in the revitalization program. Douglas County and USD 497 will need to determine its level of participation and information has been forwarded to the County Administrator and Superintendent of Schools regarding the request.

Staff Analysis

City Staff has completed a cost-benefit and “but for” analysis of the proposal, in accordance with the City's NRA policy. Analytical results are presented in Staff's Technical Report.

NRA Policy

The City of Lawrence adopted an updated NRA policy in the fall of 2011. Staff's technical memo summarizes the policy issues as it relates to this particular NRA request. It appears the request would meet the parameters of the policy.

Draft Neighborhood Revitalization Plan

Staff has prepared a draft Neighborhood Revitalization Plan, which is required by State statute, for the 9 Del Lofts, LLC request. This plan should be reviewed by the City Commission, the Public Incentive Review Committee, and the taxing jurisdictions. The plan includes a rebate schedule and also includes provisions for Douglas County to retain \$100 annually as an administrative fee for the duration of the rebate program.

Next Steps/Calendar

A draft calendar has been prepared to consider items related to this request. The City Commission conducted a public hearing to consider the request at their September 23, 2014 meeting. The meeting for the School Board to consider school district participation is scheduled for October 13 and the meeting for County Commission to consider County participation is scheduled for October 15th. The City Commission would take final action once School District and County participation is known (tentatively scheduled for the October 21st City Commission meeting).

Staff Recommendation

Due to the affordable housing component of the project and the strong intangibles that are not represented in the numbers, Staff would recommend participation at the requested 95% level for all jurisdictions for a 15-year period. While the NRA policy suggests a 10-year limit, the policy also suggests that longer durations may be appropriate if the analysis bears out the need. In this case, the “but for” test points to the need for the NRA incentive in order to make the project viable. Adding to the 9 Del Loft development and other housing opportunities in the area, the project will help to sustain the density for vibrancy in the area.

PIRC Recommendation

At the 9-9-2014 PIRC meeting, the committee voted unanimously to recommend participation of all taxing jurisdictions in a 15-Year, 95% NRA for 900 Delaware Street.

Draft minutes of the 9- 9-2014 PIRC meeting are attached.

City Commission Actions

At the 9-23-2014 City Commission meeting, the Commission voted unanimously to authorize the establishment of and City participation in a 15-Year, 95% NRA for 900 Delaware Street.

Requested County and School District Action

Consider County/School District participation in the 900 Delaware Street NRA, including the percentage rebate amount and duration, if appropriate.

If NRA participation is approved, authorize the County Administrator (on behalf of the County) and USD 497 Superintendent of Schools (on behalf of the School District) to execute a cooperative agreement between the City, County and School District on NRA administration.

List of Attachments: 900 Delaware Street NRA

1. Staff Technical Report and Analysis (with attachments located at end of file)
2. Draft Neighborhood Revitalization Plan
3. Draft NRA Calendar
4. Draft PIRC Minutes
5. City, County, School District Cooperative Agreement

Memorandum

City of Lawrence

City Manager's Office

TO: David L. Corliss, City Manager
CC: Diane Stoddard, Assistant City Manager
FROM: Britt Crum-Cano, Economic Development Coordinator
DATE: September 9, 2014
RE: Technical Report: NRA request for 9 Del Loft Apartments

Project Overview

Tony Krisnich of 9 Del Lofts, LLC, (Developer) is proposing the development of vacant land located at 900 Delaware Street into an affordable, multi-family housing complex. Located on the southeast corner of 9th Street and Delaware Street, adjacent to the East Lawrence Historic Warehouse, in Lawrence, Kansas, the project calls for approximately 43 apartment units: 18, one-bedroom units (five at market rate); 16, two-bedroom units (three at market rate); and four, three-bedroom units (one at market rate).

Project financing will rely on Federal Low-Income Housing Tax Credits (LIHTC) as well as private funding. As per the Developer, tax credits have already been awarded to the project by the Kansas Housing Resources Corporation (KHRC). It should also be noted that as per the Developer's legal representative, the property owner will be required to hold the property for a minimum of 20 years due to the compliance obligations of affordable housing programs.

Previously, the Developer had asked for and was granted City assistance for infrastructure improvements for the project. On June 3, 2014, the City Commission received and considered an infrastructure assistance request from the Developer and authorized rebating up to \$270,967 in related expenses.

Request for NRA Assistance

A **Request Letter and Incentives Application** were received on August 13, 2014 from 9 Del Lofts, LLC requesting a 15-year, 95% Neighborhood Revitalization Area (NRA).

The following presents details and analytical results associated with this request.

Eligibility

The NRA is one of several economic development tools utilized by municipalities to promote economic growth through neighborhood enhancement. Authorized by the state, NRAs are intended to encourage the reinvestment and revitalization of properties which in turn have a positive economic effect upon a neighborhood and the City in general.

The use of an NRA is particularly applicable for use in areas where rehabilitation, conservation, or redevelopment is necessary to protect the public health, safety or welfare of the residents of the City. Typically, a percentage of the incremental increased value in property taxes (due to improvements) is rebated back to the developer/applicant over a period of time to help offset redevelopment costs and make the project financially feasible.

Project eligibility for NRA consideration is governed by both State statutes (KSA 12-17,114 et seq.) and City policy (**Resolution 6954**).

State Eligibility

Below outlines State requirements for NRA eligibility.

State Requirements

Statutory Criteria	Governing Body determines that rehabilitation, conservation or redevelopment of the area is necessary to protect the public health, safety or welfare of residents and the proposed project meets at least one of the below criteria:	
	1	An area in which there is a predominance of buildings or improvements which by reason of dilapidation, deterioration, obsolescence, inadequate provision of ventilation, light, air or open spaces, high density of population and overcrowding, the existence of conditions which endanger life or property by fire and other causes or a combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and which is detrimental to the public health, safety or welfare.
	2	An area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, defective or inadequate streets, incompatible land uses relationships, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions deterioration of site or other improvements, diversity of ownership, tax, or special assessment delinquency exceeding the actual value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes or a combination of such factors substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety or welfare in its present condition and use.
	3	An area in which there is a predominance of buildings or improvements that should be preserved or restored to productive use because of age, history, architecture or significance should be preserved or restored to productive use.

Health & Safety Need

Economic Need

Preservation of Community/Historical Asset

Conclusion—State Eligibility:

Development would replace a vacant, underutilized property with affordable housing that provides energy efficient and environmentally friendly features. In addition, the project would bring needed density and additional economic viability to the area in support of revitalization of the East Lawrence Historic Warehouse District. It should be noted that while the project does not lie within the district, it is directly next to and adjacent to the district. Residential density next to the revitalization district would likely provide additional market and economic support for the area and downtown (two blocks to the west), as well as bring needed affordable housing to the community at large.

City Eligibility

Resolution 6954 outlines the City's policy for establishing an NRA. City Policy Guidelines include:

- ***Typical Rebate Amounts & Duration***

As per NRA policy, the City typically follows the below standard practice:

- Does not provide more than 50% rebate on incremental property taxes
- Does not establish an NRA for a period of time longer than 10 years

However, there is an exception provision within the policy which allows the City to *"consider a greater rebate and/or a longer duration if sufficiently justified in the "but for" analysis."*¹

¹ Resolution 6954, Section 4: Amount of Rebate

- **Cost-Benefit Ratio**

Resolution 6954, Section Two speaks to the cost-benefit ratio threshold. Specifically, the statement, *“It is the policy of the City to only consider the establishment of Neighborhood Revitalization areas which yield a benefit/cost ratio of at least 1.25.”*, indicates that for every \$1 of cost incurred as a result of the project, \$1.25 is received as benefit) for economic development projects.

SECTION TWO: POLICY STATEMENT: It is the policy of the City to consider the establishment of Neighborhood Revitalization areas in order to promote reinvestment and revitalization of properties which in turn have a positive economic effect upon a neighborhood and the City in general. An applicant may request the City consider the establishment of a Neighborhood Revitalization area under the NRA either for a specific property, group of properties or neighborhood area. In considering the establishment of an NRA, the Governing Body shall consider the criteria outlined in Section Three. In determining the amount of a rebate, the Governing Body may balance the desirability of the project versus the amount and duration of the rebate and the requirements set forth in Section Four. It is the policy of the City to only consider the establishment of Neighborhood Revitalization areas which yield a benefit/cost ratio of at least 1.25.

From Resolution 6954, dated October 25, 2011.

Eligibility Criteria

For an NRA to be established, the project must not only meet statutory requirements, but also a majority of City policy criteria. The project meets City policy eligibility as detailed below:

City Policy: NRA Eligibility			
City Policy Criteria	When considering the establishment of a NRA, the City shall consider not only the statutory criteria, but if the project meets a majority of the below criteria:		Eligible
	1	The opportunity to promote redevelopment activities which enhance downtown	Y
	2	Provides the opportunity to promote redevelopment activities for properties which have been vacant or significantly underutilized.	Y
	3	Provides the opportunity to attract unique retail and/or mixed use development which will enhance the economic climate of the City and diversify the economic base.	N/A
	4	Provides the opportunity to enhance neighborhood vitality as supported by the City's Comprehensive Plan or other sector planning document(s).	Y
	5	Provides the opportunity to enhance community stability by supporting projects which embrace energy efficiency, multi-modal transportation options, or other elements of sustainable design.	Y
	Project must meet or exceed a 1:1.25 cost-benefit ratio.		See Analysis

Conclusion—City Eligibility:

As indicated above, the proposed redevelopment of 900 Delaware Street by 9 Del Lofts, LLC appears to meet a majority of City criteria. The project meeting the cost-benefit ratio is further explained in the following cost-benefit analysis section.

Analysis

Estimated fiscal impacts to taxing jurisdictions is examined through a cost-benefit analysis and project financial feasibility is examined through a "But For" analysis (pro forma), both of which are required by current NRA policy.

Cost-Benefit Analysis

Based on information received through the incentives application, staff conducted analysis of the costs and benefits associated with the project utilizing the City's economic development cost-benefit model. This model measures estimated fiscal impacts to four taxing jurisdictions: City, County, School District, and State. Furthermore, the model outputs a ratio reflecting the comparison of estimated costs to estimated benefits returned to the jurisdictions as a result of the project.

Assumptions utilized within the model:

- *Capital Investment & Job Creation*

According to the incentives application received, approximately \$7.2 million will be invested in purchasing and redeveloping the property. Project completion is anticipated in May 2015. Once redeveloped, the project is expected to support two new, full-time jobs anticipated to have an average annual salary of \$50,000.

- *Property Taxes*

In its present condition, the property generates approximately \$1,200 per year in real property taxes. Under the NRA program, these "base" property taxes are shielded from rebates and would continue to be paid by the property owner. Only a percentage of the incremental increase in property value resulting from project improvements is subject to NRA rebates and then only during the NRA period. After the NRA period, no reimbursements are made on property taxes and the property returns fully to the tax rolls.

900 Delaware Street Tax History							
Year	Appraised			Assessed			Total Tax
	Land	Improvements	Total	Land	Improvements	Total	
2014*	\$78,530	\$0	\$78,530	\$9,424	\$0	\$9,424	\$1,228
2013	\$78,530	\$0	\$78,530	\$9,424	\$0	\$9,424	\$1,192
2012	\$78,530	\$0	\$78,530	\$9,424	\$0	\$9,424	\$1,176

Source: Douglas County Appraiser's Office, * Estimated tax amount for 2014

The following table provides a summary of the estimated base and incremental tax amounts the developer would be responsible for given a 10- and 15-year, 85% and 95% NRA provided by all taxing jurisdictions. As base taxes are shielded from rebate, these tax revenues remain the same over the NRA period regardless of the rebate percentage granted.

85% NRA Rebate: Estimated Tax Paid by Developer		
	<i>Total over 10 year NRA period (2016-2025)</i>	<i>Total over 15 year NRA period (2016-2030)</i>
<i>Amount due on Base Value</i>	\$12,409	\$18,690
<i>Amount due on Incremental Value</i>	\$35,862	\$56,889
<i>Total developer paid taxes over NRA period</i>	\$48,272	\$75,579

95% NRA Rebate: Estimated Tax Paid by Developer		
	<i>Total over 10 year NRA period (2016-2025)</i>	<i>Total over 15 year NRA period (2016-2030)</i>
<i>Amount due on Base Value</i>	\$12,409	\$18,690
<i>Amount due on Incremental Value</i>	\$11,954	\$18,963
<i>Total developer paid taxes over NRA period</i>	\$24,363	\$37,653

- *City Infrastructure Grant*

On June 3, 2014, the City Commission authorized City assistance of up to \$270,967 for the below infrastructure improvements for the 9 Del Lofts project.

City Infrastructure Grant: 9Del Lofts	
Description	Authorized 6-3-14
Relocation of Sanitary Sewer Main	\$69,505
Site Water Line (Fire and Domestic, New Fire Hydrant)	\$17,545
Sanitary Sewer Connection to Building	\$3,355
Site Storm Sewer	\$37,840
Public Street Improvement Plans (Street Storm and Patching)	\$16,157
Private Drive-9th Street Extension to east and 10' trail along Delaware	\$47,565
System Development Charges	
Water	\$45,000
Meter	
Sewer	
Burying of overhead utility lines	\$34,000
TOTAL	\$270,967

Some of the above expenses apply only to the project, while others benefit both the project and neighborhood. For cost-benefit analysis purposes, \$222,326 was the grant amount identified that represented the expenses attributed only to the project. The remaining \$48,641 benefits both the project and neighborhood and was not included within the cost-benefit analysis.

- *Model Evaluation Period*

For projects contributing to traditional economic development goals (i.e. primary job creation, high wage jobs, capital investment infusion) the model evaluation period has typically been 15 years. However, in projects that do not have traditional economic goals as their primary community contribution or projects that provide substantial intangible benefits, which would not be considered within the model (e.g. affordable housing), a longer evaluation period may be appropriate.

Given the minimum 20 year ownership period required by tax credit compliance, staff feels a 20 year evaluation period is appropriate for this project and the below cost-benefit scenarios were ran using this evaluation period. However, for comparison purposes, results of a 10-year, 85% NRA are shown for both a 15-year and 20-year evaluation period in Addendum A. In general, the shorter the model evaluation period, the lower the cost-benefit ratios will be for the taxing jurisdictions.

Cost-Benefit Model Results:

Several cost benefit scenarios were ran utilizing information provided on the incentives application submitted by 9 Del Lofts LLC. Given the required minimum holding period for the project (as per tax credit compliance), Staff ran scenarios utilizing a 20 year evaluation period. (Additional Model results are shown in Addendum A.)

- *NRA Only—No City Grant*

The following shows results for a 20 year evaluation period without infrastructure grant values included in the analysis. As can be seen, the project exceeds a 1.25 cost-benefit ratio for all taxing jurisdictions, when not accounting for the City infrastructure grant.

9 Del: NRA Results + \$0 City Grant					
Incentive Package	City	County	USD 497	State	Total Package Value
10-Year, 85% NRA, \$0 City Grant	3.15	2.43	6.03	n/a	\$200,526
10-Year, 95% NRA, \$0 City Grant	3.09	2.27	5.59	n/a	\$232,048
15-Year, 85% NRA, \$0 City Grant	3.03	2.04	4.98	n/a	\$318,700
15-Year, 95% NRA, \$0 City Grant	2.95	1.83	4.39	n/a	\$368,101

- *Inclusion of City Grant*

Assuming a 20 year holding period, the following table shows results when City infrastructure grant amounts are included in the analysis. As can be seen, cost-benefit ratios remain the same for all taxing jurisdictions except for the City. When accounting for the City infrastructure grant, City ratios drop below breakeven levels (breakeven = 1:1 or for every \$1 of public investment, \$1 of benefit is realized).

9 Del: NRA Results + \$222,326 City Grant					
Incentive Package	City	County	USD 497	State	Total Package Value
10-Year, 85% NRA, City Grant of \$222,326	0.68	2.43	6.03	n/a	\$422,852
10-Year, 95% NRA, City Grant of \$222,326	0.62	2.27	5.59	n/a	\$454,374
15-Year, 85% NRA, City Grant of \$222,326	0.56	2.04	4.98	n/a	\$541,026
15-Year, 95% NRA, City Grant of \$222,326	0.48	1.83	4.39	n/a	\$590,427

As illustrated above, meeting the City policy’s cost-benefit threshold depends on if the City Infrastructure Grant is considered within the analysis.

- *No City NRA Participation*

Scenarios were run assuming the City did not participate in the NRA, providing only the infrastructure grant. As seen below, just the inclusion of City infrastructure pushes the ratio below the 1.25 threshold.

No City NRA Participation + City Grant

9 Del: No City NRA + \$222,326 City Grant					
Incentive Package	City	County	USD 497	State	Total Package Value
10Y-85% County/USD/State NRA, City Grant of \$222,326	1.07	2.81	7.06	n/a	\$348,713
10Y-95% County/USD/State NRA, City Grant of \$222,326	1.07	2.55	6.37	n/a	\$398,682
15Y-85% County/USD/State NRA, City Grant of \$222,326	1.07	2.57	6.42	n/a	\$421,934
15Y-95% County/USD/State NRA, City Grant of \$222,326	1.07	2.22	5.46	n/a	\$502,083

Conclusion--Model Results:

Model results show that the cost-benefit threshold of 1.25 can be met for all taxing jurisdictions, with the exception of the City, for a 10- or 15-year NRA at both the 85% and 95% rebate levels.

Meeting the City policy's cost-benefit threshold depends on if the City Infrastructure Grant is considered within the analysis. If the grant is not considered within the analysis, the City 1.25 cost-benefit threshold can be met with a 10- or 15-year NRA at both the 85% and 95% rebate levels. If the infrastructure grant is included, the cost-benefit ratio falls below breakeven levels for the City in all NRA scenarios.

“But For” Analysis

In order to provide a NRA rebate, the City must be convinced that without public assistance, the project will not be financially feasible. Whether or not the project would proceed if incentives are unavailable speaks to the “but for” test; But for the incentives, the project would not proceed.

Although there is no definite way to know in advance if the project will or will not proceed if incentives are not provided, there are financial metrics that can be examined to get a reasonable perspective. Through examining developer’s pro forma and other financial documents, project cash flow and return rates can be compared with and without public assistance.

- **Projected Cash Flow**

The Developer provided estimated annual revenues and expenses for the project, which were used to project annual cash flow over a minimum 15 year period. Property valuation information was provided by Douglas County Appraiser’s Office and was used to project annual property taxes.

In examining project cash flow, results show:

1. *Without NRA incentives, the project won't cash flow.*

The below table shows cash flow results when NRA incentives are not provided. As can be seen, cash flow is negative for each year of operations.

Cash Flow Analysis: 9 Del Lofts															
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Operating Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15
After Tax Cash Flow: No NRA	(\$10,923)	(\$10,546)	(\$10,224)	(\$9,958)	(\$9,751)	(\$9,608)	(\$9,531)	(\$9,524)	(\$9,589)	(\$9,731)	(\$9,954)	(\$10,261)	(\$10,657)	(\$11,145)	(\$11,731)

2. *With the addition of NRA rebates, cash flow becomes positive in the years provided.*

The below table shows cash flow results when a 10-year NRA is provided by all taxing jurisdictions.

Cash Flow Analysis: 9 Del Lofts															
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Operating Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15
After Tax Cash Flow: 10Y-85% NRA	\$7,497	\$8,272	\$9,002	\$9,684	\$10,316	\$10,894	\$11,415	\$11,876	\$12,274	\$12,605	(\$9,954)	(\$10,261)	(\$10,657)	(\$11,145)	(\$11,731)
After Tax Cash Flow: 10Y-95% NRA	\$9,664	\$10,486	\$11,264	\$11,995	\$12,677	\$13,306	\$13,879	\$14,394	\$14,846	\$15,233	(\$9,954)	(\$10,261)	(\$10,657)	(\$11,145)	(\$11,731)

Below shows cash flow for a 15-year, 95% NRA with all taxing jurisdictions participating.

Cash Flow Analysis: 9 Del Lofts															
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Operating Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15
After Tax Cash Flow: 15Y-95% NRA	\$9,664	\$10,486	\$11,264	\$11,995	\$12,677	\$13,306	\$13,879	\$14,394	\$14,846	\$15,233	\$15,551	\$15,796	\$15,965	\$16,053	\$16,056

Cash flow without City participation in the NRA can also provide positive cash flow over a 15 year rebate period.

Cash Flow Analysis: 9 Del Lofts															
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Operating Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15
After Tax Cash Flow: 15Y-85% NRA (no city NRA)	\$2,666	\$3,314	\$3,914	\$4,463	\$4,957	\$5,395	\$5,772	\$6,086	\$6,332	\$6,509	\$6,611	\$6,635	\$6,577	\$6,433	\$6,199
After Tax Cash Flow: 15Y-95% NRA (no city NRA)	\$4,265	\$4,945	\$5,577	\$6,159	\$6,688	\$7,160	\$7,572	\$7,922	\$8,205	\$8,419	\$8,559	\$8,622	\$8,604	\$8,501	\$8,308

- Return Rates

One common financial metric that can be examined for project feasibility is the Internal Rate of Return (IRR). The IRR is a complex formula that takes into consideration annualized compounded return rates based on the project's anticipated operating expenses and revenues over time, as well as recapture returns from selling the property at the end of a holding period. The IRR a developer requires to proceed is subjective and depends on various factors, including shareholder demand for returns, investment goals, availability of alternate projects and comparative potential returns, and many other financial and investor considerations.

Due to investor subjectivity and the confidential nature of financial documents that have to be examined in order to calculate the IRR, a typical return rate benchmark for the property type and community is difficult to access. However, it should be noted that property valuation within the IRR analysis was based on capitalization rates (cap rate) for the property type and community, as determined by the Douglas County Appraiser's Office.

In lieu of local IRR comparison data, one proxy benchmark that can be used when measuring the IRR is two times the "risk free" investment yield. Typically, the 10-year Treasury Bill is considered risk free and rate information is easily available. The below table illustrates project IRRs with and without incentives as compared to the investment threshold proxy².

9 Del: Return Rates (est.)--15 Year Holding Period					
NRA Scenarios	Investment Threshold	Average ROE: No Incentives	Average ROE: With Incentives	IRR: No Incentives	IRR: With Incentive
All Jurisdictions Participating in NRA					
10Y-85% NRA + \$270,967 City Infrastructure Grant	8.10%	0.30%	0.54%	5.96%	6.44%
10Y-95% NRA + \$270,967 City Infrastructure Grant			0.57%		6.49%
15Y-95% NRA + \$270,967 City Infrastructure Grant			0.73%		6.71%
No City NRA Participation					
County/USD/State 10Y -95% NRA + \$270,967 City Infrastructure Grant	8.10%	0.30%	0.50%	5.96%	6.35%
County/USD/State 15Y -85% NRA + \$270,967 City Infrastructure Grant			0.58%		6.45%
County/USD/State 15Y -95% NRA + \$270,967 City Infrastructure Grant			0.61%		6.51%

² Investment threshold proxy = 2 * 10-Year average Treasury Bill rate.

Overall, this seems to be a difficult project to make happen financially and even with public assistance, the returns are low. Without incentives, average project return on equity (ROE)³ is 0.30% with an internal rate of return (IRR)⁴ of 5.96%, as compared to an 8.10% investment threshold. With the addition of NRA incentives, analysis shows project returns improve, but are still relatively low, especially in comparison to the investment proxy threshold. Depending on the incentive package, return on equity ranges from 0.50%-0.73% with IRRs ranging from 6.35%-6.71%.

Conclusion—But For Test

Analysis shows that the project will not meet cash flow or have reasonable return rates without NRA assistance. Therefore, it is reasonable to assume that the project would not be able to proceed "but for" public incentives.

Other Considerations

Other non-quantifiable project benefits should also be considered within the context of this request, including:

- The opportunity to deliver needed, affordable housing within the community
- The opportunity to provide additional traffic in support of Downtown Lawrence and the East Lawrence Historic District.
- The opportunity to support on-going area revitalization and increase synergies between area projects.

Performance Agreement

Per City policy, the property owner/development team would be required to enter into a performance agreement with the City in order to receive NRA rebates. The most significant reason for this is to make sure the developer coordinates with the City and County at the beginning of the establishment of the district and to ensure that there are no delinquent property taxes during any of the years of the NRA plan.

³ Return on Equity: $ROE = \text{Cash Flow}/\text{Equity}$

⁴ Internal Rate of Return: IRR = Discount rate that makes the net present value of all cash flows from a particular project equal to zero.

Professional Staff Opinion & Recommendation

Eligibility: Staff believes the project as proposed will meet State and City NRA eligibility criteria.

But-For Test: Examination of estimated cash flows and return rates, with and without public assistance, indicates the "but for" test has been met for the project.

Cost-Benefit Threshold: The project meets the preferred 1.25 cost-benefit ratio for the County, School District and State.

Model results for the City depend on the assumption to include or exclude the value of the infrastructure grant that has been previously authorized. However, even if the grant is considered within the analysis, additional intangible benefits of the project, which should also be taken into consideration, may usurp the need for the City to meet the cost-benefit ratio threshold.

Staff Recommendation:

Due to the affordable housing component of the project and the strong intangibles that are not represented in the numbers, Staff would recommend participation at the requested 95% level for all jurisdictions for a 15-year period. While the NRA policy suggests a 10-year limit, the policy also suggests that longer durations may be appropriate if the analysis bears out the need. In this case, the "but for" test points to the need for the NRA incentive in order to make the project viable. Adding to the 9 Del Loft development and other housing opportunities in the area, the project will help to sustain the density for vibrancy in the area.

PIRC Requested Action

Public Incentives Review Committee to provide recommendation on the participation of each jurisdiction in a NRA for 900 Delaware Street, including duration and percentage rebate level.

Addendum A: Additional Cost-Benefit Model Scenarios

All Jurisdictions Participating in NRA + No City Grant

9 Del: NRA Results + \$0 City Grant					
Incentive Package	City	County	USD 497	State	Total Package Value
10-Year, 20% NRA, \$0 City Grant	3.45	3.22	8.18	n/a	\$46,410
10-Year, 25% NRA, \$0 City Grant	3.42	3.15	7.99	n/a	\$59,771
10-Year, 50% NRA, \$0 City Grant	3.31	2.84	7.16	n/a	\$119,542

All Jurisdictions Participating in NRA + City Grant

9 Del: NRA Results + \$222,326 City Grant					
Incentive Package	City	County	USD 497	State	Total Package Value
10-Year, 20% NRA, \$222,326 City Grant	0.98	3.22	8.18	n/a	\$268,736
10-Year, 25% NRA, \$222,326 City Grant	0.95	3.15	7.99	n/a	\$282,097
10-Year, 50% NRA, \$222,326 City Grant	0.84	2.84	7.16	n/a	\$341,868

Comparison of 15Y vs. 20Y Evaluation Period: All Jurisdictions Participating in NRA + City Grant

9 Del: NRA Results + City Infrastructure Grant					
Incentive Package	City	County	USD 497	State	Total Package Value
10-Year, 85% NRA, \$222,326 City Grant	0.20	2.07	5.28	n/a	\$422,852
10-Year, 85% NRA, \$222,326 City Grant	0.68	2.43	6.03	n/a	\$422,852

15 Year Evaluation Period
20 Year Evaluation Period

Addendum B: Model Results

Cost-Benefit Model Results: 9 Del Apartments

Scenario: 15-Year, 95% NRA (all jurisdictions), 20Y Evaluation Period

Project Summary

Capital Investment in Plant:	\$6,970,000
Annual Local Expenditures by Firm:	\$0
Retained Jobs:	2
Average Wage per Retained Job:	\$50,000
Indirect Jobs Created:	2
Economic Value per Indirect Job:	\$22,983
Total New Households:	2
Discount Rate:	6.24%
Cost and Revenue Escalation:	1.00%
Number of Years Evaluated:	20

Incentives

IRB Offered	No
Value of IRB Construction Sales Tax:	\$0
Tax Rebate:	0% annually over 10 years
Length of Tax Abatement/s:	0 Years
Value of Tax Abatements, Total:	\$0
Other Incentives	
Site Infrastructure:	\$222,326
Facility Construction:	\$0
NRA Rebates:	\$368,101

Value of All Incentives Offered: \$590,427

Value of All Incentives per Job per Year:	\$14,761
Value of Incentives in Hourly Pay:	\$7.10
Value of Incentives per Dollar Invested:	\$0.08

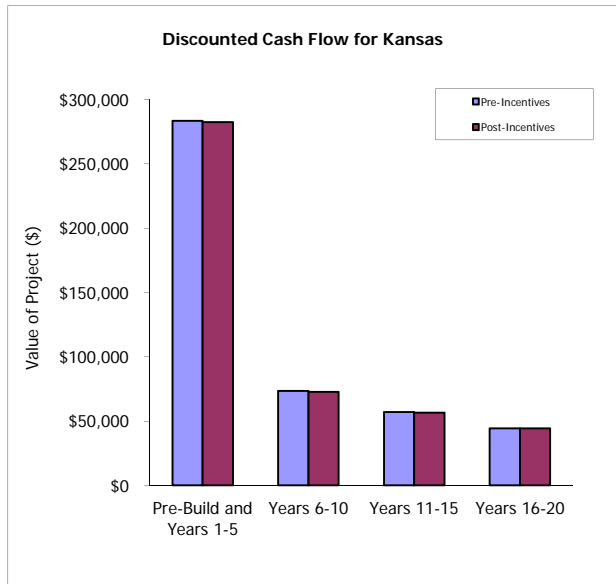
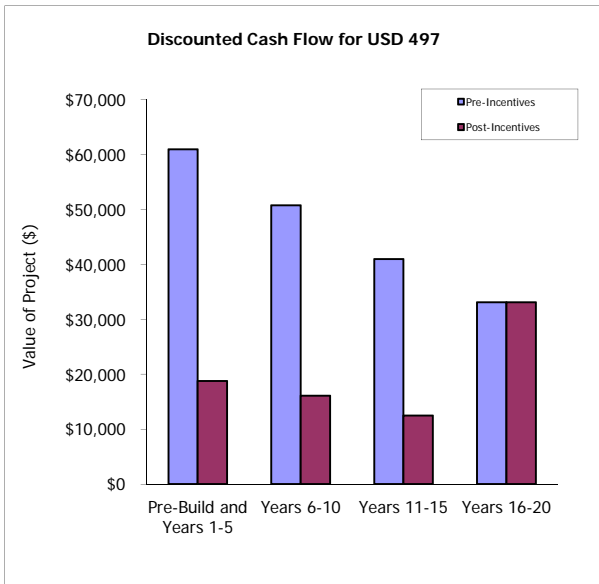
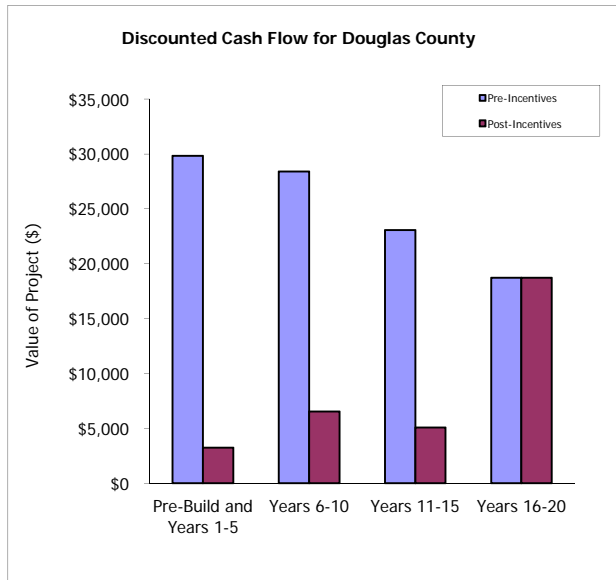
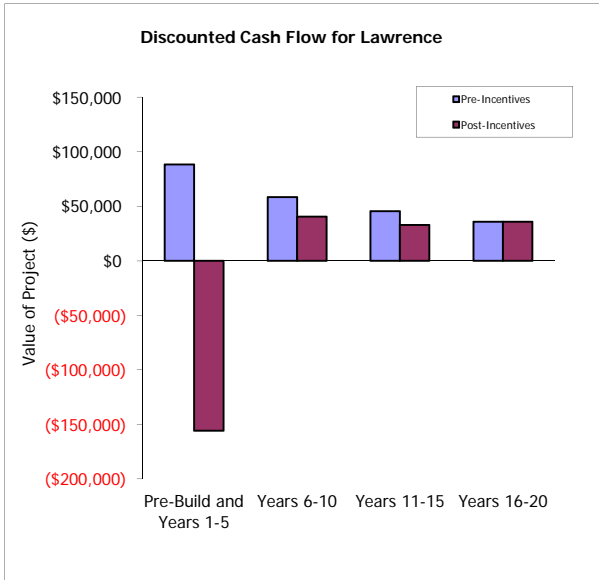
Summary of Results

Returns for Jurisdictions	Lawrence	Douglas County	USD 497	State of Kansas
Revenues	\$541,694	\$249,181	\$385,455	\$690,042
Costs	\$136,614	\$60,470	\$41,564	\$0
<i>Revenue Stream, Pre-Incentives</i>	<i>\$405,080</i>	<i>\$188,711</i>	<i>\$343,891</i>	<i>\$690,042</i>
Value of Incentives Offered	\$304,416	\$106,749	\$169,326	\$3,681
Revenue Stream with Incentives	\$100,663	\$81,962	\$174,565	\$686,361
Returns for Jurisdictions, Discounted	Lawrence	Douglas County	USD 497	State of Kansas
Discount Rate	6.24%			
Discounted Cash Flow, Without Incentives	\$228,208	\$100,031	\$185,832	\$458,559
<i>Benefit/Cost Ratio, Without Incentives</i>	<i>3.53</i>	<i>3.46</i>	<i>8.83</i>	<i>#DIV/0!</i>
Discounted Cash Flow, With Incentives	(\$46,600)	\$33,614	\$80,481	\$456,269
Benefit/Cost Ratio, With Incentives	0.48	1.83	4.39	#DIV/0!

Cost-Benefit Model Results: 9 Del Apartments

Scenario: 15-Year, 95% NRA (all jurisdictions), 20Y Evaluation Period

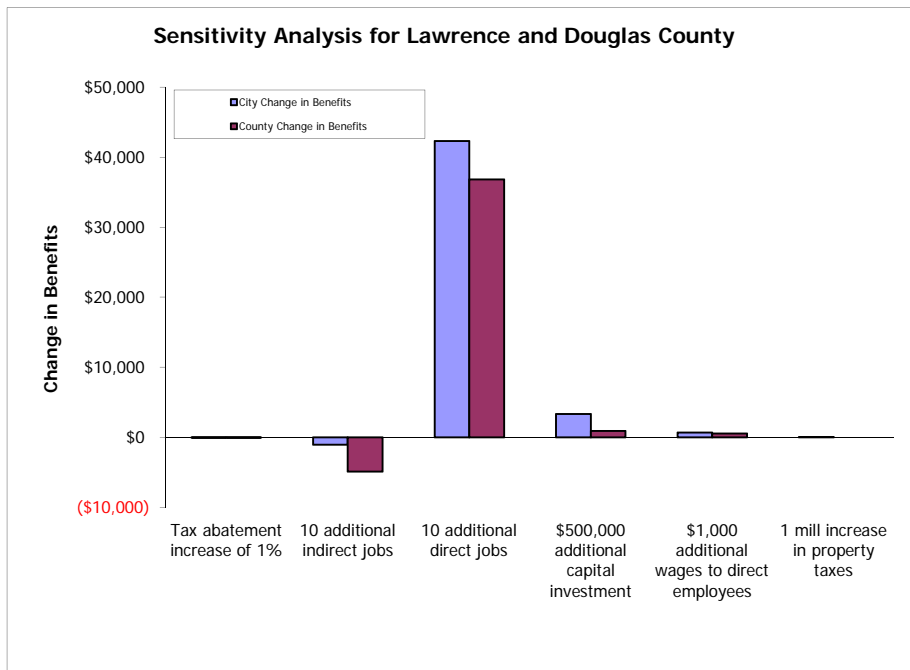
Graphs of Benefits and Costs by Time Period, with and Without Abatement



Cost-Benefit Model Results: 9 Del Apartments

Scenario: 15-Year, 95% NRA (all jurisdictions), 20Y Evaluation Period

Sensitivity Analysis



Cost-Benefit Model Results: 9 Del Apartments

Scenario: 15-Year, 95% NRA (all jurisdictions), 20Y Evaluation Period

APPENDIX 1: Annual Results Not Discounted

Lawrence: Annual Results (not discounted)					
Year	Revenues	Costs	Incentives	Net	Cumulative
Pre-Operation	\$0	\$0	\$0	\$0	\$0
1	\$71,732	(\$42,198)	(\$5,048)	\$24,486	\$24,486
2	\$22,892	(\$4,537)	(\$5,157)	\$13,199	\$37,685
3	\$23,181	(\$4,582)	(\$5,269)	\$13,330	\$51,015
4	\$23,473	(\$4,628)	(\$5,383)	\$13,463	\$64,477
5	\$23,770	(\$4,674)	(\$5,499)	\$13,597	\$78,074
6	\$24,072	(\$4,721)	(\$5,618)	\$13,732	\$91,806
7	\$23,422	(\$4,768)	(\$5,740)	\$12,914	\$104,720
8	\$23,401	(\$4,816)	(\$5,864)	\$12,721	\$117,440
9	\$23,703	(\$4,864)	(\$5,991)	\$12,847	\$130,288
10	\$24,009	(\$4,913)	(\$6,121)	\$12,975	\$143,263
11	\$24,321	(\$4,962)	(\$6,389)	\$12,969	\$156,233
12	\$24,636	(\$5,011)	(\$6,528)	\$13,097	\$169,330
13	\$24,957	(\$5,062)	(\$6,669)	\$13,226	\$182,556
14	\$25,282	(\$5,112)	(\$6,813)	\$13,357	\$195,913
15	\$25,613	(\$5,163)	\$0	\$20,449	\$216,362
16	\$25,950	(\$5,215)	\$0	\$20,735	\$237,098
17	\$26,293	(\$5,267)	\$0	\$21,026	\$258,123
18	\$26,640	(\$5,320)	\$0	\$21,321	\$279,444
19	\$26,993	(\$5,373)	\$0	\$21,620	\$301,064
20	\$27,352	(\$5,427)	\$0	\$21,925	\$322,989

Douglas County: Annual Results (not discounted)					
Year	Revenues	Costs	Incentives	Net	Cumulative
Pre-Operation	\$0	\$0	\$0	\$0	\$0
1	\$23,335	(\$20,773)	(\$6,099)	(\$3,537)	(\$3,537)
2	\$10,142	(\$1,908)	(\$6,231)	\$2,003	(\$1,534)
3	\$10,315	(\$1,927)	(\$6,366)	\$2,022	\$488
4	\$10,492	(\$1,946)	(\$6,504)	\$2,041	\$2,529
5	\$10,672	(\$1,965)	(\$6,645)	\$2,061	\$4,590
6	\$10,855	(\$1,985)	(\$6,789)	\$2,081	\$6,671
7	\$11,042	(\$2,005)	(\$6,936)	\$2,101	\$8,773
8	\$11,233	(\$2,025)	(\$7,086)	\$2,122	\$10,894
9	\$11,427	(\$2,045)	(\$7,240)	\$2,142	\$13,037
10	\$11,625	(\$2,066)	(\$7,396)	\$2,163	\$15,200
11	\$11,827	(\$2,086)	(\$7,557)	\$2,185	\$17,385
12	\$12,033	(\$2,107)	(\$7,720)	\$2,206	\$19,591
13	\$12,243	(\$2,128)	(\$7,887)	\$2,228	\$21,818
14	\$12,458	(\$2,149)	(\$8,058)	\$2,250	\$24,068
15	\$12,676	(\$2,171)	(\$8,233)	\$2,272	\$26,340
16	\$12,898	(\$2,193)	\$0	\$10,706	\$37,046
17	\$13,125	(\$2,215)	\$0	\$10,911	\$47,957
18	\$13,357	(\$2,237)	\$0	\$11,120	\$59,077
19	\$13,593	(\$2,259)	\$0	\$11,334	\$70,410
20	\$13,833	(\$2,282)	\$0	\$11,551	\$81,962

Cost-Benefit Model Results: 9 Del Apartments

Scenario: 15-Year, 95% NRA (all jurisdictions), 20Y Evaluation Period

APPENDIX 1: Annual Results Not Discounted (Continued)

USD 497: Annual Results (not discounted)					
Year	Revenues	Costs	Incentives	Net	Cumulative
Pre-Operation	\$0	\$0	\$0	\$0	\$0
1	\$16,335	(\$3,894)	(\$9,675)	\$2,766	\$2,766
2	\$16,610	(\$1,810)	(\$9,884)	\$4,915	\$7,681
3	\$16,890	(\$1,828)	(\$10,098)	\$4,963	\$12,644
4	\$17,175	(\$1,846)	(\$10,317)	\$5,012	\$17,656
5	\$17,466	(\$1,865)	(\$10,540)	\$5,061	\$22,716
6	\$17,762	(\$1,884)	(\$10,769)	\$5,110	\$27,826
7	\$18,065	(\$1,902)	(\$11,002)	\$5,160	\$32,987
8	\$18,373	(\$1,921)	(\$11,240)	\$5,211	\$38,198
9	\$18,687	(\$1,941)	(\$11,484)	\$5,262	\$43,460
10	\$19,006	(\$1,960)	(\$11,732)	\$5,314	\$48,774
11	\$19,333	(\$1,980)	(\$11,986)	\$5,367	\$54,141
12	\$19,665	(\$1,999)	(\$12,246)	\$5,420	\$59,560
13	\$20,004	(\$2,019)	(\$12,511)	\$5,473	\$65,034
14	\$20,349	(\$2,040)	(\$12,782)	\$5,528	\$70,561
15	\$20,702	(\$2,060)	(\$13,059)	\$5,583	\$76,144
16	\$21,061	(\$2,081)	\$0	\$18,980	\$95,124
17	\$21,426	(\$2,101)	\$0	\$19,325	\$114,449
18	\$21,800	(\$2,122)	\$0	\$19,677	\$134,126
19	\$22,180	(\$2,144)	\$0	\$20,036	\$154,162
20	\$22,568	(\$2,165)	\$0	\$20,403	\$174,565

State of Kansas: Annual Results (not discounted)					
Year	Revenues	Costs	Incentives	Net	Cumulative
Pre-Operation	\$0	\$0	\$0	\$0	\$0
1	\$222,662	\$0	(\$210)	\$222,452	\$222,452
2	\$22,434	\$0	(\$215)	\$22,219	\$244,671
3	\$22,661	\$0	(\$220)	\$22,441	\$267,112
4	\$22,890	\$0	(\$224)	\$22,666	\$289,778
5	\$23,121	\$0	(\$229)	\$22,892	\$312,670
6	\$23,355	\$0	(\$234)	\$23,121	\$335,791
7	\$23,591	\$0	(\$239)	\$23,352	\$359,143
8	\$23,830	\$0	(\$244)	\$23,586	\$382,729
9	\$24,071	\$0	(\$250)	\$23,822	\$406,551
10	\$24,315	\$0	(\$255)	\$24,060	\$430,611
11	\$24,561	\$0	(\$261)	\$24,300	\$454,911
12	\$24,810	\$0	(\$266)	\$24,543	\$479,454
13	\$25,061	\$0	(\$272)	\$24,789	\$504,243
14	\$25,315	\$0	(\$278)	\$25,037	\$529,280
15	\$25,571	\$0	(\$284)	\$25,287	\$554,567
16	\$25,830	\$0	\$0	\$25,830	\$580,397
17	\$26,092	\$0	\$0	\$26,092	\$606,489
18	\$26,356	\$0	\$0	\$26,356	\$632,845
19	\$26,623	\$0	\$0	\$26,623	\$659,468
20	\$26,893	\$0	\$0	\$26,893	\$686,361

Cost-Benefit Model Results: 9 Del Apartments

Scenario: 15-Year, 95% NRA (all jurisdictions), 20Y Evaluation Period

APPENDIX 2: Discounted Annual Results

Lawrence: Annual Results (discounted)					
Year	Revenues	Costs	Incentives	Net	Cumulative
Pre-Operation	\$0	\$0	(\$222,326)	(\$222,326)	(\$222,326)
1	\$67,517	(\$39,719)	(\$4,751)	\$23,047	(\$199,279)
2	\$20,281	(\$4,019)	(\$4,569)	\$11,693	(\$187,586)
3	\$19,330	(\$3,821)	(\$4,393)	\$11,115	(\$176,470)
4	\$18,423	(\$3,632)	(\$4,225)	\$10,566	(\$165,904)
5	\$17,560	(\$3,453)	(\$4,063)	\$10,044	(\$155,860)
6	\$16,738	(\$3,283)	(\$3,907)	\$9,548	(\$146,312)
7	\$15,329	(\$3,121)	(\$3,757)	\$8,451	(\$137,860)
8	\$14,415	(\$2,967)	(\$3,613)	\$7,836	(\$130,024)
9	\$13,743	(\$2,820)	(\$3,474)	\$7,449	(\$122,575)
10	\$13,103	(\$2,681)	(\$3,341)	\$7,081	(\$115,494)
11	\$12,492	(\$2,549)	(\$3,282)	\$6,662	(\$108,832)
12	\$11,911	(\$2,423)	(\$3,156)	\$6,332	(\$102,500)
13	\$11,357	(\$2,303)	(\$3,035)	\$6,019	(\$96,481)
14	\$10,829	(\$2,190)	(\$2,918)	\$5,721	(\$90,760)
15	\$10,326	(\$2,082)	\$0	\$8,244	(\$82,516)
16	\$9,847	(\$1,979)	\$0	\$7,868	(\$74,648)
17	\$9,391	(\$1,881)	\$0	\$7,509	(\$67,138)
18	\$8,956	(\$1,788)	\$0	\$7,167	(\$59,971)
19	\$8,541	(\$1,700)	\$0	\$6,841	(\$53,130)
20	\$8,146	(\$1,616)	\$0	\$6,530	(\$46,600)

Douglas County: Annual Results (discounted)					
Year	Revenues	Costs	Incentives	Net	Cumulative
Pre-Operation	\$0	\$0	\$0	\$0	\$0
1	\$21,964	(\$19,552)	(\$5,741)	(\$3,329)	(\$3,329)
2	\$8,985	(\$1,690)	(\$5,521)	\$1,774	(\$1,555)
3	\$8,601	(\$1,607)	(\$5,309)	\$1,686	\$131
4	\$8,234	(\$1,527)	(\$5,105)	\$1,602	\$1,733
5	\$7,883	(\$1,452)	(\$4,909)	\$1,523	\$3,256
6	\$7,548	(\$1,380)	(\$4,721)	\$1,447	\$4,703
7	\$7,227	(\$1,312)	(\$4,539)	\$1,375	\$6,078
8	\$6,919	(\$1,247)	(\$4,365)	\$1,307	\$7,385
9	\$6,626	(\$1,186)	(\$4,198)	\$1,242	\$8,627
10	\$6,344	(\$1,127)	(\$4,036)	\$1,181	\$9,808
11	\$6,075	(\$1,072)	(\$3,882)	\$1,122	\$10,930
12	\$5,818	(\$1,019)	(\$3,733)	\$1,067	\$11,997
13	\$5,572	(\$968)	(\$3,589)	\$1,014	\$13,010
14	\$5,336	(\$921)	(\$3,452)	\$964	\$13,974
15	\$5,110	(\$875)	(\$3,319)	\$916	\$14,890
16	\$4,894	(\$832)	\$0	\$4,062	\$18,952
17	\$4,688	(\$791)	\$0	\$3,897	\$22,849
18	\$4,490	(\$752)	\$0	\$3,738	\$26,588
19	\$4,301	(\$715)	\$0	\$3,586	\$30,174
20	\$4,120	(\$680)	\$0	\$3,440	\$33,614

Cost-Benefit Model Results: 9 Del Apartments

Scenario: 15-Year, 95% NRA (all jurisdictions), 20Y Evaluation Period

APPENDIX 2: Discounted Annual Results (Continued)

USD 497: Annual Results (discounted)					
Year	Revenues	Costs	Incentives	Net	Cumulative
Pre-Operation	\$0	\$0	\$0	\$0	\$0
1	\$15,375	(\$3,665)	(\$9,106)	\$2,603	\$2,603
2	\$14,715	(\$1,604)	(\$8,757)	\$4,355	\$6,958
3	\$14,084	(\$1,524)	(\$8,421)	\$4,139	\$11,096
4	\$13,480	(\$1,449)	(\$8,097)	\$3,933	\$15,030
5	\$12,903	(\$1,378)	(\$7,787)	\$3,738	\$18,768
6	\$12,351	(\$1,310)	(\$7,488)	\$3,553	\$22,321
7	\$11,823	(\$1,245)	(\$7,200)	\$3,377	\$25,699
8	\$11,318	(\$1,184)	(\$6,924)	\$3,210	\$28,909
9	\$10,835	(\$1,125)	(\$6,658)	\$3,051	\$31,960
10	\$10,372	(\$1,070)	(\$6,403)	\$2,900	\$34,860
11	\$9,930	(\$1,017)	(\$6,157)	\$2,757	\$37,616
12	\$9,508	(\$967)	(\$5,921)	\$2,620	\$40,237
13	\$9,103	(\$919)	(\$5,693)	\$2,491	\$42,727
14	\$8,716	(\$874)	(\$5,475)	\$2,368	\$45,095
15	\$8,346	(\$831)	(\$5,265)	\$2,251	\$47,346
16	\$7,992	(\$790)	\$0	\$7,202	\$54,548
17	\$7,653	(\$751)	\$0	\$6,902	\$61,450
18	\$7,328	(\$714)	\$0	\$6,615	\$68,065
19	\$7,018	(\$678)	\$0	\$6,340	\$74,404
20	\$6,721	(\$645)	\$0	\$6,076	\$80,481

State of Kansas: Annual Results (discounted)					
Year	Revenues	Costs	Incentives	Net	Cumulative
Pre-Operation	\$0	\$0	\$0	\$0	\$0
1	\$209,577	\$0	(\$198)	\$209,379	\$209,379
2	\$19,875	\$0	(\$190)	\$19,684	\$229,064
3	\$18,896	\$0	(\$183)	\$18,713	\$247,776
4	\$17,965	\$0	(\$176)	\$17,789	\$265,566
5	\$17,081	\$0	(\$169)	\$16,911	\$282,477
6	\$16,239	\$0	(\$163)	\$16,077	\$298,554
7	\$15,440	\$0	(\$157)	\$15,283	\$313,837
8	\$14,679	\$0	(\$151)	\$14,529	\$328,366
9	\$13,957	\$0	(\$145)	\$13,812	\$342,178
10	\$13,269	\$0	(\$139)	\$13,130	\$355,308
11	\$12,616	\$0	(\$134)	\$12,482	\$367,790
12	\$11,995	\$0	(\$129)	\$11,866	\$379,656
13	\$11,404	\$0	(\$124)	\$11,281	\$390,937
14	\$10,843	\$0	(\$119)	\$10,724	\$401,661
15	\$10,309	\$0	(\$114)	\$10,195	\$411,855
16	\$9,801	\$0	\$0	\$9,801	\$421,657
17	\$9,319	\$0	\$0	\$9,319	\$430,976
18	\$8,860	\$0	\$0	\$8,860	\$439,836
19	\$8,424	\$0	\$0	\$8,424	\$448,260
20	\$8,009	\$0	\$0	\$8,009	\$456,269

Addendum C: Cost-Benefit Model Limitations

This analysis utilized the City of Lawrence's Cost-Benefit Model. The City's cost-benefit model provides a framework for estimating the fiscal impacts of a project, assuming it were in existence and in use today, through the examination of costs and benefits to various taxing jurisdictions (City, County, School District, State).

The Cost-Benefit model is one tool that government decision makers can incorporate in their decision-making process. However, as with most models, it does have limitations, including

- **Does not consider intangible effects**

The model does not speak to the effects of intangible costs or benefits resulting from the project, since intangible effects are difficult, if not impossible to assign a dollar value.

- **Does not consider private or market effects**

The model only seeks to quantify the cumulative effect on public revenues and expenses and not the effect on private interests that may be affected by the project. Thus, the model only considers public, or governmental, costs and revenues.

Logic would dictate that any development may also have a financial impact on the private sector. For example, if one were analyzing a proposal to build a new baseball stadium, the new tax revenue from the building and property – as well as the costs for providing additional public security and emergency services (police, fire, ambulance, etc.) – would factor into the analysis. However, the effect of the stadium on neighboring property values or the impact on business at local restaurants would not be accounted for within the model.

The cost-benefit model does not consider market impacts of the project, including the amount of market share the project captures from existing businesses or the amount of new revenues brought into the community as a direct result of the project. A market study can be employed to study these effects.

- **The model considers direct effect economic impacts**

Multipliers used within the model are applied to direct effects such as the number of jobs created by the project and associated wages. The model does not attempt to measure all indirect effects such as capturing visitor spending associated with the project, nor the economic effects of that spending as outside dollars circulate through the community over time.

- **Model assumes current effects**

The model is run on assumptions and estimations provided at the time of analysis. The current effects aspect of the model means that the analysis provides a means of estimating the financial impact of a development as if the project were in existence and in use today, given estimated costs and assumptions that are usually defined prior to the project being constructed or operational. Given that it may be difficult to predict future costs and benefits accurately, there is an implicit assumption that future changes affect both revenues and costs.

In addition, the model does not reflect any changes in economic adjustments over time due to macroeconomic conditions, regional industrial structure, public policies, and technological advances.

- **Does not consider fiscal impacts of temporary or part-time employment**

Employment analyzed is for full-time, permanent positions related to the project and does not consider temporary jobs created due to project construction or part-time positions created during project operation.

Other considerations for decision making:

It is important to remember that there could be several important considerations that fall outside of the realm of municipal budgets. For example, fiscal impacts of development on abutters, local businesses and natural resources are not accounted for in the cost-benefit model.

The model also does not consider issues of equity and social responsibility. For instance, while it may be easy to identify the fiscal downsides of low-income housing on municipal and school budgets, municipalities may also bear some level of responsibility for ensuring access to affordable housing, as is dictated by the Fair Housing Act. Finally, communities maintain certain values that cannot be assigned a price tag, such as the intrinsic value of nature, cultural heritage, and aesthetics.

Depending on the project, it may be prudent to employ other analytical models or studies (e.g. economic impact analysis; pro forma/but-for analysis; trade area analysis; tourism impact, market demand and other studies; etc.) in conjunction with the cost-benefit model, as well as non-quantifiable elements, to gain insight into the project's overall value to the community.

August 19, 2014

Lawrence City Commission
City Hall
6 East 6th Street
Lawrence, KS 66044



Mr. Mayor and Distinguished Commissioners:

We are seeking a Neighborhood Revitalization Area (NRA) designation from the City of Lawrence for the 9 Del Lofts Project to cover the financing gap that currently exists.

The “But For” analysis very clearly concludes that our request is more than justified. State and federal historic tax credits are often bundled with other incentives to bridge the gap in fixed-income housing projects, but the new construction requires 9 Del ownership to look elsewhere to meet financing needs. Further, the 15-year term is not an arbitrary number, but is tied directly to the compliance period that Section 42 properties require to meet regulations.

This development will help to satisfy the growing demand for affordable housing in Lawrence. Affordable housing and office space is the cornerstone of every development in the Warehouse Arts District so as to not alienate those that value it so much. 9 Del Lofts is the next phase of this mission, and the nearly 200-person waiting list speaks to the number of people that favor the lifestyle 9 Del Lofts will offer in an area that showcases inclusion, culture and vibrancy.

Further, the Cider Gallery, Poehler Lofts, 720 Annex building and every other vital building to the W.A.D. has helped to directly recruit and retain residents and employees that would be working outside of Lawrence if this area remained as it was ten years ago. Employees of mine are relocating to Lawrence currently, and I have heard from dozens of others that moved to Lawrence to specifically work in the Cider Gallery offices, live at the Poehler Lofts, or join the artist community currently exists in the burgeoning neighborhood.

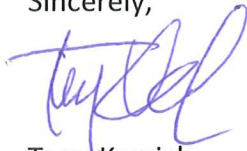
By handicapping the development that bookends the 9th Street corridor, a corridor that will quickly become a destination in the Midwest upon implementation of the ArtPlace Grant, a decision to reject this request would only slow down the efforts of so many to date. The architectural design of the building was designed to enhance the corridor, and it’s positioning on the eastern terminus of the 9th street corridor makes it all the more vital to the final product.

The above intangibles are necessary to illustrate to properly tell the story of 9 Del Lofts. I am convinced that the inherent value in progressing the economic and cultural efforts

in the Warehouse Arts District through the support of 9 Del Lofts will allow the City of Lawrence to see a return on their investment for decades to come. Many of the project types on the horizon do not require municipality incentives, but rather will help to attract more outside investment into the W.A.D.

Our construction efforts will move forward at the site of 9 Del Lofts, as we are happy to have the support of the City of Lawrence Staff in recommending our request for approval.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tony Krsnich', written in a cursive style.

Tony Krsnich

City of Lawrence, Kansas Application for Economic Development Support/Incentives



The information on this form will be used by the City to consider your request for economic development support and may also be used to prepare a cost-benefit or other analysis of the project. Information provided on this form will be available for public viewing and will be part of compliance benchmarks, if approved for economic development support. Prior to submission, applicant may wish to seek technical assistance from City Staff, the Chamber of Commerce, the Small Business Development Center, or others to address questions and ensure the application is complete.

Please provide data in the cells below. Applicant is encouraged to attach additional pages as necessary to fully explain and support the answers to each question. Note anything additional you wish the City to take into consideration for your request and provide supporting documentation.

Applicant Contact Information	
Name:	Tony Krsnich
Title:	Member
Organization:	9 Del Lofts
Address 1:	832 Pennsylvania, Lawrence, KS 66044 (future office 6/1/14)
Address 2:	SE Corner of 9 th and Delaware (future 9 Del Lofts site)
Phone:	(913)904-6747
Email:	tonyk@landmarkigllc.com
Fax:	

Application Tips:

Enter contact information for the company representative completing this application.

Economic Development Support Requested		
City Incentives	Amount	Term (in years)
Tax Increment Financing District (TIF)		
Transportation Development District (TDD)		
Neighborhood Revitalization Area (NRA)	95%	15
Tax Abatement (TA)		
Industrial Revenue Bonds (IRBs)		
Community Improvement District (CID)		
Other (Please Describe):		

Application Tips:

Applicable Terms:

- TIF: Up to 20 years
- TDD: Up to 22 years
- TA: Up to 10 years
- CID: Up to 22 years

IRBs: If applying for IRBs, please enter the amount that will cover all construction costs for the project. Enter "n/a" for term.

Examples: City provided water main along ABC Street from 1st Street to 2nd Street, employee training grant for 5 years at \$500/new employee, etc.

Project Information	
Name of Company Seeking Incentive(s):	9 Del Lofts, LLC
Project Type (check one):	Expansion:
	New Facility: X
Company Type (check one):	Existing Local Company:
	Out-of-Area Company Locating Locally: X
Current Company Address:	140 Walnut, KCMO, 64108
Location of Proposed New Facility/Expansion Project:	SE Corner of 9 th and Delaware
Describe the Company's Plans to Develop or Expand in the Community: 9 Del Lofts will be a 43 unit new construction artist loft development consisting of 34 rent restricted units and 9 market rate units.	
Operations Start Date at the Expansion or New Facility:	5/1/15
Industry NAICS # for the New or Expanded Facility (6-digit code):	
Describe the Primary Industry the New or Expanded Facility Will Support: 9 Del will serve as a quality affordable mixed-income development which will further expand and solidify the private/public investment in the Warehouse Arts District.	

Application Tips:

Company's Plans: e.g. ABC manufacturing is the nation's largest processors of wind turbine components. The company plans to construct a new 250,000 sf manufacturing plant in Commerce Park, initially employing 150 with an average annual salary of \$35,000 each. Another 50 employees will be hired in Year 5 and 40 in year 7. The firm expects to initially invest \$5 million in land and buildings and anticipates a 50,000 sf, \$2 million expansion in Year 5 and another 50,000 sf expansion in Year 7.

Link for NAICS code lookup:

<http://www.naics.com/search.htm>

Capital Investment Information for New Facility or Expansion			
Estimated Size of New Facility (square feet):	43,000		
Estimated Size of Land for New Facility (acres):	18,000 s.f.		
<i>For the new or expanded facility, enter the amount the company anticipates spending for initial and subsequent investments in land, buildings and improvements (do not include machinery or equipment):</i>			
Year	Buildings & Other Real Property Improvements	Land	Total
1	\$6,950,000	\$250,000	\$7,200,000
2			
3			
4			
5			
6			
7			
8			
9			
10			
Total			
Will land be leased from the City or County (Y/N):	N		
If yes, Monthly Lease Rate for Land:			

Application Tips:

If expansion, only include information on size and values of the new facility, not existing facility.

If land is currently owned, enter current land value from Douglas County property tax records. Otherwise, enter the market value amount the company will pay for land.

Local Utility Expenses		
Utility	Current Local Monthly Expenses	Projected Local Monthly Expenses at New Facility
Gas	0	1,000
Electricity	0	7,000
Phone	0	1,000
Cable	0	4,000
Operating Expenditures		
For Expansion Projects, Current Annual Operating Expenses at Existing Facility:		
Annual Operating Expenses after Expansion/Relocation:		
% of Additional Operating Expenses Anticipated to be Spent Locally:		
Exports		
% of Revenues at the new Lawrence Facility Anticipated to Come from Non-Local Sources.		

Application Tips:

Current Local Monthly Expenses: Enter 0 for an out-of-area relocation or if project involves a separate, new facility.

Projected Local Monthly Expenses: Enter expense amounts anticipated at the new facility.

Existing Facility Annual Operating Expenses: Enter 0 if project is being relocated from out-of-area or if project involves a separate, new facility.

% Additional Operating Expenses Spent Locally: Enter % of operating expenses anticipated to be spent in Lawrence/Douglas County as a result of the project.

Exports: Enter % of revenues (from the sale of goods or services) anticipated to be generated from sources outside of Lawrence/Douglas County.

IRB and Tax Abatement Request Information	
If you are seeking an IRB, please list the firm that will be receiving the IRB:	
Will your firm be leasing the building or the land in your expansion or newly constructed facility? (Y/N)	
If you are leasing the building or land, and you are seeking a tax abatement <u>without</u> an IRB, please list the tenant and owner and the financial relationship between tenant and owner.	
Total Cost of <u>Initial</u> Construction for the Project:	
Estimated Cost of Construction Materials for <u>Initial</u> Construction:	
Anticipated Annual Gross Profits:	

Application Tips:

Anticipated Annual Gross Profits: If you are seeking a tax abatement or an IRB, please provide an estimate of anticipated Annual Gross Profits (\$). Note: For expansions, please enter anticipated gross annual profits from expansion.

This question helps estimate the impact of your incentive request on the State of Kansas, which is required for all tax abatements and IRBs.

Environmental Information	
Will the new facility meet Energy STAR criteria? (Y/N)	Y
Will the project seek or be designed to LEED certification standards? (Y/N)	N
<i>If yes, please indicate level:</i>	Certification
	Silver
	Gold
	Platinum
<p>Please describe environmentally friendly features of the project: The project will consist of solar panels and the entire project will be Energy Star rated. The project will also spend additional monies on insulation, calking, green electronic hand dryers which eliminate paper waste, and will use leftover contingency money to further reduce its carbon footprint.</p>	
<p>Please describe anticipated positive environmental impacts resulting from the project: This project, as with all the projects in the Warehouse Arts District, will incorporate landscaping plans into its budget. The sister project, Poehler Lofts, has been named one of the greenest historic buildings in the Midwest. Similarly, the design of 9 Del Lofts will incorporate many of the same aspects while having the additional benefit of new construction sealing and insulation.</p>	
<p>Please describe anticipated negative environmental impacts and planned remediation efforts: We do not anticipate negative impacts. Essentially, we are taking an underutilized low land/swamp area with no signs of significant vegetation nor habitat and building and energy efficient apartment incorporating trees and native plants.</p>	

Application Tips:

Environmentally Friendly Features: e.g. Low-energy, led lighting used throughout, pedestrian friendly elements including green space, bike paths, water saving native plantings used in landscapes, etc.

Additional Community Benefits

Describe Other Local Economic Benefits Resulting From Project:

The Poehler Building set a national record leasing 49 units within 11 hours of opening. It was the recipient of the 2013 National Historical Project of the year from Novogradac, the authority in tax credit development. Poehler has dozens of people on its waiting list in need/want of a nice, fun, artistic place to live. 9 Del Lofts will help fill this need. Further and as with the Poehler, it will serve as a catalyst to help with the growth of the Warehouse Arts District and protect the public and private investment which has already been made in the area. A good example of this is Decade, the areas new coffee shop.

Describe Other Quality of Life Benefits Resulting From Project:

The Warehouse Arts District is unlike any other area of Lawrence with creativity and acceptance being a common thread. It provides affordable living, office, and art studios. It also provides market rate options so everyone can be a part of it. This is unique and serves Lawrence and its creative culture in a positive way.

Application Tips:

Local Economic Benefits: Include additional benefits not directly related to project capital investment and direct employment (e.g. Project attracting overnight visitors that will spend on lodging, entertainment, food and beverages, shopping, etc.)

Quality of Life Benefits: Include tangible and intangible benefits; such as how company is/will be a good corporate citizen, community involvement, local philanthropy efforts, and how project/company will contribute to local well being of citizens.

Employment Information									
Construction Employment for New Facility or Expansion									
# Full-Time, Construction Jobs:								3/200	
Average Annual Salary for Full-Time, Construction Workers (during construction period):								\$55k (both)	
Construction Period (months):									
For Expansion, # of Full-Time Employees Currently Working in Lawrence:									
New Employment Resulting from Project									
Net New Jobs (full-time, permanent)	Year	# Jobs	Avg Annual Salary	# Jobs	Avg Annual Salary	# Jobs	Avg Annual Salary	# Jobs	Avg Annual Salary
	1	2	50000						
	2								
	3								
	4								
	5								
	6								
	7								
	8								
	9								
	10								
Total									
Anticipated # of Employees to Be Relocated Locally as a Result of the Project									
# of Net New Full-Time Employees Anticipated to be Relocated From Outside of Kansas:								1	
# of Net New Full-Time Employees Anticipated to be Relocated from Outside of Lawrence/Douglas County:								1	
# of Local, Full-Time Jobs Anticipated At End of Incentives Period:									

Application Tips:

Enter 0 if project is new or relocation.

Enter information by major job category (e.g. administrative, support, professional, executive, production, etc.)

For a local expansion, Net New Jobs = number of additional employees to be hired each year, excluding employees that are already employed in Lawrence.)

Average Annual Salary: Only provide wage information. Do not include the value of non-wage benefits such as insurance and time off.

Jobs at End of Incentives Period: Enter total number of full-time employees (existing & new) anticipated to be employed at the new facility over the term of incentives (e.g. If applying for a 10-year tax abatement, this would be the total number of local Existing (if expanding) + Net New full-time jobs anticipated at the end of that 10-year period.)

Employee Benefits	
Description	After Expansion or Relocation
% of Employees with Company Provided Health Care Insurance	100%
% of Health Care Premium Covered by Company	75%
% of Employees with Company Provided Retirement Program	100%
Will You Provide Job Training for Employees? (Y/N)	Y
<i>If Yes, Please Describe:</i>	
What is the Lowest Hourly Wage Offered to New Employees?	\$15
What Percentage of Your New Employees Will Receive this Wage?	100%
Will You Provide Additional Benefits to Employees? (Y/N)	
<i>If Yes, Please Describe:</i>	

Disclosures	
Company Form of Organization:	
Company Principals: Tenants to Homeowners is the Sole General Partner. Flint Hills Development Group, LLC will be the developer and Flint Hills Management Group, LLC will be the property manager.	
List all subsidiaries or affiliates and details of ownership:	
Subsidiary :	
Principals:	
Has Company or any of its Directors/Officers been involved in or is the Company presently involved in any type of litigation?	N
Has the Company, developer or any affiliated party declared bankruptcy?	N
Has the Company, developer or any affiliated party defaulted on a real estate obligation?	N
Has the Company, developer or any affiliated party been the defendant in any legal suit or action?	N
Has the Company, developer or any affiliated party had judgments recorded against them?	N
<i>If the answer to any of the above question is yes, please explain:</i>	

Note: Applicant may be required to provide additional financial information for the project and company.

When you have completed this form to your satisfaction, please sign and send, along with applicable application fee(s) to:

City of Lawrence
Attn: Economic Development Coordinator
6 East 6th Street
Lawrence, KS 66044
Fax: 785-832-3405
Email: bcano@lawrenceks.org

Application Fees	
Tax Abatement	\$500
Industrial Revenue Bonds (IRB)	\$1,000
Community improvement District (CID)	\$2,500
Neighborhood Revitalization Area (NRA)	n/a
Transportation Development District (TDD)	n/a
Tax Increment Financing (TIF)	n/a
Other	n/a

I hereby certify that the foregoing and attached information contained is true and correct, to the best of my knowledge:

Applicant/Representative: Tony Krznich
(Please Print)

Signature:  Date: 8.19.14

RESOLUTION NO. 6954

A RESOLUTION ESTABLISHING A POLICY OF THE CITY OF LAWRENCE, KANSAS RELATING TO NEIGHBORHOOD REVITALIZATION AREAS.

WHEREAS, the City of Lawrence, Kansas (the "City") is committed to the high quality and balanced growth and development of the community while preserving the City's unique character and broadening and diversifying the tax base; and

WHEREAS, the economic development goals of the City include the expansion of existing businesses, development of new businesses, economic development activities which are environmentally sound, diversification of the economy, quality in-fill development, historic preservation, and the creation of quality jobs; and

WHEREAS, neighborhood revitalization areas are an economic development tool established by K.S.A. 12-17,114 et seq. (the "Neighborhood Revitalization Act") which can assist with spurring reinvestment and revitalization of properties which can benefit a neighborhood and the general public; and

WHEREAS, the City finds it in the best interest of the public to establish certain policies and guidelines for the consideration of requests to utilize the Neighborhood Revitalization Act ("NRA") within the City of Lawrence.

NOW, THEREFORE, THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS DOES HEREBY RESOLVE;

SECTION ONE: This policy shall be entitled the Neighborhood Revitalization Act Policy of the City of Lawrence.

SECTION TWO: POLICY STATEMENT: It is the policy of the City to consider the establishment of Neighborhood Revitalization areas in order to promote reinvestment and revitalization of properties which in turn have a positive economic effect upon a neighborhood and the City in general. An applicant may request the City consider the establishment of a Neighborhood Revitalization area under the NRA either for a specific property, group of properties or neighborhood area. In considering the establishment of an NRA, the Governing Body shall consider the criteria outlined in Section Three. In determining the amount of a rebate, the Governing Body may balance the desirability of the project versus the amount and duration of the rebate and the requirements set forth in Section Four. It is the policy of the City to only consider the establishment of Neighborhood Revitalization areas which yield a benefit/cost ratio of at least 1.25.

SECTION THREE: CRITERIA:

1. ELIGIBLE AREAS: Eligible areas may include a defined geographic area which encompasses more than one property, or it may be a single property/lot.

2. STATUTORY FINDINGS AND OTHER CRITERIA:

A. STATUTORY CRITERIA. It shall be the policy of the City to create a Neighborhood Revitalization area, if, in the opinion of the Governing Body, the rehabilitation, conservation or redevelopment of the area is necessary to protect the public health, safety or welfare of the residents of the City of Lawrence, it is in the best interest of the City to do so, and if, in the opinion of the Governing Body, one of the following findings, set forth in K.S.A. 12-17,115 can be made:

1. An area in which there is a predominance of buildings or improvements which by reason of dilapidation, deterioration, obsolescence, inadequate provision of ventilation, light, air or open spaces, high density of population and overcrowding, the existence of conditions which endanger life or property by fire and other causes or a combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and which is detrimental to the public health, safety or welfare;
2. an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, defective or inadequate streets, incompatible land use relationships, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the actual value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or a combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is detrimental to the public health, safety or welfare in its present condition and use; or
3. an area in which there is a predominance of buildings or improvements which by reason of age, history, architecture or significance should be preserved or restored to productive use.

B. OTHER CRITERIA. Additionally, the Governing Body will consider whether a project meets the Policy Statement outlined in Section Two, and the project meets a majority of the following criteria when considering the establishment of a Neighborhood Revitalization area:

1. the opportunity to promote redevelopment activities which enhance Downtown Lawrence;
2. the opportunity to promote redevelopment activities for properties which have been vacant or significantly underutilized;
3. the opportunity to attract unique retail and/or mixed use development which will enhance the economic climate of the City and diversify the economic base;
4. the opportunity to enhance the vitality of a neighborhood within the City as supported by the City's Comprehensive Plan and/or other sector planning documents;
5. the opportunity to enhance the community's sustainability by supporting projects which embrace energy efficiency, multi-modal transportation options, or other elements of sustainable design.

SECTION FOUR: AMOUNT OF REBATE:

As a standard practice, the City will not provide a rebate amount in excess of 50% of the incremental property taxes and will not establish an NRA for a period of time longer than 10 years. The City may consider a greater rebate and/or a longer duration if sufficiently justified in the “but for” analysis required by Section Five. The determination of the rebate amount and duration of the NRA is the sole discretion of the Governing Body.

SECTION FIVE: PROCESS:

1. An applicant wishing to request that the City to create a Neighborhood Revitalization Area in the City of Lawrence shall submit a request to the City. The request shall include information that would be required for a revitalization plan. Such requirements are set forth in K.S.A. 12-17,117. The applicant shall also submit a “but for” analysis to the City demonstrating the need for the NRA and the purpose for which the NRA revenue will be used. The analysis should support that “but for” the NRA, the project will be unable to proceed. The applicant shall provide City Staff with pro forma cash flow analysis and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources will not fund the entire cost of the project and still provide the applicant a reasonable market rate of return on investment.

The applicant shall furnish such additional information as requested by the City in order to clarify the request or to assist staff or the Governing Body with the evaluation of the request.

2. The Governing Body shall receive the request and determine whether to consider the request or deny the request. If the Governing Body wishes to consider the request, the request shall be referred to the City’s Public Incentive Review Committee for review and a recommendation. Staff will perform a benefit/cost analysis on the project. The Governing Body may also set a date for a public hearing to consider the establishment of a revitalization area and a revitalization plan.

3. Douglas County and USD 497 are also important parties related to a NRA request. When an NRA is considered, the City and the applicant will work with Douglas County and USD 497 to seek concurrence from these entities regarding the establishment of an NRA.

4. The Governing Body will determine whether one of the findings set forth in Section Three can be made regarding the request. Additionally, the Governing Body shall consider the other criteria outlined in Section Three.

5. The Governing Body shall hold a public hearing, after the required statutory notice is provided, and consider adoption of the revitalization plan to establish the revitalization area.

6. The City will require a performance agreement with the property owner to require adherence to the adopted Neighborhood Revitalization Plan.

7. The merits of the proposal under this policy shall guide the decision on the application without regard to the applicant.

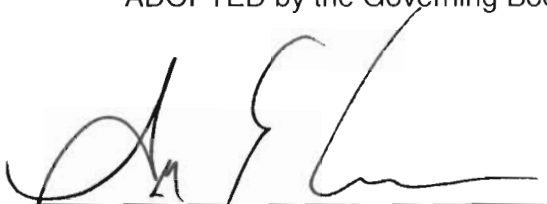
SECTION SIX: PUBLIC INCENTIVES REVIEW COMMITTEE AND GOVERNING BODY ANNUAL REVIEW OF THIS POLICY: Annually, the Public Incentives Review Committee and the Governing Body shall review this policy.

SECTION SEVEN: AUTHORITY OF GOVERNING BODY: The Governing Body reserves the right to deviate from any policy, but not any procedure set forth in state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City. Additionally, the Governing Body, by its inherent authority, reserves the right to reject any proposal or petition for creation of a NRA at any time in the review process when it considers such action to be in the best interests of the City.

SECTION EIGHT: REPEAL OF RESOLUTION 6921. Resolution 6921 is hereby repealed.

SECTION NINE: EFFECTIVE DATE: This Resolution shall take effect immediately.

ADOPTED by the Governing Body this 25th day of October, 2011.



Aron E. Cromwell, Mayor

ATTEST:



Jonathan M. Douglass, City Clerk

DRAFT

City of Lawrence Neighborhood Revitalization Plan and Program: 9 Del Lofts, 900 Delaware Street

Definition:

Area - used interchangeably with "Property", referring to the property located at 900 Delaware Street, Lawrence, Douglas County, Kansas

Plan:

Tony Krsnich of 9 Del Lofts, LLC, (project Developer/Owner) is proposing the development of vacant land located at 900 Delaware Street into a multi-family housing complex. Located on the southeast corner of 9th Street and Delaware Street, adjacent to the East Lawrence Industrial Historic District, in Lawrence, Kansas, the project calls for approximately 43 apartment units: 18, one-bedroom units (five at market rate); 16, two-bedroom units (three at market rate); and four, three-bedroom units (one at market rate). Mr. Krsnich estimates the costs for purchasing and redeveloping the property to be \$7.2 million. Mr. Krsnich has requested a Neighborhood Revitalization Act (NRA) be placed on the property. The following is the Neighborhood Revitalization Plan ("Plan") for this area.

9 Del Lofts is a mixed-income development that will provide affordable and market rate housing in East Lawrence. Mr. Krsnich believes these plans complement the creative nature of the East Lawrence neighborhood and enhance the vitality of a neighborhood within the City as supported by the City's Comprehensive Plans. The project will have solar panels and be Energy Star rated, further enhancing community sustainability. 9 Del Lofts will offer quality, affordable, mixed-income housing to further expand and solidify the private/public investment in the East Lawrence Industrial Historic District also known as the "Warehouse Arts District".

This Plan is required by the Kansas Neighborhood Revitalization Act (the "Act") (see Appendix 1) in order to create a neighborhood revitalization area intended to encourage both reinvestment and improvements to a specific area or Property of the community. The governing body of the City of Lawrence (the "Governing Body" has determined that the a "neighborhood revitalization area" as described in K.S.A. 12-17,115(c) (2):

An area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, defective or inadequate streets, incompatible land use relationships, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the actual value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or a combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is

detrimental to the public health, safety or welfare in its present condition and use.

The Governing Body has also determined that the rehabilitation, conservation, and redevelopment of the Property is necessary to protect the public health, safety and welfare of the residents of the City of Lawrence, as required by K.S.A. 12-17,116.

In accordance with K.S.A. 12-17,117, the components of this Plan include:

1. A general description of the Plan's purpose;
2. A legal description and map of the Property (Area);
3. The existing assessed valuation of the real estate comprising the Property;
4. A list of the name and address of the owner of record within the Property;
5. The existing zoning classifications and Property boundaries and the existing and proposed land uses of the Property;
6. The proposals for improving or expanding municipal services within the Property;
7. The term of the Plan;
8. The criteria used to determine what property is eligible for revitalization, including a statement specifying that property, existing buildings, and new construction is eligible for revitalization;
9. The contents, procedure and standard of review for an application for a rebate of property tax increments;
10. A statement specifying the maximum amount and years of eligibility for a rebate of property tax increments; and
11. A section regarding the establishment of a Neighborhood Revitalization Fund.

Section 1: Purpose

Establish a property revitalization tax rebate program (the "Program" or "Revitalization") to provide incentives for property owners to build public and private improvements. The Program is intended to encourage the development of 9 Del Lofts at 900 Delaware Street.

The Program will provide a valuable incentive to private developers/property owners to redevelop the Area and will accomplish the following city goals including, but not limited to, the following:

- The opportunity to promote redevelopment activities which enhance downtown
- The opportunity to promote redevelopment activities for properties which have been vacant or significantly underutilized on site around Lawrence
- The opportunity to enhance the community's sustainability by supporting projects which embrace energy efficiency, multi-modal transportation options, or other elements of sustainable design
- The opportunity to enhance the vitality of a neighborhood within the City as supported by the City's Comprehensive Plan and/or other sector planning documents

For Purposes of this Plan, the term “improvements” shall also include the private and public infrastructure for developing the Property to achieve the foregoing goals.

Section 2: Legal Description & Map of Neighborhood Revitalization Property

The Property shall include the Area described herein:

9 DEL LOFTS ADD LT 1 (PLAT 2014).

As depicted below:



Section 3: Value of Real Properties

The appraised value of the real estate in the Area is:

2014 Appraised Values

Year	Appraised		
	Land	Improvements	Total
900 Delaware (2014)	\$78,530	\$0	\$78,530

The assessed value of the real estate in the Area is:

2014 Assessed Values

Year	Assessed		
	Land	Improvements	Total
900 Delaware (2014)	\$9,424	\$0	\$9,424

Section 4: Owner of Record of the Lots

Current Owner:
 Provident Family LP
 P.O. Box 368
 Lawrence, KS 66044

Future owner anticipated to be 9 Del Lofts GP, LLC to complete project.

Section 5: Existing Zoning Classifications and Property Boundaries; Existing and Proposed Land Uses

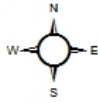
The area has already been rezoned to RM32- PD. Please see the Existing Zoning Map and Existing Land Use Map below.

Existing Zoning Map.

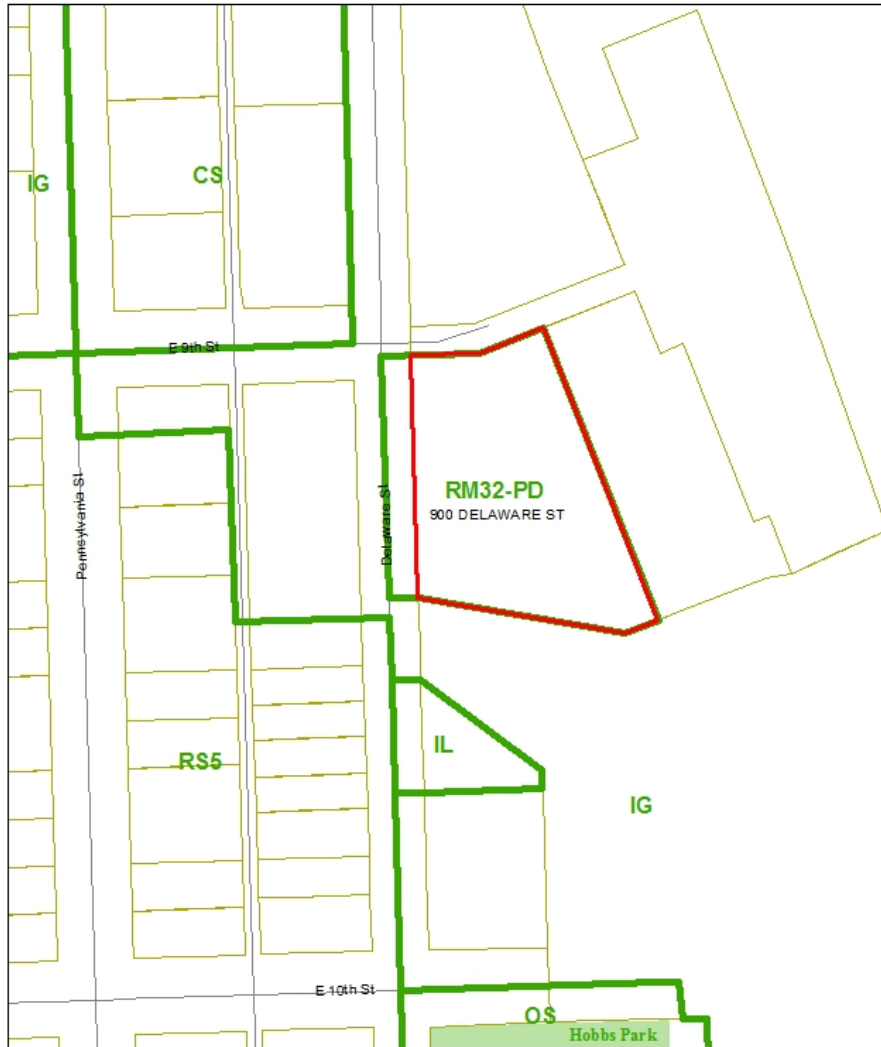
900 Delaware Street

N.R.A. Zoning

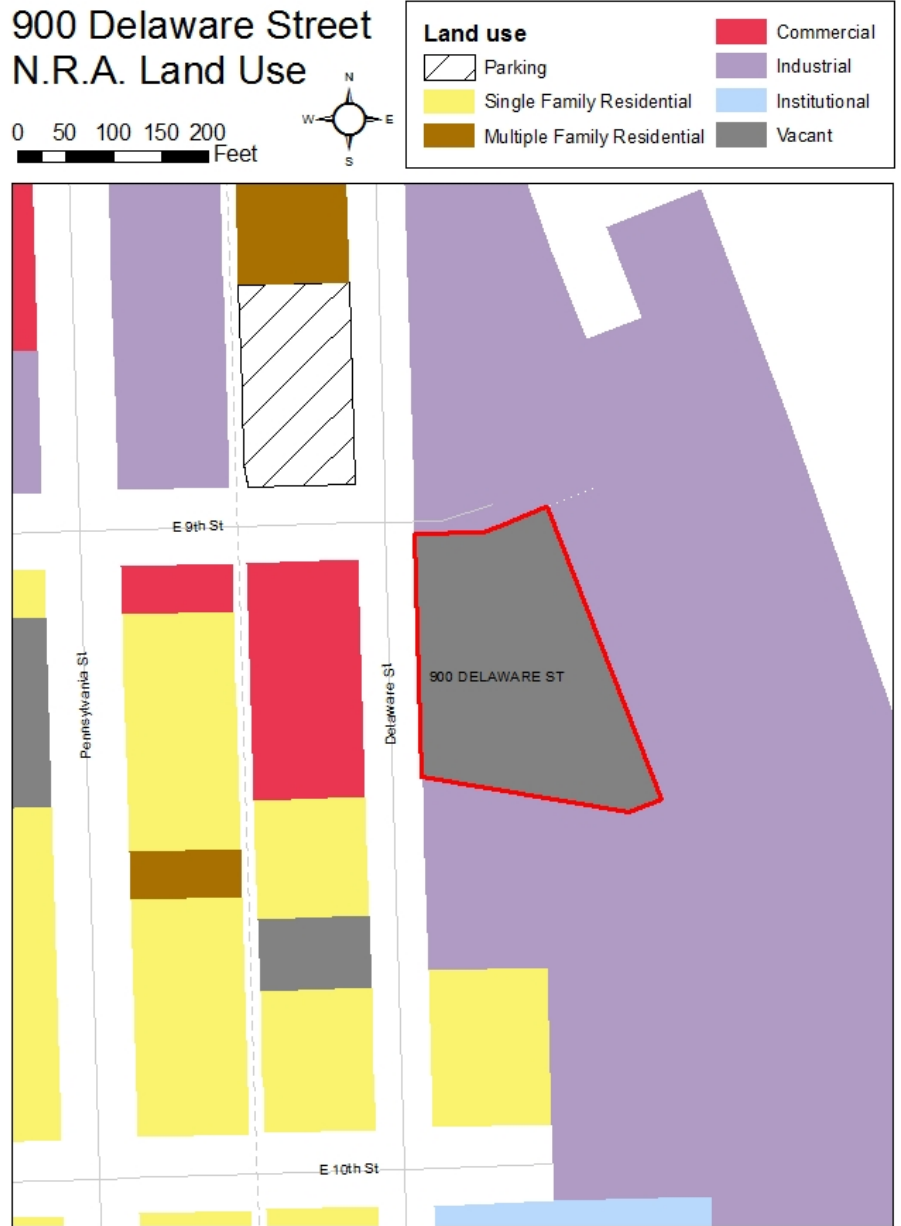
0 50 100 150 200
Feet



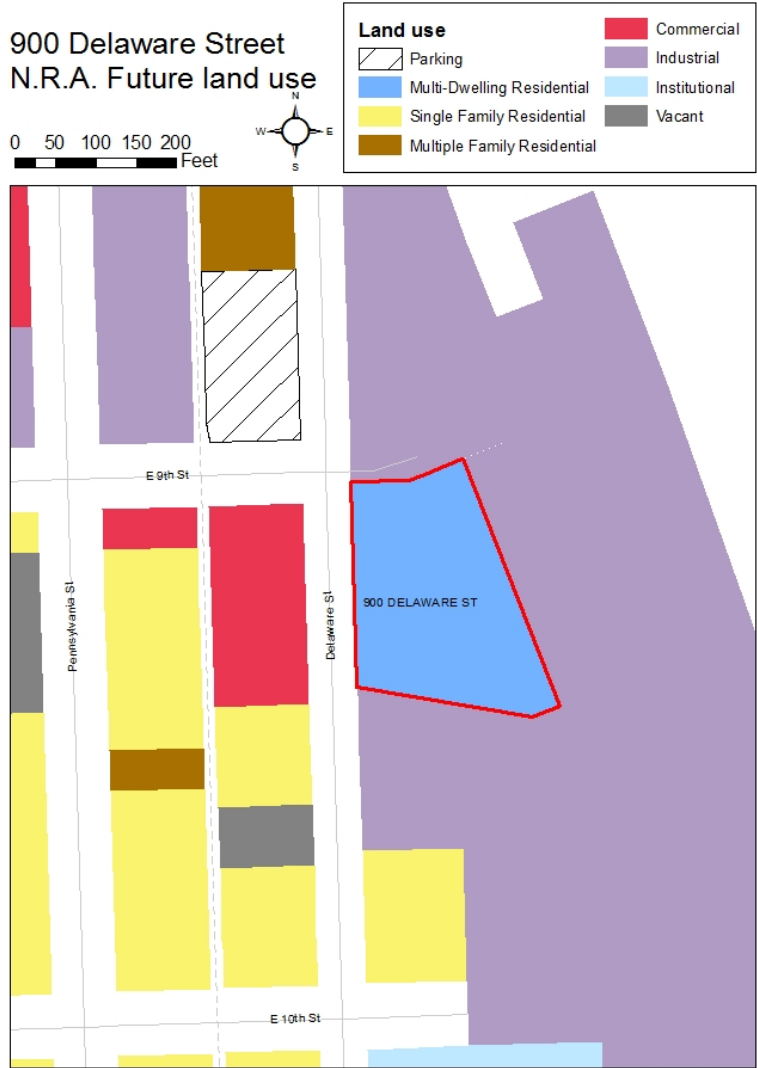
	900 Delaware Street		Parcels
	Zoning		Street Centerline



Existing Land Use Map.



Land Use Map with Project:



Section 6: Proposals for Improving Municipal Services in the Property

The City received a request on May 20, 2014 from Mr. Krsnich for a variety of infrastructure and improvements including: relocation of sanitary sewer main, site water line, sanitary sewer connection to the building, site storm sewer, public street improvement plan, private drive extension, and burying of overhead utility lines.

Section 7: Term of the Plan

1. This Plan and tax rebate Program shall be effective upon the adoption of this Plan by ordinance of the Governing Body of the City of Lawrence.
2. This Plan and tax rebate program (the "Term") shall be congruent with the years outlined on the tax rebate schedule provided in the table within this Section. The Governing Body reserves the right to evaluate the Program at any time.
3. The owner of the property at the time the property taxes are paid will be eligible for a property tax rebate on the incremental taxes associated with improvements to the Property (the "tax increment"). The Tax Increment will equal the property tax assessment against the Property for the first year after the improvements are completed (i.e. determined including the value that such improvements add to the assessed value of the Property) reduced by the property tax assessed against the Property for the base year (the year this Plan is approved) (i.e. determined without the value that the improvements add to the assessed value of the Property). The Tax Increment will then remain constant throughout the Term of the rebate program. The tax rebate will be determined based on the Tax Increment and the following table:

Table 1

NRA Rebate Schedule: 900 Delaware Street (9 Del Lofts)			
NRA Year	Tax Year	Rebate %	Year Rebate Paid to Property Owner
--	2015	n/a	Project complete ~ May 2015
1	2016	95% of increment	2017 (for 2016 Taxes)
2	2017	95% of increment	2018 (for 2017 Taxes)
3	2018	95% of increment	2019 (for 2018 Taxes)
4	2019	95% of increment	2020 (for 2019 Taxes)
5	2020	95% of increment	2021 (for 2020 Taxes)
6	2021	95% of increment	2022 (for 2021 Taxes)
7	2022	95% of increment	2023 (for 2022 Taxes)
8	2023	95% of increment	2024 (for 2023 Taxes)
9	2024	95% of increment	2025 (for 2024 Taxes)
10	2025	95% of increment	2026 (for 2025 Taxes)
11	2026	95% of increment	2027 (for 2026 Taxes)
12	2027	95% of increment	2028 (for 2027 Taxes)
13	2028	95% of increment	2029 (for 2028 Taxes)
14	2029	95% of increment	20230 (for 2029 Taxes)
15	2030	95% of increment	2031 (for 2030 Taxes)

4. This Plan and the Program is subject to approval of each taxing unit, including Douglas County and USD 497 and the City entering into an agreement with such other taxing units relating to the implementation and payment of tax rebates provided for under this plan.

Section 8: Contents of an Application for Rebate, Application Procedures and Standards of Criteria Used to Review an Application

The Letter of Proposal submitted by Mr. Krsnich shall serve as the application for the Program under this Plan. **No further applications are anticipated related to the Property. Please refer to Exhibit A.**

1. The improvements must result in an assessed value increase for the Property within twelve months of completing the improvements. Some improvements, regardless of cost, may not result in an increase in assessed value and thus would not make the property eligible for a property tax rebate. Such determinations will be made solely and independently by the Douglas County Appraiser's Office and the County Clerk.
2. General Provisions Applicable to all Rebate Applications on Eligible Property
 - a) Any otherwise eligible Property with delinquent real property or special assessments shall not be eligible for a rebate until such time as all taxes and assessments have been paid. If delinquency occurs after entry into the Program, the rebate will be suspended until such time as all taxes are paid in full. The County Treasurer will monitor real estate tax delinquencies for Property participating in the Program. The County Treasurer will notify the City if a Property becomes ineligible for the program due to tax or special assessment delinquencies.
 - b) The Property owner shall notify the City when all improvements covered under the application have been completed and the city shall inspect the improvements for compliance with the required building, health and safety codes of the City. The City shall notify the County Appraiser by December 1st that the improvements have been substantially completed.
 - c) The County Appraiser shall conduct an on-site appraisal as a part of the normal valuations following completion of the Improvements and determine the increase in the taxable valuation due to the Improvements. On or before December 1st of each calendar year, the City shall notify the County Appraiser, in writing, of each property in the Area for which Improvements have been determined to be substantially completed so that the County Appraiser may conduct on-site inspections as a part of the normal valuations to determine the increase in taxable valuations due to the Improvements. The County Appraiser will notify the City and the County Clerk of the valuation.
 - d) A tax rebate will be based on the Tax Increment as provided in Section 7.3.
 - e) Upon payment in full of the real estate tax (first and second installments) for the Property for the year following the completion of the improvements provided for in Section 7.3 and within thirty (30) days after the County distributes property tax collections to the City, The City shall pay the owner the amount determined under the Plan. If the owner

appeals the appraised value of the Property to the County Appraiser, no payment will be made until the appeal is resolved.

- f) For any improvements that are only partially completed as of December 1st of each year, the Property owner shall file a written document with the City indicating the status of construction as of December 1st. The City shall share that document with the County Appraiser.
- g) If this Plan is repealed or the rebate criteria changed, any approved applications shall be eligible for rebates for the remaining Term of the rebate originally provided in the plan
- h) Any taxes paid under protest for a eligible property will suspend the rebate until the protest has been resolved.
- i) Construction of an Improvement must begin on or after the date of the designation of the District and be located within the District.

Section 9: Amount of Tax Rebate, Rebate Term, and Maximum Rebate Limit

- 1. The eligible tax rebate is set forth in Table 1, Section 7. If there is no Tax Increment generated for a specific property due to a diminution of assessed values, no tax rebate shall be provided for the Property.
- 2. Douglas County will retain an annual administrative fee of \$100 from the Increment of the rebate program. The remaining Increment for any given year shall be distributed to the taxing jurisdictions in accordance with regular property tax distribution procedures.
- 3. The maximum rebate shall be the sum of all applicable incremental increases in taxes for the duration of the ten year period as further defined in the Table 1, Section 7.

Section 10: Neighborhood Revitalization Fund

Upon Governing Body approval of the Plan, the 9 Del Lofts (900 Delaware Street) Neighborhood Revitalization Fund will be established.

Section 11: Other City Requirements

- 1. The Improvements must conform to all codes, rules, and regulations that are in effect at the time the improvements are made. Improvements must be authorized by public improvement plans or building permit when applicable.
- 2. Any otherwise eligible property with delinquent taxes or special assessments shall not be eligible for a rebate until such time as all delinquent taxes and assessments have been paid.

Appendix I: Summary of the Kansas Neighborhood Revitalization Act

The Kansas Neighborhood Revitalization Act (NRA) allows the governing body of any municipality to pass an ordinance designating an area within that municipality as a "Neighborhood Revitalization Area" if it finds that "the rehabilitation, conservation or redevelopment of the area is necessary to protect the public health, safety or welfare of the residents of the municipality." K.S.A. 12-17,116.

KSA 12-17,115(b) and 12-17,116 provide that all municipalities are authorized to participate in Neighborhood Revitalization Area programs. In addition, KSA 12-17,119, provides that two or more (i.e. all) taxing jurisdictions within a Neighborhood Revitalization Area are specifically authorized to enter into interlocal agreements pursuant to 12-2901 to exercise the powers authorized by the Act (including utilizing all or a part of the other taxing jurisdictions tax increment). The interlocal agreement(s) must be submitted to and approved by the Kansas Attorney General.

The Neighborhood Revitalization Area Act expressly provides for additional home rule provisions which are not in conflict with this act. KSA 12-17,120 permits cities to enact and enforce additional laws and regulations on the same subject of revitalization, provided they are not in conflict with the Act. This would mean, for example, that cities should be able to adopt provisions permitting use of some of the increment which is not returned to taxpayers, to be used instead for other infrastructure improvements within the NRA Property, and conceivably, even for revitalization grants or other incentives that would spur revitalization and rehabilitation in the NRA Property. The ability of cities to go beyond the statutes will depend in a large part upon the scope of their agreement with the other taxing jurisdictions.

Exhibit A: Mr. Krsnich's Letter of Proposal

August 19, 2014

Lawrence City Commission
City Hall
6 East 6th Street
Lawrence, KS 66044



Mr. Mayor and Distinguished Commissioners:

We are seeking a Neighborhood Revitalization Area (NRA) designation from the City of Lawrence for the 9 Del Lofts Project to cover the financing gap that currently exists.

The "But For" analysis very clearly concludes that our request is more than justified. State and federal historic tax credits are often bundled with other incentives to bridge the gap in fixed-income housing projects, but the new construction requires 9 Del ownership to look elsewhere to meet financing needs. Further, the 15-year term is not an arbitrary number, but is tied directly to the compliance period that Section 42 properties require to meet regulations.

This development will help to satisfy the growing demand for affordable housing in Lawrence. Affordable housing and office space is the cornerstone of every development in the Warehouse Arts District so as to not alienate those that value it so much. 9 Del Lofts is the next phase of this mission, and the nearly 200-person waiting list speaks to the number of people that favor the lifestyle 9 Del Lofts will offer in an area that showcases inclusion, culture and vibrancy.

Further, the Cider Gallery, Poehler Lofts, 720 Annex building and every other vital building to the W.A.D. has helped to directly recruit and retain residents and employees that would be working outside of Lawrence if this area remained as it was ten years ago. Employees of mine are relocating to Lawrence currently, and I have heard from dozens of others that moved to Lawrence to specifically work in the Cider Gallery offices, live at the Poehler Lofts, or join the artist community currently exists in the burgeoning neighborhood.

By handicapping the development that bookends the 9th Street corridor, a corridor that will quickly become a destination in the Midwest upon implementation of the ArtPlace Grant, a decision to reject this request would only slow down the efforts of so many to date. The architectural design of the building was designed to enhance the corridor, and it's positioning on the eastern terminus of the 9th street corridor makes it all the more vital to the final product.

The above intangibles are necessary to illustrate to properly tell the story of 9 Del Lofts. I am convinced that the inherent value in progressing the economic and cultural efforts

in the Warehouse Arts District through the support of 9 Del Lofts will allow the City of Lawrence to see a return on their investment for decades to come. Many of the project types on the horizon do not require municipality incentives, but rather will help to attract more outside investment into the W.A.D.

Our construction efforts will move forward at the site of 9 Del Lofts, as we are happy to have the support of the City of Lawrence Staff in recommending our request for approval.

Sincerely,



Tony Krsnich

9 Del Lofts: Neighborhood Revitalization Act Request

CALENDAR OF EVENTS 2014

<u>Date/Location</u>	<u>Event</u>	<u>Parties</u>	<u>Status/Notes</u>
August 2014	Notify USD 497 and Douglas County of NRA item discussions and determine how they wish to process request	City	Complete
Aug. 26, 2014 City Commission Room, City Hall 6:35 pm	City Commission meeting: action to receive staff report, refer to PIRC and set date for public hearing (Setp. 23) on proposed NRA and Revitalization Plan	City and Applicant	Complete
Sept. 8 & Sept. 15, 2014	Publish Notice of Public Hearing (2 consecutive weeks)	City	Complete
Sept. 9, 2014 PIRC City Commission Room, City Hall 4 pm	Public Incentive Review Committee: Discuss proposed NRA project and make recommendation to the City Commission	City and Applicant	Complete Critical for applicant to attend
Oct. 7, 2014	Deadline for School Board packet for October 13th meeting		
Date: Sept. 23, 2014 City Commission Room, City Hall 6:35 pm	City Commission meeting: hold a public hearing on the NRA project, receive PIRC recommendation, adopt first reading of an ordinance establishing the NRA, approve development agreement and NRA agreement	City and Applicant	Critical for applicant to attend
October 10, 2014	Deadline for County Commission packet for October 15th meeting		
Date: Oct. 13, 2014 7:00 pm School Board Meeting	School Board meeting; consideration of approval of the NRA agreement and School district participation	City, School District, and Applicant	Critical for applicant to attend
Date: Oct. 15, 2014 County Commission County Courthouse 4:00 pm	County Commission meeting; consideration of approval of the NRA agreement and County participation	City, County and Applicant	Critical for applicant to attend
Date: Oct.21, 2014 City Commission Room, City	City Commission meeting: adopt second reading of an ordinance establishing the NRA (consent	City and Applicant	

Hall 6:35 pm	agenda)		
Fall 2014	Construction Commences	Applicant	

DRAFT
City of Lawrence
Public Incentives Review Committee
September 9, 2014 minutes

MEMBERS PRESENT: Mike Amyx, Linda Jalenak, Jeremy Farmer, Brian Iverson, Brad Burnside, Shannon Kimball, Mike Gaughan, Boog Highberger

MEMBERS ABSENT: None

STAFF PRESENT: Diane Stoddard, Britt Crum-Cano

PUBLIC PRESENT: Tony Krsnich and a few members of the public

Mayor Amyx called the meeting to order. A motion was made by Mr. Iverson, seconded by Ms. Jelenak to approve the June 24, 2014 meeting minutes. Motion approved unanimously 6-0.

Mr. Iverson declared a conflict of interest related to the 9 Del Lofts request and sat in the audience. Tony Krsnich explained the project. He mentioned that the tax credit projects have a 15 year lifetime for rent restriction. The Poehler project leased up within several hours and it lost money the first year. He mentioned the Poehler project as an illustration of why he was requesting the NRA for the 9 Del Lofts project. The 9 Del Lofts won't have any historic tax credits due to it being new construction. Due to these factors, he is requesting a 15 year rebate period. He mentioned that the Cider Building received a national award for historic preservation. All of these projects result in significant investment in the area. He said that it is clear cut that the project needs the assistance for a 15 year period from the analysis. He said that without the 9 Del Lofts project, it will affect other development in the area.

Vice Mayor Farmer asked about whether there was a point that the City investment will make the area self-sustaining as it continues to grow and develop. Krsnich responded that he sees the next round of development being market rate, mixed use development.

Mayor Amyx asked about his statement that 9 Del Lofts is key to the ArtsPlace grant. Krsnich stated that the project was included in the grant application as an approved project because it had been through the planning process.

Mayor Amyx asked if nine of the units were going to be market rate. Krsnich confirmed that number, which was 20%. He also mentioned that there are some larger units for more of a family atmosphere.

Mr. Highberger asked about the notes about the new jobs created and the hourly wage levels provided in the application. The application listed 2 jobs at \$50,000 and \$15 per

hour. Krsnich clarified that he has already hired the two mentioned at \$50,000 or above.

Britt Crum-Cano, the City's Economic Development Coordinator, presented the analytical report. She covered the request, the eligibility, the analysis, recommendations, project considerations and next steps. The applicant is requesting a 15-year 95% NRA on the project. The City has made significant investments in the area. She explained that she ran two cost-benefit assumptions, one with the approved infrastructure grant provided to the project, and one without consideration of this approved infrastructure grant. Without considering the grant, the cost-benefit ratio is well above the threshold for all taxing jurisdictions. With the grant considered, the ratio for the city is negatively affected. Crum-Cano mentioned that the project also included a number of intangibles that are not captured in the number, such as the investment in the area and the need for affordable housing. Regarding the "but for" analysis, Crum-Cano said that the 15 year cash flow numbers for the project without NRA rebates results in a negative cash flow. With a 10 year rebate, the project will meet cash flow for the first 10 years, but not the next 5 years. With the 15 year rebate, the project met cash flow. In both cases, the return rates for the project were very low. She stated the project does meet the "but for" requirement. She mentioned the affordable housing factor, in-fill development, synergies with other area investments and transforming a vacant lot to a productive use. Staff concludes that the project meets eligibility, the "but for" test and the cost-benefit model if the infrastructure grant is not considered. Staff recommends a 15 year NRA participation based on these factors. She mentioned that the first public hearing would be September 23.

Ms. Kimball asked about the Cider NRA and whether the infrastructure grant was included in the analysis for that project. Crum-Cano mentioned that the timing of that information did not enable it to be incorporated into the analysis.

Mr. Highberger asked about the requirement for affordable units. Krsnich stated that there is a standard 15 year rent restriction period, but to be competitive, he elects to extend the restriction for a 30 year period. That is also congruent with Poehler. Krsnich said that at the end of 15 years, the project would re-enter into the program to keep it viable. Krsnich said that there would be no rent increases beyond the 60% area median income for 30 years. Some of the units are even lower.

Commissioner Gaughan said that the City had the decision to make regarding its participation for the project in light of the other infrastructure grant, but he supported the project and thought that the County would. He suggested that the infrastructure costs not be included in the analysis for this PIRC board if PIRC wasn't weighing in on the infrastructure grant.

Mr. Krsnich also mentioned the density that the project will bring to the area, helping surrounding businesses.

Burnside made a motion to recommend the 15 year 95% NRA. Highberger seconded the motion. The motion passed unanimously. Commissioner Gaughan left the meeting.

Mayor Amyx thanked Mr. Krsnich. Mr. Highberger appreciated the inclusion of affordable housing component with this request. Krsnich mentioned the importance of supporting affordable housing project.

Mr. Farmer mentioned the City of San Francisco policy developed in the last year a fast track development and incentive process for affordable housing if it contains a certain percentage of rent controlled apartments. He was interested in looking into this policy change for the city. He requested City staff look into this and bring it back to PIRC for consideration.

Diane Stoddard, Assistant City Manager, introduced the next PIRC item for discussion: The policy issue related to possible inclusion of public nuisance performance criteria in public incentive performance agreements. The City Commission had asked PIRC to weigh in on this issue as a result of recent circumstances related to a business located within the Oread Hotel.

Toni Wheeler, City Attorney, said the legal Staff had previously proposed adding detailed language within incentive agreements to aid in restricting nuisance behaviors. Ms. Stoddard mentioned that there are laws currently in place to deal with some nuisance behaviors. Ms. Stoddard also mentioned a developer may have difficulty controlling tenant operations within a lease agreement.

Ms. Kimball stated she thought the Oread instance was a law enforcement issue. City Manager, Dave Corliss, clarified that the issue for PIRC was to weigh in on if public incentives should be claw-backed in instances of certain nuisance behavior. He also mentioned that clawbacks tied to nuisance behavior within agreements may have developer financing consequences.

PIRC discussion regarding incentive clawbacks in instances of nuisance behavior included the following:

- Mr. Iverson stated that incentives for the Oread Hotel impacted the entire project, even though there was only one business that had experienced nuisance problems.
- Rather than penalizing the entire project, he asked if the City has a business license that could be revoked for a particular business having problems. Mr. Corliss stated the City does not have a business license that could be revoked. He mentioned the City can request a hearing from the Kansas Department of Alcohol Beverage Control to get a liquor license revoked. In addition, State nuisance laws can allow a City to shut down problem businesses. However, it is not a simple issue to shut down a business.
- Mr. Burnside stated he believes this is a law enforcement issue. He said he can't envision how to manage regulating nuisance behavior through an incentives agreement with the City.
- Ms. Kimball stated the best way to deal with this type of issue is through a use restriction placed on the front end.
- Ms. Jalenak stated she didn't know how it could be enforced without being too overbearing on businesses.

- Mr. Highberger agreed with Mr. Burnside that incentive clawbacks in these issues introduces uncertainty in enforcing the agreement.
- The Mayor asked if the City Commission should consider types of project uses eligible to get incentives. Ms. Kimball stated they probably should not.

Ms. Kimball made a motion that PIRC recommend no action be taken by the City Commission to include clawback language in incentive agreements related to nuisance behavior. Mr. Iverson seconded the motion. Motion passed unanimously.

Ms. Stoddard introduced the next PIRC issue for discussion. The City Commission is seeking feedback from PIRC and others related to property tax abatement eligibility thresholds for smaller businesses.

Ms. Kimball stated she supports providing more flexibility to home-grown, small business within the policy, but would not want to extend it to new businesses coming in to the community. Ms. Kimball left the meeting.

There was a question as to the history of eligibility thresholds and why they were changed in the past. Ms. Stoddard mentioned that thresholds were reduced in 2009 to help accommodate smaller businesses.

Mr. Farmer stated he thought the issue was broader than just threshold minimums and suggested all the City's economic development policies might need revision in order to consider the intangible effects of projects. Farmer stated that in addition to using the City's current tools, which are primarily designed to evaluate primary job creation and capital investment impacts, other tools may be needed to help evaluate investments in light of intangible benefits.

Mr. Iverson suggested trying to design something that would help small business. He also mentioned that the bank has policies, but they use them as a tool, not a rule. For his industry, additional project circumstances are always considered when evaluating funding requests.

Mr. Highberger suggested that they help small businesses, but don't set the threshold too low.

Mr. Burnside stated that the City & County have really stepped up in assisting businesses.

Ms. Jalenak made a motion to adjourn with Mr. Burnside seconding the motion. The motion passed unanimously with the meeting adjourning at 5:30.

**NEIGHBORHOOD REVITALIZATION ACT
COOPERATIVE AGREEMENT for 900 DELAWARE STREET**

This Agreement (hereinafter "Agreement") is entered into this ____ day of _____, 2014, by and between the City of Lawrence, Kansas (hereinafter "City"); the Board of Commissioners of Douglas County, Kansas (hereinafter "County"); and Unified School District No. 497, Douglas County, State of Kansas (hereinafter "USD 497") (collectively the "Parties"), all of which are municipalities within the meaning of K.S.A. 10-1101 and K.S.A. 12-17,114 *et seq.*; and

WHEREAS, pursuant to K.S.A. 12-2901 *et seq.* and amendments thereto, the Parties have authority to enter into agreements to jointly perform certain functions, including economic development, and this Agreement furthers mutual cooperation and joint action; and

WHEREAS, K.S.A. 12-17,114 *et seq.* and amendments thereto, also referred to as the Kansas Neighborhood Revitalization Act (the "Act"), provides a program for neighborhood revitalization to provide incentives for property owners to improve aging and deteriorating property, or otherwise stimulate new construction, the rehabilitation, conservation or redevelopment of an area in order to protect the public health, safety and welfare; and

WHEREAS, K.S.A. 12-17,119, provides for all taxing jurisdictions within a Neighborhood Revitalization District to enter into agreements as set out in K.S.A. 12-2901 *et seq.* to further neighborhood revitalization; and

WHEREAS, the Parties desire to maximize the economic development opportunities under the Act and the Neighborhood Revitalization Plan (later defined herein) by acting jointly through the use of this agreement; and

WHEREAS, the Parties desire to set out the terms and conditions of participation as described herein, and

WHEREAS, the City and County will have primary responsibility for the procedural aspects of NRA implementation and administration, and therefore desire to set forth the specific rights and responsibilities of the Parties with respect to the procedures associated with the NRA.

NOW, THEREFORE, for the mutual promises and covenants contained herein and other good and valuable consideration, the Parties understand and agree as follows:

1. Purpose. The purpose of this Agreement is to provide a program for neighborhood revitalization and allow the taxing jurisdictions within the

designated neighborhood revitalization area (“Area”) to work together, through this agreement, to facilitate the rehabilitation, conservation or redevelopment of an area to protect the public health, safety and welfare of the residents of Lawrence.

- a. After conducting a public hearing and complying with the publication requirements of K.S.A. 12-17,117 as amended, on September 23, 2014 the City approved Ordinance No 9040 adopting a neighborhood revitalization district plan in substantially the same form and content as contained in **Exhibit A** attached hereto and incorporated herein by reference. (“Plan”).
 - b. The other Parties to this Agreement have also reviewed and considered the Plan, and by adoption of this Agreement, agree to work cooperatively to implement the Plan.
 - c. The Parties further agree that no separate legal entity shall be created under this Agreement, but rather the City, on behalf of all Parties, shall administer the Plan as adopted by the City or as it may be subsequently amended as provided herein.
 - d. The Parties agree that the Plan shall not be amended by the City or by any of the Parties acting separately and shall only be amended in writing and accompanied by a new Agreement signed by all Parties hereto, which consent and cooperation shall not be unreasonably withheld.
 - e. In the event that the Neighborhood Revitalization Plan, as adopted, is not followed with respect to the aspects set forth in the Plan, the Parties may individually wish to reconsider participation in the Plan at that point.
2. Duration. This Agreement shall commence on October 21, 2014 and expire February 20, 2031 or upon payment of the 2030 property taxes and the processing of the rebate for the 2030 tax year. The City reserves the right to evaluate the Program at any time.
 3. Termination. The Parties agree that termination of this Agreement by any party prior to February 20, 2031 would adversely impact the Plan, and consequently, this Agreement may only be terminated with ninety (90) days written notice, and further provided such written notice must be received prior to August 1 in the calendar year prior to the tax year the party desires to terminate participation, unless such notice is waived, in writing, by all Parties to this Agreement. The Parties further agree that any application for tax rebate submitted to the City prior to receipt of the

notice of termination shall, if approved, be considered eligible for the duration of the rebate period set forth in the Plan.

4. Financing.

- a. A qualified improvement must meet the requirements set out in the Plan. The tax increment will be calculated as described in Section 7 of the Plan. (The real property taxes and special assessments must be paid, and not paid under protest, and the increment generated before a rebate will be issued.)
- b. The County is authorized to and shall transfer any tax increment received for the Parties to the Neighborhood Revitalization Fund (NRA Fund) a separate fund created and maintained by the City under the authority of K.S.A. 12-17,118 and amendments thereto.
- c. The County shall retain an annual administrative fee in an amount of \$100 from the increment of the rebate program. The County shall deduct this fee from the tax increment prior to rebating the tax increment to the City for disbursement to the property owner as provided in the Plan.
- d. Within thirty (30) days of distribution of the tax increment from the County, the City will disburse the rebate(s) in the appropriate percentage to each eligible taxpayer in accordance with the Plan. All funds transferred to the NRA Fund by the County and not required to be rebated to taxpayers shall be refunded by the City to the County Treasurer for distribution to all participating taxing jurisdictions in their proportionate share based on their tax rate at the time of disbursement.

5. Additional City Responsibilities.

- a. The property owner will be subject to a performance agreement with the City, which will require the property owner to adhere to the terms of the NRA Plan and this agreement, as well as the requirements listed in paragraphs b. – .d. below.
- b. It is the responsibility of the property owner to notify City staff and the County Appraiser prior to commencing the improvements. The property owner shall provide any project information that may be helpful to the County Appraiser in the valuation process. In addition, the property owner must confirm that the County Appraiser's Office has completed a review of the real property prior to commencing the improvements.

- c. The property owner shall notify City staff and the County Appraiser in written form upon completion of the improvements utilizing the 'Certificate of Project Completion'.
- d. The property owner shall notify both City staff and the County Appraiser in written form within 30 days should any substantial change occur to the planned improvements.
- e. The Property owner shall notify the City when all improvements covered under the application have been completed and the City shall inspect the improvements for compliance with the required building, health and safety codes of the City. On or before December 1st of each calendar year, the City shall notify the County Appraiser, in writing, of each property in the Area for which Improvements have been substantially completed so that the County Appraiser may conduct on-site inspections as part of the normal valuations to determine the increase in taxable valuations due to the Improvements.
- f. Within thirty (30) days of distribution of the tax increment from the County Treasurer, the City will disburse the rebate to the eligible taxpayer in accordance with the Plan unless the tax is paid in semi-annual payments, in which case the rebate will be made after payment of the second and final installment. Within thirty (30) days after the County transfers any tax increment received by the taxpayer to the City, the City will disburse the rebate to the eligible taxpayer in accordance with the Plan.

6. Additional County Responsibilities.

- a. The County Appraiser shall conduct an on-site appraisal as part of the normal valuations following completion of the Improvements and determine the increase in the taxable valuation due to the improvements.
- b. The County Appraiser will notify the City and the County Clerk of the valuation.
- c. The County Treasurer will monitor real estate tax delinquencies for Property participating in the Program. The County Treasurer will notify the City if a Property becomes ineligible for the program due to tax or special assessment delinquencies.

8. Execution. For purposes of executing this Agreement, this document if signed and transmitted by facsimile machine or telecopier, is to be treated as an original document. This Agreement may be executed in one or

more counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument.

9. Liberal Construction. This Agreement shall be liberally construed to achieve the economic development objectives and purposes of both this Agreement and the Plan. Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal, such provision(s) shall be null and void, but the remaining provisions shall be unaffected thereby and shall continue to be valid and enforceable.
10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on this subject and may not be modified or amended except in writing executed by all Parties in the same manner as the original.
11. Governing Law. This Agreement and the Plan and the rights of all the Parties hereto shall be governed by and construed according to the laws of the State of Kansas.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective, appropriate representatives with authority to bind their respective entity.

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CITY OF LAWRENCE, KANSAS

[SEAL]

By: _____

Attest:

David L. Corliss, City Manager

Diane Trybom, Acting City Clerk

(Rest of Signature Page Left Intentionally Blank)

BOARD OF COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

[Seal]

By: _____

Attest:

_____, Clerk of the Board

Approved As To Form:

County Counselor

(Rest of Signature Page Left Intentionally Blank)

UNIFIED SCHOOL DISTRICT NO. 497,
DOUGLAS COUNTY, STATE OF
KANSAS

[Seal]

By: _____

President, Board of Education

Attest:

Clerk of the Board

Approved As To Form:

Attorney for the Board

(Rest of Signature Page Left Intentionally Blank)

Exhibit A

Neighborhood Revitalization Plan
As adopted by Governing Body of the City of Lawrence
On October 21, 2014
through Ordinance No. 9040

[See Attached]

Request for Economic Development Support:

900 Delaware Street (9 Del Lofts)

900 Delaware Street (9 Del Lofts)

Project:

- 9 Del Lofts: Proposed mixed-income, multi-family development at 900 Delaware Street
 - Request
 - Eligibility
 - Analysis
 - Recommendations
 - Project Considerations
 - Next Steps

900 Delaware Street (9 Del Lofts)

Request:

- **15-Year, 95% Neighborhood Revitalization Area (NRA)**
- **NRA is a Property Tax Rebate Program:**
 - Rebate is on the incremental increase in property valuation due to project.
 - Base property value (value prior to improvements) is shielded from rebate.
 - Property owner continues to pay property taxes on the base value and the percentage not awarded a rebate

900 Delaware Street (9 Del Lofts)

■ Background:

- Vacant parcel next to East Lawrence Industrial Historic District
- Past public assistance in area infrastructure and district revitalization:

Area Public Support	
Project	Amount (est.)
Poehler/Phase I Infrastructure (City)	\$ 1,051,577.00
Cider/Phase II Infrastructure (City)	\$ 695,430.00
Cider CID Special Assessments (City)	\$ 22,432.00
9Del/Phase III Infrastructure (City)	\$ 270,967.00
Subtotal	\$ 2,040,406.00
Cider NRA, 10Year-85% Rebates (City, County, USD, State)	\$ 270,689.26
Total Estimated Area Support	\$ 2,311,095.26

900 Delaware Street (9 Del Lofts)

NRA Eligibility:

- State Criteria: NRA Area would address a Health/Safety, Economic Need or Community Asset need.
- City Criteria:

City Policy: NRA Eligibility			
City Policy Criteria	When considering the establishment of a NRA, the City shall consider not only the statutory criteria, but if the project meets a majority of the below criteria:		Eligible
	1	The opportunity to promote redevelopment activities which enhance downtown	Y
	2	Provides the opportunity to promote redevelopment activities for properties which have been vacant or significantly underutilized.	Y
	3	Provides the opportunity to attract unique retail and/or mixed use development which will enhance the economic climate of the City and diversify the economic base.	n/a
	4	Provides the opportunity to enhance neighborhood vitality as supported by the City's Comprehensive Plan or other sector planning document(s).	Y
	5	Provides the opportunity to enhance community stability by supporting projects which embrace energy efficiency, multi-modal transportation options, or other elements of sustainable design.	Y
	Project must meet or exceed a 1:1.25 cost-benefit ratio.		*

*Ratio is dependant on if infrastructure grant is included within the analysis.

900 Delaware Street (9 Del Lofts)

Analysis Required:

- **Cost-Benefit**
- **“But For”/Pro Forma**

900 Delaware Street (9 Del Lofts)

■ Cost-Benefit Assumptions

- Capital Investment : \$7.2 million
- Job Creation :
 - 2 FT, Avg. Annual Salaries at \$50,000
- Base Property Taxes: \$1,228 (shielded from rebate)
- A 20Y evaluation period is necessary due to tax credit (LIHTC & HOME) requirements

900 Delaware Street (9 Del Lofts)

Cost-Benefit Assumptions:

- Model scenarios ran with and without infrastructure grant (\$270,967) included.

City Public Assistance: 9 Del Lofts		Expenses Applicable for	
Description	Estimated Expense Amount	Only 9 Del	Project + Area
Relocation of Sanitary Sewer Main	\$69,505	\$69,505	
Site Water Line (Fire and Domestic, New Fire Hydrant)	\$17,545	\$12,545	\$5,000
Sanitary Sewer Connection to Building	\$3,355	\$3,355	
Site Storm Sewer	\$37,840	\$37,840	
Public Street Improvement Plans (Street Storm and Patching)	\$16,157	\$16,157	
Private Drive-9th Street Extension to east and 10' trail along Delaware	\$47,565	\$37,924	\$9,641
System Development Fees: Water	\$45,000	\$45,000	
System Development Fees: Meter			
System Development Fees: Sewer			
<i>Burying of overhead utility lines</i>	\$34,000		\$34,000
TOTAL	\$270,967	\$222,326	\$48,641

900 Delaware Street (9 Del Lofts)

Cost-Benefit Results: 20Y evaluation period

All Jurisdictions Participating in NRA + No City Grant

9 Del: NRA Results + \$0 City Grant

Incentive Package	City	County	USD 497	State	Total Package Value
10-Year, 85% NRA, \$0 City Grant	3.15	2.43	6.03	n/a	\$200,526
10-Year, 95%% NRA, \$0 City Grant	3.09	2.27	5.59	n/a	\$232,048
15-Year, 85% NRA, \$0 City Grant	3.03	2.04	4.98	n/a	\$318,700
15-Year, 95%% NRA, \$0 City Grant	2.95	1.83	4.39	n/a	\$368,101

900 Delaware Street (9 Del Lofts)

Cost-Benefit Results: 20Y evaluation period

All Jurisdictions Participating in NRA + City Grant

9 Del: NRA Results + \$222,326 City Grant

Incentive Package	City	County	USD 497	State	Total Package Value
10-Year, 85% NRA, City Grant of \$222,326	0.68	2.43	6.03	n/a	\$422,852
10-Year, 95% NRA, City Grant of \$222,326	0.62	2.27	5.59	n/a	\$454,374
15-Year, 85% NRA, City Grant of \$222,326	0.56	2.04	4.98	n/a	\$541,026
15-Year, 95% NRA, City Grant of \$222,326	0.48	1.83	4.39	n/a	\$590,427

900 Delaware Street (9 Del Lofts)

Cost-Benefit Results:

- Cost benefit ratio threshold can be met given all scenarios for the County, USD, and State.
- City cost-benefit ratios vary, depending on if the City infrastructure grant is included.
- Intangibles of the project, including providing needed affordable housing, are not reflected within the cost-benefit model and may out weigh the need to meet the preferred 1.25 ratio for the City.

900 Delaware Street (9 Del Lofts)

“But For”/Pro Forma

- Analysis utilized estimated project program information, annualized cash flow and pro forma data.
- Taxes were estimated using property information from Douglas County Appraiser’s Office.

900 Delaware Street (9 Del Lofts)

“But For”/Pro Forma: Cash Flow Results

- Without NRA rebates, the project won't cash flow for each year of operations, when held to tax credit requirements for affordable housing:

Cash Flow Analysis: 9 Del Lofts															
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Operating Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15
After Tax Cash Flow: No NRA	(\$10,923)	(\$10,546)	(\$10,224)	(\$9,958)	(\$9,751)	(\$9,608)	(\$9,531)	(\$9,524)	(\$9,589)	(\$9,731)	(\$9,954)	(\$10,261)	(\$10,657)	(\$11,145)	(\$11,731)

900 Delaware Street (9 Del Lofts)

“But For”/Pro Forma: Cash Flow Results

- With the addition of NRA rebates, cash flow becomes positive in the years provided.

All Taxing Jurisdictions

Cash Flow Analysis: 9 Del Lofts															
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Operating Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15
After Tax Cash Flow: 10Y-85% NRA	\$7,497	\$8,272	\$9,002	\$9,684	\$10,316	\$10,894	\$11,415	\$11,876	\$12,274	\$12,605	(\$9,954)	(\$10,261)	(\$10,657)	(\$11,145)	(\$11,731)
After Tax Cash Flow: 10Y-95% NRA	\$9,664	\$10,486	\$11,264	\$11,995	\$12,677	\$13,306	\$13,879	\$14,394	\$14,846	\$15,233	(\$9,954)	(\$10,261)	(\$10,657)	(\$11,145)	(\$11,731)

All Taxing Jurisdictions

Cash Flow Analysis: 9 Del Lofts															
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Operating Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15
After Tax Cash Flow: 15Y-95% NRA	\$9,664	\$10,486	\$11,264	\$11,995	\$12,677	\$13,306	\$13,879	\$14,394	\$14,846	\$15,233	\$15,551	\$15,796	\$15,965	\$16,053	\$16,056

900 Delaware Street (9 Del Lofts)

“But For”/Pro Forma: Returns

- Overall, this seems to be a difficult project to make happen financially and even with public assistance, the returns are low.

9 Del: Return Rates (est.)--15 Year Holding Period

NRA Scenarios	Investment Threshold	Average ROE: No Incentives	Average ROE: With Incentives	IRR: No Incentives	IRR: With Incentive
All Jurisdictions Participating in NRA					
10Y-95% NRA + City Infrastructure Grant	8.10%	0.30%	0.57%	5.96%	6.49%
15Y-85% NRA + City Infrastructure Grant			0.68%		6.63%
15Y-95% NRA + City Infrastructure Grant			0.73%		6.71%

900 Delaware Street (9 Del Lofts)

Additional Considerations:

- Will provide needed, affordable housing within the community
- In-fill development will provide additional density in support of Downtown Lawrence and the East Lawrence Historic District.
- Opportunity to support on-going area revitalization and increase synergies between area projects.
- Transforms a vacant lot to productive use

900 Delaware Street (9 Del Lofts)

Staff Conclusions & Recommendation:

- **Eligibility:** *Staff believes the project as proposed will meet State and City NRA eligibility criteria.*
- **But-For Test:** Examination of estimated cash flows and return rates, with and without public assistance, indicates the "but for" test has been met for the project.
- **Cost-Benefit Threshold:** The project meets the preferred 1.25 cost-benefit ratio for the County, School District and State. The project does not meet the ratio threshold for the City, but intangible benefits of the project, which are not captured within the model, may outweigh the need to meet the ratio.

900 Delaware Street (9 Del Lofts)

Staff Conclusions & Recommendation:

■ *Staff Recommendation:*

Due to the affordable housing component of the project and the strong intangibles that are not represented in the numbers, Staff would recommend participation at the requested 95% level for all jurisdictions for a 15-year period.

- While the NRA policy suggests a 10-year limit, the policy also suggests that longer durations may be appropriate if the analysis bears out the need. In this case, the “but for” test points to the need for the NRA incentive in order to make the project viable.
- Adding to the 9 Del Loft development and other housing opportunities in the area, the project will help to sustain the density for vibrancy in the area.

900 Delaware Street (9 Del Lofts)

PIRC Recommendation

- Public Incentives Review Committee met on September 9, 2014 and unanimously voted to recommend participation of each jurisdiction in a 15-year, 95% NRA for 900 Delaware Street.

CC Action

- City Commission held a public meeting on 9-23-2014 to consider the establishment of a NRA at 900 Delaware Street and voted unanimously (5-0) to support a 15-year, 95% NRA for 900 Delaware Street.
- During the meeting the Commission adopted on first reading, Ordinance 9040, establishing the NRA and approving a NRA plan.

USD Action

- During the USD 497 meeting on October 13, 2014, the School Board voted unanimously to participate in a 15-year, 95% NRA rebate for 900 Delaware Street.

900 Delaware Street (9 Del Lofts)

Next Steps:

- Consider participation in the NRA program for 900 Delaware Street, including, if appropriate, what percentage rebate level and duration.
- If participation is authorized, proceed with a cooperative agreement between the City, County and School District on the administration of the NRA rebate program.
- Final City action is anticipated October 21, 2014.

Request for Economic Development Support:

900 Delaware Street (9 Del Lofts)

Thank You



September 17, 2014

Gary Ortiz
City Manager
Eudora, KS 66025

Douglas County Commissioners
C/O Craig Weinaug
County Administrator
Douglas County, KS

Dear Commissioners,

The City Commission of the City of Eudora, KS authorized me to formally request funding from Douglas County toward procuring the analytic services of the Buxton Company in conducting a retail market analysis for the City of Eudora. The purpose of the study is to better understand the consumers in our city and their purchasing practices. We wish to learn what our citizens are buying in Eudora and what they are leaving the city to purchase. The Buxton Company is by far the industry leader in retail analysis. Buxton uses the same methodology used in retail and applies it to the public sector.

A few other policy objectives the City of Eudora hopes to achieve in procuring Buxton's services are:

- Increase tax revenues by reducing retail leakage and identifying sustainable retail candidates to attract.
- Improve quality of life by attracting the type of retailers our citizens most want, and creating a more attractive environment for growth.
- Support local existing businesses by increasing their competitiveness, giving them access to information that reveals opportunities for growth and expansion based on consumer preferences.

As you know the frequency of which smaller jurisdictions land major employers and substantial new tenants in established industrial parks areas is rare at best. For the most part economic development consists of helping existing business expand or attracting new restaurants and retail outlets. In today's competitive environment, retailers and restaurants are weighing their decision of where and how to expand more carefully than ever before. That means that local governments have to make a stronger case based on empirical data in order to recruit new businesses, and enhance our ability to retain and support existing ones. We believe that Buxton will give us the answers (data) we need to do both.

The City of Eudora is requesting that Douglas County fund \$25,000 in current fiscal year (2014) and \$25,000 next year (2015) for a total of \$50,000 as an equal cost share for 2 years participation in the Buxton program.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Ortiz".

Gary Ortiz

The following is a summary of the deliverables Buxton will provide to Eudora:

Year One:

- ***Our community profile***
 - o We will be able to understand the consumer profile of our residents and identify specific retailers and restaurant who seek a market with household purchasing habits just like Eudora's.
- ***Research our community***
 - o Buxton will be able to define our current retail situation and those in any neighboring communities that impact our retail environment
- ***Define and evaluate our trade area***
 - o Using their proprietary methodology and knowledge of individual retail client's actual trade area, Buxton will be able to conduct a custom drive-time analysis to determine our trade area.
- ***Profile our trade area's residential customers***
 - o Based on 7,500 categories of lifestyles, purchase behaviors and media reading and viewing (psychographics), the households in your trade area are assessed to gain an understanding of the types of retails that would be attracted to our Eudora.
- ***Match retailers and restaurants to market potential***
 - o Buxton will match the consumer profile of your community's trade area against the customer profiles of 5000+ retailers in their proprietary database.
- ***Create marketing packages***
 - o Buxton will assemble individualized marketing packages for up to 20 targeted retailers and will notify each retailer's real estate decision make, by letter that they have been qualified by Buxton as a potential viable fit for our site.

Years Two and Three:

- In years two and three, due to the changes in demographic and retail environments, Buxton will refresh their analysis for recruitment purposes. That means that:
 - o Buxton will look at what has changed in the market place, what retailers and residents have moved in or out
 - o Buxton will take what additional information that is out there or has changed since the last analysis e.g. traffic count, available sites/building, infrastructures, etc

Once this is done, Buxton will select 20 more unique retailers to target and create recruitment packages and continue to reach to the potential retailers.

NB:

The second year refresh will be very important to Eudora due to the anticipated impact of the South Lawrence Traffic way that is scheduled to be complete by 2016.

A stylized map of the United States is shown in shades of yellow and orange against a dark green background. Numerous small red circles with white outlines are scattered across the map, representing retail locations. The circles are more densely packed in the Northeast, Midwest, and South regions.

Buxton

Eudora, KS

Retail Recruitment and Retention Solution

Prepared by: Ryon Stewart
Expiration Date: October 31, 2014



BUXTON IS YOUR **COMPETITIVE ADVANTAGE**

OUR VALUE PROPOSITION

Since our founding in 1994, Buxton has been a leading force in retail site and development. We are recognized for creating solutions that provide results. Buxton began as a service to help retailers make informed site selection decisions by understanding their customers and precisely determining their markets and soon realized that the company's expertise in retail site and market analysis could also be leveraged to benefit communities desiring retail expansion.

More than simply providing data, Buxton supplies custom marketing materials and strategies targeting the unique site requirements of retailers, developers and commercial real estate brokers. Buxton clients achieve outstanding success using our tools for retail identification, selection and recruitment. And our clients benefit from our unique understanding of retail site selection from the retailer's point of view.

- **Grow Your Community.** Create new, permanent jobs that will satisfy your citizen's desire to shop at home; retain dollars currently spent outside of your community and maximize revenue growth to fund city services.
- **Leverage Buxton's Retail Industry Expertise.** Establish credibility with decision makers by providing factual evidence to support your site and gain a competitive position by leveraging our experience:
 - 2000+ retail, restaurant, and healthcare clients
 - 650+ public sector clients nationwide
 - 35+ million square feet of retail space
 - 500+ cumulative years of retail management and economic development experience
- **Access Your Buxton Solution with Ease.** Utilize your best-in-class retail recruitment solution via SCOUT, with the touch of a button from any mobile device. Get the insights and answers to your retail recruitment and site analysis questions and have the big picture in the palm of your hand.
- **Develop a Long-Term Partnership.** You will receive personal guidance and ongoing insight into key industry topics.

SECTION 1: SCOPE OF SERVICES

Buxton is pleased to present this proposal to Eudora, KS. The purpose of this proposal is to outline and review your community development objectives and how Buxton's solutions will enhance your ability to effectively meet those objectives.

Eudora, KS's Objectives

1. Recruit new retailers and restaurants
2. Retain existing retailers and restaurant
3. Understand current retail and restaurant economic condition

Retail Recruitment and Retention Solution: Your Community Profile

Our solution is a total marketing strategy that enables community leaders to understand the consumer profile of their residents and to identify specific retailers and restaurants who seek a market with household purchasing habits just like yours. This solution provides you with the ability to actively pursue identified retailers, making a compelling case for their expansion to Eudora, KS utilizing custom marketing packages that Buxton will create for you. You will have access to the same analytical information and insights retailers depend on today to make site selection decisions providing you with instant credibility and the ability to differentiate your community.

Step 1 - Research Your Community

Buxton uses over 250 consumer and business databases that are updated regularly and compare your potential sites to the universe of all competing sites operating in the U.S. We define your current retail situation and those in any neighboring communities that impact your retail environment.

Step 2 – Define and Evaluate Your Trade Area

Customers shop by convenience, measuring distance based on time, not mileage. We will conduct a custom drive-time analysis to determine your trade area using our proprietary methodology and knowledge of individual retail client's actual trade areas. Your drive-time trade area will be provided to you as a map that accurately depicts your consumer shopping patterns.

Step 3 – Profile Your Trade Area's Residential Customers

Your community profile will analyze all the households in your drive-time trade area. Based on more than 7,500 categories of lifestyles, purchase behaviors and media reading and viewing habits (psychographics), the households in your trade area are assessed to gain an understanding of the types of retailers that would be attracted to your site.

Step 4 – We Match Retailers and Restaurants to Market Potential

Buxton will match the consumer profile of your community's trade area against the customer profiles of 5,000+ retailers in our proprietary database. We will identify the similarity between the two profiles analyzed using Buxton's proprietary retail matching algorithm to determine if your site presents an attractive opportunity for each retailer. We then qualify the list of matched results to verify that a retailer is currently operating or expanding, that they operate in similar sites and that your site affords adequate buffer from competition and cannibalization to be realistically considered.

Step 5 – We Create Marketing Packages

Buxton will assemble individualized marketing packages for up to twenty (20) targeted retailers and will notify each retailer’s key real estate decision maker, by letter that they have been qualified by Buxton as a potential viable fit for your site and should expect to be contacted by a representative of the city.

Your marketing packages will be delivered to you in SCOUT and include:

1. Map of the retail site and trade area
2. Map of retailer’s potential customers
3. Retailer match report that compares the site’s trade area characteristics and consumer profile with the retailer’s sites in similar trade areas

Solution Deliverables:

- SCOUT Touch Access
- Drive Time Trade Area Maps
- Retail Site Assessment
- Retail Match List (specific retailers that match your trade area’s consumer profile)
- Retailer Specific Marketing Packages (for up to twenty (20) retailers)
- Mobile tablet device at completion pre-loaded with all findings

Multi Year Deliverables: Year 2 & 3 of this agreement will include a Retail Recruitment model refresh, retail marketing packages, and full SCOUT and SCOUT Touch.

Access and Use Your Retail Recruitment Solution via SCOUT

Buxton’s Retail Recruitment solution will allow you to actively recruit retailers to your community and support existing businesses with the push of a button in SCOUT Touch, providing you with crucial information about your community, your trade areas, your residents, and much more. SCOUT is a web-based platform which is accessible on any Windows or iOS enabled device with an internet connection and designed to give decision-makers in your community access to the data and solutions that will assist them in making better business decisions. The Retail Recruitment solution includes one (1) mobile tablet device which will be provided at completion and will be pre-loaded with all key findings. This mobile tablet device, possession of Eudora, KS, is enabled with four (4) SCOUT Users with the ability to *run demographic and trade area profile reports*, and view maps, and other data elements.

Identifying and quantifying the key variables which impact your community, you will acquire insights from these findings that will provide you with a strong foundation from which to understand retail recruitment and business retention efforts. In Buxton’s SCOUT Touch you will be able to:

- Identify Retail Matches
- Run Variable Reports
- View City Limit Maps
- Run Healthcare Reports
- Run Demographic & Consumer Propensity Reports
- See Aerial View
- View Physician Intelligence
- Run Comparable Reports
- Run Retail Leakage/Surplus Reports



ANSWERS AT YOUR FINGERTIPS. ANYTIME. ANYWHERE.

SECTION 2: FEES & TIMING

ANNUAL FEE	SOLUTION TIMELINE
<p style="text-align: center;">\$50,000 (three (3) year term)</p>	<ul style="list-style-type: none"> Your SCOUT access will be enabled within ten (10) business days of the execution of this agreement Eudora, KS will have access to retail match lists and marketing packages within sixty (60) business days of execution.

Eudora, KS will be invoiced as follows:

- \$50,000 Year 1 Fee (50% invoiced upon execution of this agreement: 50% invoiced January 1, 2015)
- \$50,000 Year 2 Fee (Invoiced 1st Anniversary of this agreement)
- \$50,000 Year 3 Fee (Invoiced 2nd Anniversary of this agreement)

Buxton may include Eudora, KS on its client list in presentations and public relations efforts. When doing so, Buxton will not reveal information that is confidential and proprietary to Eudora, KS.

The initial term of this agreement is for three (3) years with services invoiced annually. However, at any time during this initial 3-year term, Eudora, KS may cancel services for the following year by providing written notice to Buxton at least sixty (60) days in advance of a yearly renewal. If Eudora, KS cancels services prior to the expiration of the initial term, no additional fees are due and payable. All service fees associated with this agreement are due in net (10) days of the date of the invoice.

Buxton

Signature

Printed Name

Title

Date

Eudora, KS

Signature

Printed Name

Title

Date

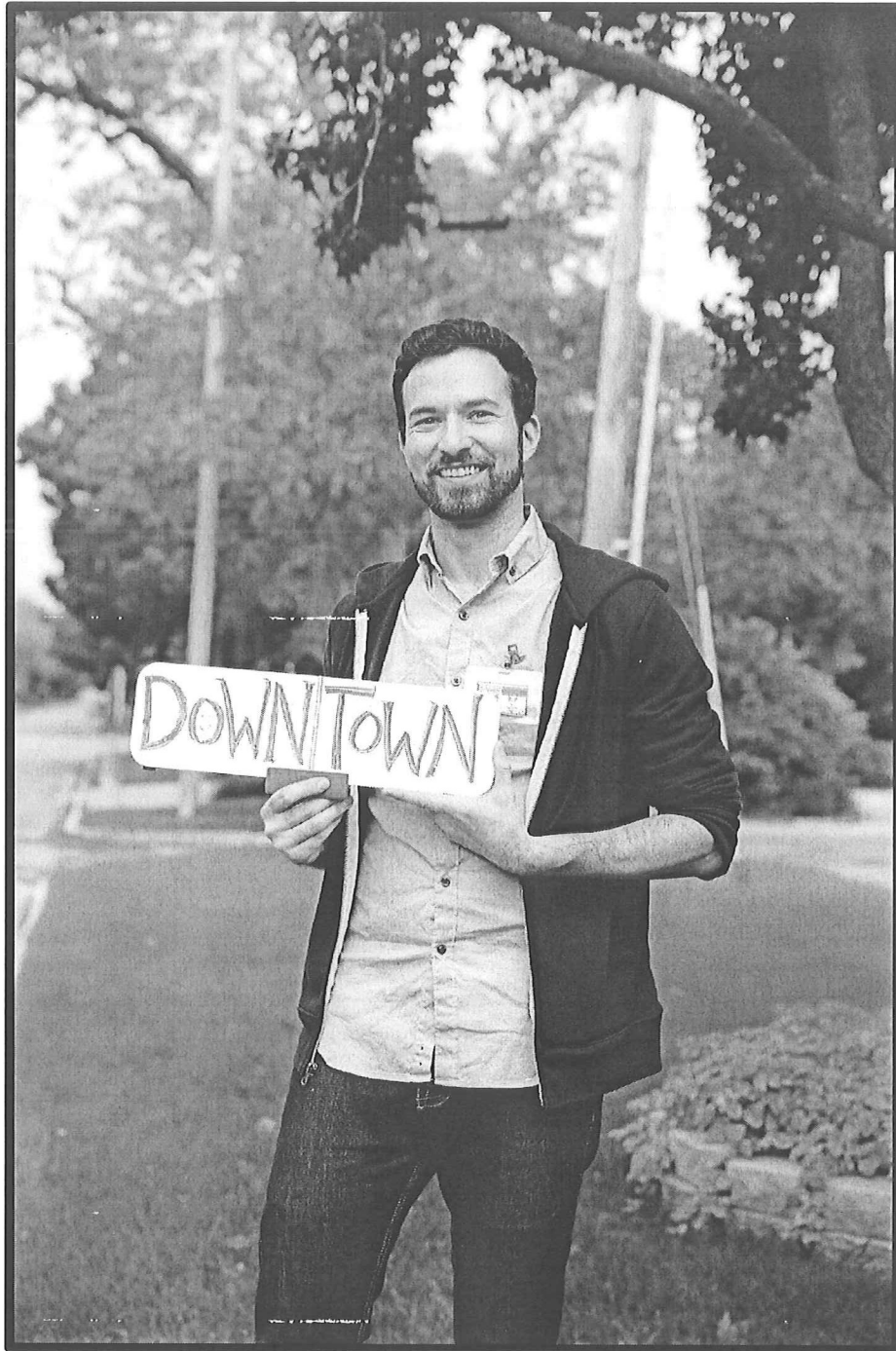
Please provide us with a primary point of contact for invoice receipt.

Name _____

Phone _____

Email _____

Preferred Method of Receipt (Email or U.S. Mail)



CarmaHop Roadside Ridesharing

This document is to introduce the ridesharing program CarmaHop, describe its structure and purpose, and explain how it relates to Carma Carpooling.

Jenny O'Brien
Community Manager
CarmaHop

785-856-2272
jenny.obrien@car.ma
www.carmahop.com
www.carmacarpool.com

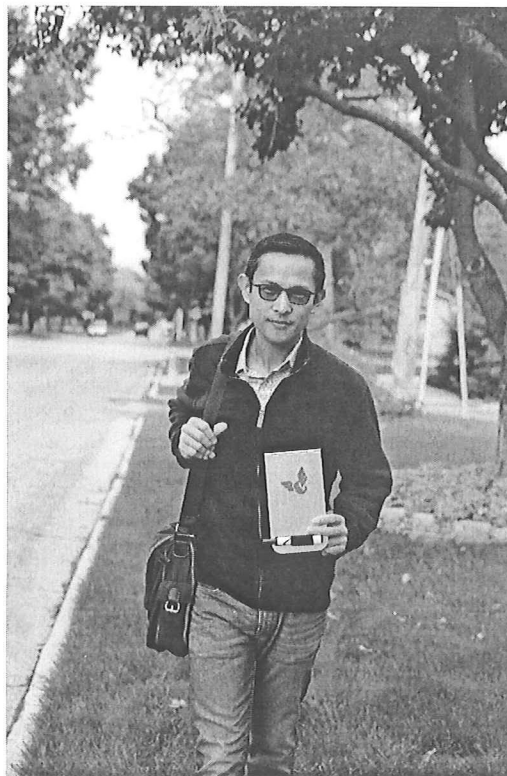
Background

CarmaHop began as a local grass-roots project called Lawrence OnBoard. Creator Jenny O'Brien was concerned about the lack of transportation options in rural Jefferson County, and so began researching a way to match people who need a ride with the empty seats in passing cars. O'Brien conducted extensive research and field testing of the concept and in May of 2014 teamed up with Carma Technology Corporation to develop an app and to launch a pilot program in Lawrence, Kansas.

How does it work?

Riders initiate all the ride activity in CarmaHop. They download the CarmaHop app from www.carmahop.com or the App store or Google Play. They make a profile page, with a photo and verify their email address and phone number. Participants can also sign up with Facebook. Riders then request a ride board--a folding dry erase board with the CarmaHop logo and a personalized ID permanently attached. Riders must give a home address to get a board, and it comes with a user guide

Riders can then find a good location to get a ride by tapping the "locations" button on the app. A map with pins and some data about each location appears. In addition to the map, riders are instructed on how to find these locations themselves. Criteria for a good location are as follows:





The rider must be visible to approaching cars
The road must have enough traffic flow to assure speedy pick-up time, but not so busy as to pose a traffic hazard

There must be a safe, easy and obvious place for cars to safely exit the roadway.

A stop sign or traffic light close by is helpful because it gives drivers a pause to consider if they want to stop for a rider.

The rider then writes his or her destination on the board, holds it up and waits for a passing car to stop and offer a ride. The rider must exercise good judgement in accepting a ride. Once the rider has entered the vehicle and buckled up, they open the app and tap "start trip". Then they ask for and input the driver's phone number. This enters the driver in a drawing for a \$20 gas card, which is an incentive to give a real phone number. The chance at a prize is also something of value that the rider can offer the driver, without the problems of money changing hands. When the trip is complete, the rider taps "end trip" and hops out. The app uses GPS to record the start and end points as a safety feature, and also so a rider can keep track of miles travelled and trips

taken.

O'Brien and volunteers have tested CarmaHop on over 150 test trips and found it to be safe, easy and reliable. Average wait time is under seven minutes. One in five drivers is familiar to the rider, and 85% of rides are reported very positive or mostly positive. Negative experiences include smoking drivers, loud music or an uncomfortable temperature in the car.



Carma Carpooling app

CarmaHop is meant to be used in conjunction with Carma Carpooling. Participants download the regular Carma app for Smartphone or desktop. They create a profile with a picture, email address and phone number, and additional information about themselves. Users who want to plan trips ahead of time input their trip information: start and end location, time of day and whether they want to drive or ride. Users can ask the app to find them a match using a trip matching algorithm, or they can message each other to organize their carpool activities. The rider records the carpool by tapping "start trip" and the driver's name pops up on a pull-down menu. GPS records the start and end locations and the time elapsed.

The regular Carma app uses an electronic wallet to collect 20 cents a mile from the rider, and pay 85% of that amount to the driver. This is less than or equal to than the legal amount permitted by law as the rider's share of the cost of the ride. This amount has no effect on a driver's insurance liability, and does not violate taxi ordinances. This payment structure is why Carma is considered a true ridesharing program and not a "Transportation Network Company" like Lyft or Uber.

The critical mass problem--why Carmahop works where other ridesharing systems do not

All ridesharing systems must overcome the problem of critical mass. A program needs a large pool of active participants in order to find successful matches. Critical mass is difficult to build and requires a lot of marketing and outreach. In small cities and rural areas, that critical mass would be difficult or impossible. CarmaHop sidesteps the need for critical mass because a rider can find a ride with any passing driver who is willing to stop.

Carma has made the two systems interoperable. The same user account works on both apps. Random drivers who pick up CarmaHoppers will get a text message thanking them for giving the ride. The message links through to the Carma website where they can sign up for a regular Carma account. The plan is for CarmaHop to act as a mechanism to build critical mass for regular Carma so that eventually all participants can plan rides ahead of time.

Safety features:

In addition to the GPS location abilities of both apps, Carma uses several sharing economy practices to insure that participants are on their best behavior.

Ratings:

After a trip, all Carma and CarmaHop riders and drivers are sent a push notification to rate each other. Users who give another user 1 star are never matched in the future, and users who get enough bad ratings are excluded from the service.

Verifications:

Carma and CarmaHop follow the standard sharing economy model for verifications. Phone numbers are verified through an SMS message and a code, email is verified through an email link and users are also verified through Facebook.

Carma emphasizes in the terms of service that their platform facilitates carpools and that the participants are responsible for their own safety. Carma does not require background checks to participate, and has found that the verifications, ratings and good judgement are adequate. Carma has an immaculate track record for security. With regards to the roadside ridesharing elements, Carma has conducted extensive research into Casual Carpooling systems (the closest thing to roadside ridesharing) and has concluded that this mode of travel is not any more dangerous than any other travel mode, and is significantly safer than single occupant vehicle travel.

Indemnification

Carma includes in its Terms of Service indemnification for Trusted Partners. This will be amended to include the City of Lawrence, and other local government entities. Carma includes this clause for all it's partner cities, whether or not they provide financial support for Carma projects. See www.carmacarpool.com for full terms of service.

About Jenny O'Brien

O'Brien has lived in Northeast Kansas since 1997. She started a jewelry company, CASA Kids Studio that made fundraisers for Court Appointed Special Advocate programs across the country. In 2012, she started researching an idea for creating a transportation network based on hitchhiking, which became Lawrence OnBoard. O'Brien coauthored with Anne Dunning *Community Rideshare for a Small City; Preliminary Results of the Lawrence OnBoard Prototype Program*, which was accepted for publication in the *TRB Record*. She was featured in *YES! Magazine*, *Smithsonian Online*, the NCMM podcast, and gave a talk at the 2014 TEDxKC event. In May of 2014, O'Brien teamed up with Carma Technology to develop a smartphone app for roadside ridesharing. The program, now called CarmaHop is set to launch in the fall of 2014.

O'Brien will be presenting CarmaHop at the following conferences:

- Kansas Planners Conference on October 3, 2014 in Wichita, KS
- The 21st National Conference on Rural Public and Intercity Bus Transportation in Monterey, CA on October 27, 2014
- The International Paratransit Conference in Monterey, CA on October 29, 2014

About Carma Technology Corporation

Formerly known as Avego, the company was founded in 2007 by Sean O'Sullivan, who pioneered mapping on the home computer. Carma Technology Corporation is a real-time transportation technology company headquartered in Cork, Ireland. Its flagship product, Carma Carpooling, is the world's only verified ridesharing app, matching users with nearby commuters and enabling them to share the cost of driving. Carma also has offices in San Francisco, California, Bergen, Norway and Austin, Texas.



Heritage Conservation Council

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5286 Fax (785) 838-2480
www.douglas-county.com

MEMO TO: The Board of County Commissioners
Craig Weinaug, County Administrator

FROM: Douglas County Heritage Conservation Council

SUBJECT: Recommendations for Heritage Grant Program Revisions

DATE: October 10, 2014

The Heritage Conservation Council of Douglas County promotes the conservation of our cultural and natural heritage to honor our past, enrich our present, and inspire our future.

The Commission created the Heritage Conservation Council to provide guidance for heritage conservation efforts in Douglas County, including the Natural and Cultural Heritage Grant Program. Since establishing the grant program in 2011, the Council has awarded \$834,050 for various projects in the county. Those grants have helped secure nearly \$1.5 million, or about 182 percent, in additional resources. These include private donations, state and federal grants, donated land grants and easements, and other tangible forms of in-kind donations. Commissioner Nancy Thellman and Assistant County Administrator Sarah Plinsky met with the Heritage Council in September to ask them to consider making a few revisions to the Heritage Grant Program. After discussion at their October 2 meeting, the Council agreed by consensus to recommend the following revisions to the 2015 Heritage Grant Program.

Recommended changes to Heritage Grant Program

A. Eligibility:

The Council proposes to change the eligibility criteria to require partnering for certain potential applicants, with the suggested revision to read:

Who can apply: Douglas County nonprofit organizations, universities, K-12 schools, businesses, and any unit of local government.

Individuals, families, or out-of-county organizations, businesses, or units of government must have a Douglas county partner as listed above to apply.

For projects on properties or structures the applicant must hold title to the property or demonstrate full consent of the property owner.

B. Competitive Evaluation Criteria:

The Council recommends the following changes to the grant evaluation criteria.

1. Conservation of natural and cultural resources has been the only weighted (multiplier of 2) criterion in the past. The Council proposes the addition of two more criteria as weighted categories:
 - a. Matching Resources (multiplier of 2)
 - b. Sustainability (multiplier of 2)
2. Community Impact criteria to have an expanded definition to place emphasis on proposed projects using Douglas County procured materials, supplies, and labor whenever feasible.
3. Connectivity criteria to have expanded definition to include collaborative effort between agencies or organizations.
4. Public Access definition to be clarified to include all types of access, whether it be direct physical (on-site) access or virtual access (films, books or digital media).
5. Affordability criteria to be renamed Budget.
6. Feasibility criteria to have an expanded definition that includes the necessary regulatory approvals to be accomplished (i.e. zoning, land use rights, e.g.) Copies of such approvals, if applicable, will be required as part of an application.
7. Add new criterion for listed or designated structures, districts or landscapes: National, State or Local Register of Historic Places listing for structures and districts; landscapes with national or state recognition and designated as conservation areas; wilderness areas; and historic or scenic trails. Properties with these designations or pursuing these designations will receive credit.

C. Application:

The Council recommends the following changes to the application to provide more information for the evaluation of proposed grant projects:

- a. Include a standard budget worksheet for applicants to complete for use by the Council to evaluate and more easily compare the relative strength of projects (Budget Criterion).
- b. For organizations with board of directors or other oversight group, provide a complete list of members including brief resumes (Feasibility Criterion).

D. Project Agreement:

The Council recommends the following changes to clarify payment procedures.

1. Except for grants in the amount of \$5000 or less, the grant program should be treated as a reimbursement grant. The grant recipient shall pay, in full, all costs of the project as they become due and payable. Progress payments or monthly billings for a percentage of the completed project are not reimbursable under the program. This provision should be taken into consideration when calculating the cash flow for the project and itemizing the project budget.

2. Modification to General Conditions:

- a. Clarify general condition number three to include compliance with local, state and federal building code requirements, including the ADA Act of 1990.
- b. Proposed Additional Condition: Property sold at a profit within five years of project conclusion may be subject to recapture at the rate of 20% per year.
- c. Proposed Additional Condition: Construction projects performed on structures that are listed on local, state or national registers or that are pursuing such listing must be reviewed, prior to commencing work, by the SHPO (or SHPO designee) for compliance with the Secretary of the Interiors Standards whether such a project requires a building permit or not. Letter of determination must be submitted to the Program Manager prior to commencing demolition or construction work.

E. Project Reports

The Council recommends the following changes to project reports.

1. Require quarterly written interim reports for grants over \$50,000. These reports would not be tied to dispersal of funds.
2. Final report to include a full accounting of receipts and financial information (in-kind, tax credits, e.g.)
3. When applicable, interim reports shall include copies of the following:
 - a. Building and zoning permits (if not provided with application) for all construction projects.
 - b. Letters of determination from the State Historic Preservation Office (evidence of compliance with the Secretary of the Interiors Standards).
 - c. Approval letters for tax credit applications (state, federal, housing or other) from the appropriate reviewing authority.

Recommendation:

The Heritage Conservation Council asks that the Board of County Commissioners approve the above recommendations for revisions to the Natural and Cultural Heritage Grant Program. Some Council members will be available at the Commission meeting to answer any questions from the Commissioners.

AD - Crabtree, Robin

From: AD - Weinaug, Craig
Sent: Thursday, October 09, 2014 11:10 AM
To: County Commission
Cc: SH ext - McGovern, Ken; PW - Browning, Keith; AD - Crabtree, Robin; Evan H. Ice (EIce@stevensbrand.com)
Subject: FW: Jake Brake prohibition
Attachments: Resolution-SLT-Temporary Jake Brake Prohibition--Sept2014.doc; Copl Guinn info--2002.pdf

Commissioners:

Several weeks ago, I received complaints from neighbors living on 458 just east of highway 59 about the noise created by the use of jake brakes by truckers on 458, approaching 59. The amount of heavy truck traffic at this location has increased significantly due to the Trafficway construction.

Attached please find a resolution that would provide for sign postage at this location prohibiting the use of jake brakes. Also attached is an analysis of this issue that was prepared by personnel in the Sheriff's office in 2002.

The recommendation from the Sheriff's office in 2002 was that posting the signs would have little benefit because the restriction would be difficult to enforce; instead they recommended that KSA 8-1739 (c) which requires trucks to be properly muffled, be enforced.

My recommendation is only slightly different. I recommend that the attached resolution be approved by the commission, enabling us to post signs, and that the Sheriff's Office be encouraged to enforce KSA 8-1739 (c), and/or this resolution prohibiting the use of jake brakes at this location, as the Sheriff deems appropriate. I do think (hope) that the signs might very well cause some of the truckers to brake using methods that minimize the noise impact on the neighbors.

I have talked with the Sheriff about this recommendation, and he has no objection to this approach.

This will be an item on the 4 pm agenda for next Wednesday.

Craig

From: PW - Browning, Keith
Sent: Wednesday, October 08, 2014 3:47 PM
To: AD - Weinaug, Craig
Subject: FW: Jake Brake prohibition

Craig,

Resolution attached.

Keith

From: PW - Browning, Keith
Sent: Thursday, September 25, 2014 3:04 PM
To: AD - Weinaug, Craig; Evan Ice

Cc: PW - Gorman, Terese
Subject: Jake Brake prohibition

Craig & Evan,

Attached is Evan's draft resolution prohibiting engine brakes, a.k.a. Jake Brakes, on Rte 458 (N 1000). Also attached is information compiled by DGSO in 2002 when the issue was raised. The DGSO recommended at the time that current KSA 8-1739(a) should be enforced, rather than creating another resolution. There have been legal challenges to prohibiting engine brakes because the problem is not with engine brakes per se, but rather with poorly muffled engine brakes.

Let me know if you want to move forward with Evan's draft resolution.

Keith

*Keith A. Browning, P.E.
Public Works Director/County Engineer
Douglas County Public Works
1242 Massachusetts
Lawrence, Kansas 66044
785-832-5293
kbrowning@douglas-county.com*

HOME RULE RESOLUTION NO. _____

A HOME RULE RESOLUTION PROHIBITING THE USE OF ENGINE BRAKING ON PORTIONS OF N 1000 ROAD FOR THE DURATION OF THE CONSTRUCTION OF THE SOUTH LAWRENCE TRAFFICWAY (KDOT PROJECT)

WHEREAS, K.S.A. 19-101a, and amendments thereto, authorizes the Board of County Commissioners (hereinafter the "Board") to transact all County business and perform all powers of local legislation and administration it deems appropriate, including the enactment of legislation designed to protect the health, safety, welfare, and quality of life of the citizens of Douglas County; and

WHEREAS, the Board is the local authority having jurisdiction over county and township highways within Douglas County; and

WHEREAS, construction of the South Lawrence Trafficway has closed roads and rerouted commercial traffic onto County and Township roads not used to such traffic; and

WHEREAS, the Board has determined that the use of engine braking on portions of N 1000 Road, described below, is causing unnecessary noise and disruption to the lives of residents near such Road and, therefore, desires to temporarily prohibit the use of such breaking mechanisms on portions of N 1000 Road for duration of the road closures caused by the South Lawrence Trafficway construction.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION AND INTENDING TO EXERCISE THE POWERS OF HOME RULE LEGISLATION PURSUANT TO K.S.A. 19-101a, DOES HEREBY RESOLVE AS FOLLOWS:

- 1. Prohibition.** The use of engine braking, including compression release engine brakes, frequently referred to as Jake Brakes, is prohibited on the following described county and township highways:

Westbound traffic on N 1000 Road, from a point 100 yards west of Wells Overlook Drive to E 1338 Road

- 2. Violations.** Persons who violate the provisions of this Resolution shall be guilty of disobeying an official traffic control device and punished as provided in K.S.A. 8-2118, as amended.

3. **Effective date.** This Resolution shall become effective upon publication one time in the official County newspaper and after appropriate traffic control devices giving notice thereof are erected upon the above described county and township highways.

4. **Expiration.** This Resolution shall be rescinded when construction of the South Lawrence Trafficway no longer affects the roadway operating conditions of the above described county and township highways, as determined by the County Engineer, and applicable traffic control devices are removed.

ADOPTED on _____, 2014.

**BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS**

Nancy Thellman, Chair

ATTEST:

Mike Gaughan, Member

County Clerk

Jim Flory, Member

GLENN R. "Rick" TRAPP
SHERIFF




WILLIAM H. SHEPARD
UNDERSHERIFF

111 EAST 11th
LAWRENCE, KANSAS 66044
PHONE: (785) 841-0007 • FAX: (785) 841-5168

MEMORANDUM
October 16, 2002

TO: LT. CROWE

FROM:  GLENN R. "Rick" TRAPP, SHERIFF

CC: CPL. GUINN, CAPT. VAN HOESEN, MAJOR SHEPARD,
KEITH BROWNING, PUBLIC WORKS

RE: Excessive Noise from Engine Compression Brakes

Please see the attached memorandum prepared by Cpl. Guinn that reflects his research into the problem of engine compression brake noise. Please also see the attached copy of K.S.A. 8-1739, mufflers and noise suppressing systems.

Please assign Cpl. Guinn and/or yourself to contact the traffic attorney in the District Attorney's office. Discuss with him whether K.S.A. 8-1739 is enforceable and can be used to help control excessive noise caused from improper mufflers and vehicles using engine compression brakes. Please inform me of the results of your discussion.

Thank you.

Douglas County Sheriff Department

Research for Prohibition on use of Engine Compression Brakes

To: Sheriff Trapp
Cc: Public Works Director Keith Browning
From: Corporal Guinn
Date: September 7, 2002

Sheriff Trapp,

You requested that I conduct research for the possibility of issuing a resolution on the prohibition on the use of engine compression brakes (Jake Brakes) within the county area. It was my understanding that numerous complaints from citizens have been received both at the Sheriff's Department and Public Works. Most complaints have been from the area of 1800 N road and 1200 E road.

I have observed this area during all shifts. This area has a tremendous amount of heavy truck traffic twenty- four hours a day, at least twenty-five percent or more of this truck traffic is using some form of an engine compression brake while approaching this four-way stop intersection.

There is no known regulations prohibiting the use of an engine compression brake system in the Code of Federal Regulations Title 49, parts 40, 325, and 355-399 Federal Motor Carrier Safety Regulations.

There is no Kansas State Statue that addresses this issue and at the present time there is no county or municipal resolution or ordinance for Douglas County.

During my search for information I found one, State House Bill HB0281, from the State of Wyoming, and two local municipalities from Kansas with ordinances. The Kansas Turnpike has posted signage prohibiting the use. I spoke to numerous municipalities' traffic enforcement divisions and to State and Federal Motor Carrier Enforcement Officers. Scott McPherson of the Douglas County District Attorney's Office attempted to locate other jurisdictions, other then the ones known to me that might have any form of regulations in reference to the prohibition of engine brakes. Scott McPherson found none. Attached to this are copies of information I obtained while

Douglas County Sheriff Department

Research for Prohibition on use of Engine Compression Brakes

researching this matter. Of interest while searching, I found one web site, OOIDA Motor Carrier Survey asking for individuals with knowledge of jurisdictions with regulations banning the use of Jake Brake or engine compression brakes, log on and complete the survey against this practice. I located one newspaper article from Waukesha, Wisconsin dated February 18, 2001 in which a spokesperson (Frank Stawski) from Jacobs Vehicle Systems of Bloomfield, Conn. (makers of the trademarked "Jake Brake" system) stated they have been successful in getting government bodies to change their signage language. He also stated they have not had to sue yet, but would if needed. He also said they produced a legal product and that persons using the product often use it with faulty exhaust making the loud noises.

I spoke to traffic enforcement divisions from Lenexa, Olathe, Overland Park, Chanute, Hutchinson, and Manhattan, Kansas along with the Kansas Turnpike.

Kansas Turnpike: Post signs but has no ability to enforce "No Jake Brakes."

Chanute and Hutchinson: City ordinances prohibiting the use of "Jake Brakes."

Manhattan, Lenexa and Overland Park: No enforcement.

Olathe: After a similar study, bought decibel meters and strictly enforces their current noise ordinance.

Lawrence Douglas County Fire and Medical currently use engine compression brakes on their fire trucks. They are properly muffled and most citizens do not know they are in use at all times the truck is coming to a stop.

Options

1. Do nothing, not a good option for addressing citizens concerns.

Douglas County Sheriff Department

Research for Prohibition on use of Engine Compression Brakes

2. Attempt enforcement under the county's Nuisance resolution HR 93-6-5; not a good option due to the fact that you must document multiple violations and then the County Commission determines if it is a nuisance.
3. Create a resolution to prohibit the use of engine compression brakes; may not be legally enforceable, additional signage and warnings needed and hard to enforce.
4. Post signage as the Kansas Turnpike has with no enforcement abilities; bad idea, some drivers tend to use the brakes simply because there is signage.
5. Create a resolution to prohibit excessive noise in the county area; not a bad idea but would require equipment to measure noise and is hard to enforce.
6. Enforce current State Statute 8-1739(a) (mufflers and noise suppressing systems)

Recommendation

1. Use current State Statute 8-1739 (a). The problem with using engine compression brakes is only evident when used in conjunction with no or poorly muffled engines. This statute is easy to enforce on all motor vehicles regardless of size. All large trucks must have a Kansas registration, permanent or temporary making all vehicles subject to this statute.

Respectfully Submitted,

Cpl. Gayland L. Guinn S168

Cpl. Gayland L. Guinn S168



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Site Index

Home > [Kansas Statutes](#) > Kansas Statute No. 8-1739

8-1739

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES Article 17.--UNIFORM ACT REGULATING TRAFFIC; EQUIPMENT OF VEHICLES

8-1739. Mufflers and noise suppressing systems. (a) Every vehicle shall be equipped, maintained and operated so as to prevent excessive or unusual noise. Every motor vehicle at all times shall be equipped with a muffler or other effective noise suppressing system in good working order and in constant operation, and no person shall use a muffler cut-out, bypass or similar device.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

History: L. 1974, ch. 33, § 8-1739; July 1.

Kansas State Capitol - 10th and Jackson - Topeka, Kansas 66612

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CHAPTER VII. NUISANCES

Article 1. Prohibiting Nuisances within the County

ARTICLE 1. PROHIBITING THE MAINTENANCE, COMMISSION AND CAUSING OF NUISANCES WITHIN THE COUNTY

- 7-101. NUISANCES DEFINED AND PROHIBITED. It shall be unlawful for any person to permit, cause, keep or maintain any nuisance, or cause to be committed, caused, kept or maintained any nuisance within Douglas County. Anything which is dangerous to or violates the health, peace, or welfare of any citizen of Douglas County, Kansas, is hereby deemed and declared to be a nuisance. (HR 93-6-5, Sec. 1)
- 7-102. EXEMPTIONS. The following activities shall not be deemed a nuisance as defined herein:
- (a) Any activity normally associated with the operation of an agricultural, farming or ranching business; and
 - (b) The normal operation of any industrial business which is being carried on in an area zoned for such use or for which a conditional use permit has been issued by the Board. (HR 93-6-5, Sec. 2)
- 7-103. ABATEMENT; NOTICE. Whenever the Board determines that any nuisance, as herein defined, exists on any premises within the County, it shall be the duty of the Board (or its designated representative) to notify in writing the owner or occupant thereof of the existence of such a nuisance, specifying the measures necessary to abate such nuisance and requiring its abatement. The notice to abate such nuisance must be served on the occupant of the premises personally, or if there is no such occupant, then the notice must be sent to the owner or agent of the owner of such premises by United States mail, postage prepaid, to the address of such owner or agent.
(HR 93-6-5, Sec. 3)
- 7-104. ABATEMENT; DUTY OF OWNER; FAILURE TO COMPLY. Upon receipt of the notice specified by 7-103, above, it shall be the duty of the owner or occupant receiving notice to abate the nuisance within the time specified in the notice and it shall be unlawful for any such occupant or owner to fail to take remedial action. In the event such occupant, owner or agent shall fail, neglect or refuse to comply with the terms of the notice, or in case the Board or its designated representative after having used due diligence, is unable to locate any occupant, owner or agent, the Board shall have the authority to take remedial action. (HR 93-6-5, Sec. 4)

7-105.

ENFORCEMENT. (a) Injunction. The Board may bring an action in the District Court of Douglas County to enjoin the nuisance and upon a finding that a nuisance exists the Court shall make an order enjoining the nuisance and granting such further relief as is necessary to protect the interest of the citizens of Douglas County, Kansas.

(b) Temporary Abatement. In the event that the Sheriff of Douglas County, Kansas, determines that an emergency exists wherein a nuisance, as defined herein, presents an immediate risk to the health, peace, or welfare of any citizen of Douglas County, Kansas, and irreparable harm may occur if the nuisance is not immediately abated, he may enter upon the premises and temporarily abate the nuisance in such manner as he believes will best protect the citizens of the County. Before any permanent abatement takes place the notice procedures set forth herein shall be followed. (HR 93-6-5, Sec. 5)

QUAKH BRARR

INTRODUCTION, 10-20-98

Published: 7-10-98

ORDINANCE NO. 7591

AN ORDINANCE PROHIBITING THE USE OF JAKE BRAKES IN THE CITY OF HUTCHINSON, KANSAS EXCEPT IN EMERGENCY SITUATIONS.

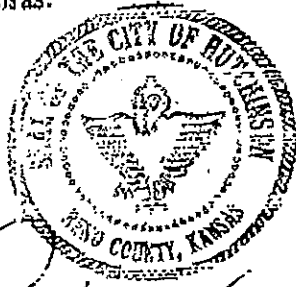
BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HUTCHINSON KANSAS:

SECTION 1. It shall be unlawful for any driver of a truck or truck-tractor to activate or use the unit's "Jake brake" within the city limits except in an emergency situation

SECTION 2. The term "emergency situation", for the purposes of this ordinance, shall mean one in which there is imminent danger of collision with property, persons or animals; and

SECTION 3. This Ordinance shall take effect and be in full force from and after its passage and publication in the official City newspaper.

PASSED BY THE GOVERNING BODY, this 7th day of July, 1998 for the City of Hutchinson, Kansas.



Handwritten signature of Jeffrey A. Roberts, Mayor, with printed name below.

ATTEST:

Handwritten signature of Ross A. VanderHamm.

Ross A. VanderHamm
Finance Director/City Clerk

Cpl Ginn #168
785-841-5168



(Published in The Chanute Tribune June 25, 1999.)

ORDINANCE NO. 2448

AN ORDINANCE ADDING TO CHANUTE MUNICIPAL CODE
SECTION 10.40.065, DEALING WITH NOISE PREVENTION
AND PROHIBITING THE PRACTICE KNOWN AS JAKE-BRAKING.

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

SECTION 1:

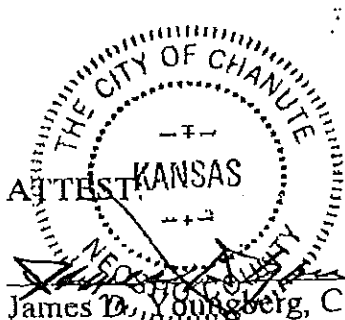
City of Chanute Municipal Code Section 14.40.065 is hereby established to read and provide as follows:

"14.40.065 Jake-Braking. It shall be unlawful for the driver of any truck as defined in this chapter to use or operate or cause to be used or operated within the City of Chanute, Kansas, any mechanical exhaust devise designed to aid in the braking or deacceleration of any vehicle which results in the excessive, loud, unusual or explosive noise from such vehicle, or otherwise known as jake-braking."

SECTION 2:

This ordinance shall take effect upon its publication in the official City newspaper.

Passed and adopted by the Governing Body of THE CITY OF CHANUTE, KANSAS, this 14th day of June, 1999.



James D. Youngberg
James D. Youngberg, City Clerk

Greg Barnhart

GREG BARNHART, Mayor

APPROVED AS TO FORM:

David S. Brake

David S. Brake, City Attorney

HB0281 - Regulation of commercial vehicle noise.

2001

STATE OF
WYOMING

01LSO-0630

HOUSE BILL NO. HB0281

Regulation of commercial vehicle noise.

Sponsored by: Representative(s) Shivler

A BILL

for

1 AN ACT relating to cities, towns and counties; authorizing
2 local governing bodies to regulate the noise created by
3 engine brakes on commercial vehicles as specified; and
4 providing for an effective date.

5
6 *Be It Enacted by the Legislature of the State of Wyoming:*

7
8 Section 1. W.S. 15-1-103(a) by creating a new
9 paragraph (1) and 18-3-504(a) by creating a new paragraph
10 (x) are amended to read:

11
12 15-1-103. General powers of governing bodies.

13
14 (a) The governing bodies of all cities and towns may:

15
16 (1) Adopt ordinances to regulate the amount of
17 noise a commercial vehicle may emit from the use of an

Page 1

1 unmuffled engine brake within the corporate limits of the
2 city, including establishing requirements with respect to
3 the operation of mufflers or other effective noise
4 suppressing systems to prevent excessive or unusual noise
5 from engine brakes. Before enforcement of a resolution
6 adopted under this paragraph restricting the use of an
7 unmuffled engine brake, the city or town shall post signs
8 not less than one (1) mile from locations where the
9 resolution shall be enforced warning operators of the
10 restriction.

11
12 18-3-504. Powers and duties generally.

13

14 (a) Each board of county commissioners may:

15

16 (x) Adopt resolutions to regulate the amount of
17 noise a commercial vehicle may emit from the use of an
18 unmuffled engine brake within unincorporated areas of the
19 county, including establishing requirements with respect to
20 the operation of mufflers or other effective noise
21 suppressing systems to prevent excessive or unusual noise
22 from engine brakes. Before enforcement of a resolution
23 adopted under this paragraph restricting the use of an
24 unmuffled engine brake, the county shall post signs not

Page 2

1 less than one (1) mile from locations where the resolution
2 shall be enforced warning operators of the restriction.

3

4 Section 2. This act is effective July 1, 2001.

5

6

(END)

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Alderman urges engine brake ban

By RICK BARRETT of the Journal Sentinel staff

Last Updated: Feb. 18, 2001

The staccato sound of big trucks "jake" braking, or using engine compression to slow down, has come under fire from a City of Pewaukee alderman.

The distinctive sound might be music to a trucker's ears, but it's annoying to people who live near Capitol Drive, Highway 164 and other major roads, said Ald. David Swan.

"These trucks remind me of the days when some people thought that cars with loud mufflers were cool," Swan said.

The term "Jake Brake" is a registered trademark of Jacobs Vehicle Systems and refers to a type of engine brake used extensively on heavy-duty trucks.

The driver has a switch in the cab that activates the device and adjusts the engine compression to slow the vehicle. In doing so, it makes what some people describe as a lot of noise.

Swan said he had seen "No Jake Braking" signs in other communities, and he wants something similar in Pewaukee. He has proposed an ordinance to ban the use of engine brakes in the city.

"I am not against truckers, but I want something to quiet things down a bit," Swan said.

Menomonee Falls and at least a half-dozen other communities in Wisconsin have ordinances prohibiting truck drivers from using engine brakes.

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But although Menomonee Falls passed its ordinance almost a year ago, the village hasn't written traffic citations to violators yet because it hasn't posted warning signs, said Police Sgt. Jim Bramm.

"What we are doing is giving verbal warnings, telling truck drivers they can't use their engine brakes here," he said.

The warning signs are a sensitive issue because Jacobs Vehicle Systems has threatened to sue communities for using the trademark name "Jake Brake" without the company's permission.

"The term we will have to use on our signs is 'engine brake,' " Bramm said.

Engine brakes are a safety feature and can stop a truck about 15 feet faster at 30 mph than just using regular brakes, according to trucking industry data. They also save truck owners money because they reduce wear on wheel brakes.

"Absolutely, they help," said Bill Wisecup, training director at Diesel Truck Driver Training School in Sun Prairie, near Madison.

Yet some truck drivers wrongly use engine brakes to compensate for poorly maintained wheel brakes, Wisecup and Bramm said.

Also, engine brakes were designed for use in mountainous regions where wheel brakes can become overheated on steep downhill roads. They aren't necessary in Wisconsin, according to Wisecup.

"You just don't need a jake brake in this state," he said. "And some truck drivers think it's cool to make a lot of noise with them, causing problems for everyone else."

Rather than banning engine brakes, local governments should crack down on poorly muffled trucks that are at the root of the problem, said Frank Stawski, attorney for Jacobs Vehicle Systems.

The sound from an engine brake can be quite loud on a poorly muffled truck, Stawski said.

"But the real problem here is the illegally modified or defective muffler, rather than the brake," he said.

Jacobs Vehicle Systems of Bloomfield, Conn., is concerned about the number of communities across the country that have enacted ordinances banning engine brakes, Stawski added.

"We don't believe communities should have the right to ban a legal product," he said. "It's almost as ludicrous as saying if a town doesn't like red trucks they should ban red trucks."

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Stawski said his company has been successful in having the language on "No Jake Brake" signs changed to something more generic in most of the communities it has contacted.

"We haven't had to sue anyone over it yet," he said. "If a community is making a genuine effort to comply we give them time to change their signs."

In Pewaukee, Swan said he just wants an ordinance to give people some relief from truck drivers making a lot of noise with engine brakes.

"People who live along a highway shouldn't have to listen to this over and over just because some truck drivers think it's cool," he said.

In the Village of Pewaukee, former truck driver Doug Schuh, who lives near Highway 164, said he doesn't blame truck drivers from trying to save their wheel brakes, as they wear out fast and are expensive to replace. But noisy engine brakes are a problem in the village, too, Schuh said.

"We hear them pretty regularly, and the sound carries a long way," he said.

ON THE AGENDA

The proposed ordinance on engine brakes is scheduled for discussion at 7 p.m. today during the Common Council meeting.

Appeared in the Milwaukee Journal Sentinel on Feb. 19, 2001.

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Memorandum

City of Lawrence

Planning & Development Services

TO: Board of County Commissioners

CC: Craig Weinaug

FROM: Mary Miller, City/County Planner

Date: October 9, 2014

RE: 2014 Annual review of Hamm/Buchheim Quarry, 1453 E 550 Road

The report of the 2014 annual review of the Hamm/Buchheim Quarry, CUP-11-5-76, will be presented to the Board of County Commissioners at their October 15, 2014 meeting.

The report is not available at this time as staff is in the process of completing the review. The Quarry operator and staff are working together to develop supplemental conditions to address concerns raised by the neighboring property owners. In addition, a revised access point, which would remove truck traffic from the S curve on E 550 Road, is being considered.

Staff will present the report to the Commission at their October 15th meeting for discussion. The Commission may choose to continue the item if additional time is needed to consider the material.

Memorandum

City of Lawrence

Planning & Development Services

TO: Board of County Commissioners

CC: Craig Weinaug

FROM: Mary Miller, City/County Planner

Date: October 14, 2014

RE: 2014 Annual review of Hamm/Buchheim Quarry, 1453 E 550 Road Road Maintenance Agreement and Supplemental Conditions

Background:

The County Engineer worked with the Hamm Quarry operator and neighboring property owners to develop a set of Supplemental Conditions when drafting the Road Maintenance Agreement. The Supplemental Conditions are conditions that the quarry operator is voluntarily adding to the CUP in response to neighbor's concerns. These were based on conditions that have been established for other quarries in the County. The Road Maintenance Agreement provisions are outlined in the Compliance Report. This memo summarizes the Supplemental Conditions which are included with the agreement.

Requested Action:

Approve and sign the Road Maintenance Agreement and Supplemental Conditions.

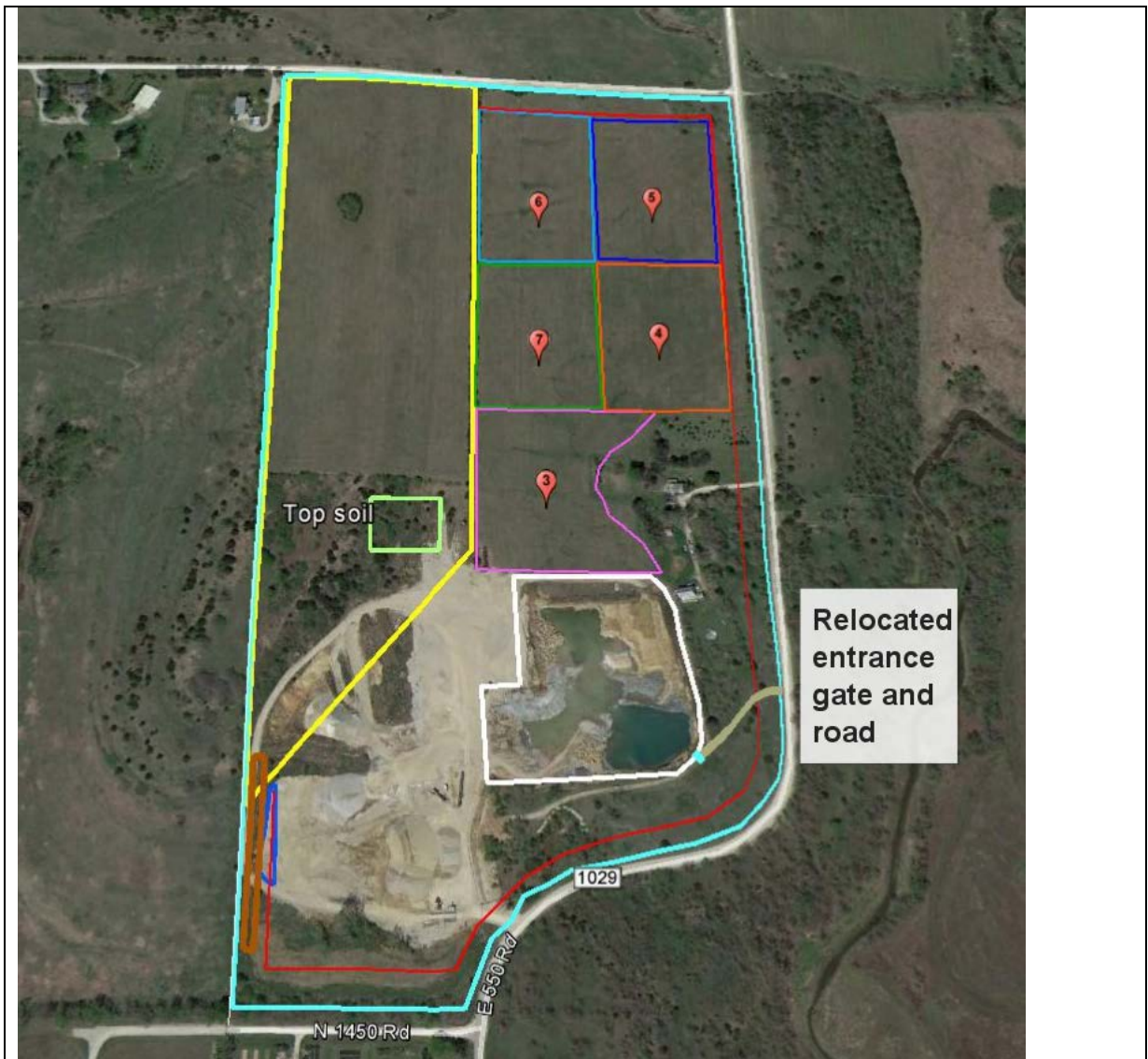
Summary of conditions:

1. The uses which are permitted with the CUP are identified.
2. The following Operating Hours are established:
 - Processing, extraction, hauling: 7 AM to 6 PM, Monday – Friday; excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following day, and Christmas Day and the following day.
 - Blasting: 10:00 AM to 2:00 PM. Blasting outside of these times shall occur during rare circumstances due to weather and/or federal/MSHA regulations.
3. The original CUP did not require the site to be fenced. The following conditions related to fencing are established:
 - A security gate and fence will be installed at the access and will be located when no staff is present. The gate will be signed with the operator's information and 'no trespassing'.
 - Fencing, minimum 5-strand barbed wire fence, will surround the permitted crushing area.
 - 'No Trespassing' signage will be installed at maximum 500 ft intervals.
 - The height of the screening berms is designated as 6 ft.

4. The Supplemental conditions allow Hamm to sell, transfer, or assign the Subject Property.
5. The seismograph placement is included as a condition.

Condition No 6 of the Road Maintenance Agreement notes that the access points may be moved to locations that the County Engineer and Hamm agree upon, with safety on E 550 Road being a significant factor. A truck staging area will be provided on site. The County will post signage along E 550 road restricting parking on E 550 road between N 1500 and N 1450 Roads.

While not included in the Road Maintenance Agreement or Supplemental Conditions, Hamm Quarry and the County Engineer determined that a safer access point for the quarry would be to the north of the S curve on E 550 Road. This location would remove the need for trucks to travel that portion of the road. The proposed access location is shown in the overall quarry diagram below:



ROAD MAINTENANCE AGREEMENT AND SUPPLEMENTAL OPERATING CONDITIONS

THIS ROAD MAINTENANCE AGREEMENT AND SUPPLEMENTAL OPERATING CONDITIONS (“Agreement”) is made and entered into this ____ day of _____, 2014, by and between DOUGLAS COUNTY, KANSAS (the “County”) by and through the BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS (the “Board”) and Hamm, Inc. (“Hamm”), a Kansas corporation with its principal offices located in Perry, Kansas.

WHEREAS, Hamm is the owner and/or lessee of certain real property located in Douglas County, Kansas, on which Hamm conducts quarrying operations, as legally described on Exhibit A (the “Subject Property”); and

WHEREAS, Hamm conducts the quarrying and related operations (the “Quarry”) on the Subject Property pursuant to a Conditional Use Permit No. 11-5-76 (the “CUP”) that the Board issued pursuant to the County Zoning Regulations; and

WHEREAS, Hamm conducts and intends to continue to operate the Quarry in the future on the Subject Property; and

WHEREAS, in connection with its Quarry, trucks containing rock, gravel and other construction aggregates (all of such material, hereinafter, “Rock”) travel from the Subject Property and across and along the public road designated Route 1029, a.k.a. E 550 Road (the “Haul Road”); and

WHEREAS, the CUP requires that Hamm and the Board enter into a road maintenance agreement by which Hamm agrees to pay certain road maintenance costs which have an essential nexus to the offsite impacts of the Quarry; and

WHEREAS, Rock is being hauled from the Subject Property and the effectiveness of this Agreement includes the obligation of Hamm to pay the County for all Rock hauled as of January 1, 2013, as hereinafter provided; and

WHEREAS, Hamm and the County intend to provide more comprehensive conditions regarding the uses of the Quarry, Time Restrictions on Operations, Blasting, Fencing and other Regulations.

NOW THEREFORE, in consideration of the above recitals, and the mutual benefit and promises, covenants, agreements, understandings and undertakings hereinafter set forth; the County and Hamm agree as follows:

1. Dust Control

- a. Hamm agrees to be responsible for the full cost of applying dust palliative to the portions of the Haul Road, as follows: from the south side of the intersection of the Haul Road with N 1450 Road to the intersection of the Haul Road with Route 442. Dust palliative will be provided each year Quarry is active with a minimum of one full treatment applied in two applications. If providing dust control by utilizing County's user-fee dust palliative program, such payment shall be made by May 1 of each year. If Hamm applies dust palliative material separate from County's user-fee dust palliative program, Hamm will provide County at least 30-days advance notice of application date to allow for road preparation.
- b. County must approve dust palliative material and oversee and approve its application.
- c. If due to traffic, weather, or other conditions, the dust palliative treatment is no longer effective, in County's judgment, Hamm and County will provide appropriate additional dust control measures on the Haul Road, as the County determines in good faith.
- d. In the event that the Entrance(s), i.e. access point(s), to the Quarry is(are) moved, dust control measures may be changed to reflect then applicable road uses, as determined by County.

2. **Rock Donation**

Hamm agrees to donate road rock meeting County specifications to the County at the rate of up to two hundred and fifty (250) tons of road rock per twenty thousand (20,000) tons of Rock hauled by truck from the Subject Property, retroactive to January 1, 2013, as the County requires for maintaining the Haul Road (the "Rock Donation"). For example, if 30,000 tons of Rock is hauled from the Subject Property, Hamm will donate $(250 \text{ tons}) \times (30,000/20,000) = 375$ tons of road rock. The monthly haulage shall be tallied from the monthly statements, and Hamm shall provide the County with an account for the amount of road rock calculated as stipulated above, all at no additional charge. The amount of road rock to be donated and available to the County at any given time shall be limited to an amount consistent with only the most recent twelve (12) months of Rock hauled by truck from the Subject Property, and less any road rock the County has used during that time frame. The Rock Donation shall be arranged and accessible upon the County's request to Hamm.

3. **Use of Dust Control Payments and Rock Donation**

Any application of dust palliative or payment to the County in lieu thereof and Rock Donation (collectively, "Payments") are not paid as a severance tax. The County and Hamm agree that the Payments are for the sole purpose of maintaining the Haul Road, and for no other purpose, and shall be used solely for

maintenance costs which have an essential nexus to the offsite impacts of the Quarry.

4. Term and Operational Review

The term of this Agreement shall be directly related to the term of Hamm's Conditional Use Permit of the Subject Property issued by the County. The parties hereby agree to meet at the request of either party, each year from the date of this Agreement, to discuss the operation of the Road Maintenance Agreement. Notwithstanding the foregoing, however, Hamm and the County acknowledge that this Agreement is intended to satisfy road maintenance requirements that the Board requires in terms and conditions of the CUP. If the County subsequently determines that the Payments are insufficient to satisfy Hamm's road maintenance and dust palliative obligations under the CUP, the County and Hamm can renegotiate the Agreement, in good faith, or, upon failure of renegotiations, County can withdraw from this Agreement and demand compliance with the terms and conditions of the CUP.

5. Cooperation

- a. Hamm and the County shall cooperate with each other, deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- b. In the event any legal action is submitted by a third party to another governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action. Hamm shall be entitled, subject to court approval, to join or intervene in any such action on its own behalf. In the event of any litigation as herein provided, the County and Hamm shall each bear its own attorney fees and costs.

6. Entrance(s)

- a. Hamm shall have the option to move the Entrance(s), i.e. access point(s), to the Quarry to a location(s) mutually agreeable to both Hamm and the County, which conforms to the standards and specifications required by the County. Traffic safety on E 550 Road will be a significant factor in determining entrance location(s). Hamm shall provide onsite, an appropriate truck staging area which fully contains all trucks waiting for gravel pickup, equipment, trailers, or other equipment relating to ongoing operations including employee vehicles and visitors. E 550 Road shall not be used for any truck or equipment staging. County will post signage along E 550 Road restricting parking on E 550 Road between N 1500 Road and N 1450 Road.

7. Supplemental Regulations and Guidance

- a. Hamm and the County agree to the following supplemental requirements regarding the Quarry operations.
- i. **Allowed Uses:** Quarry Operations shall include:
 - a) Removal of overburden and the extraction and processing of limestone utilizing a portable plant and equipment.
 - b) Stockpiling of topsoil, overburden, and limestone.
 - c) Transportation and hauling of limestone and materials.
 - d) Reclamation of the site.
 - e) Blasting operations.
 - ii. **Time Restrictions on Operations:** Operations at the Quarry shall take place in accordance with following time requirements:
 - a) Removal of overburden; stockpiling of topsoil, overburden and limestone; and transportation and hauling of limestone and materials from site: 7:00 a.m.-6:00p.m., Mon.-Friday;
 - b) **Processing and extraction of limestone:** 7:00 a.m.-6:00 p.m., Mon. - Friday;
 - c) **Blasting:** See Blasting below;
 - d) No quarry operations shall take place on the following holidays or the days on which such holidays are observed by Kansas State Government: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the days immediately following Thanksgiving Day, and Christmas Day.
 - e) If production demand requires additional processing and extraction time outside the normal schedule, application for specific additional hours of operation for a specified period may be requested to the County Commission. Additional hours of operation for limited periods must be approved by the County Commission
 - iii. **Blasting:** Blasting at the Quarry shall adhere to the following requirements:
 - a) Blasting will follow recognized standards of the industry.
 - b) Blasting and crushing will be permitted for a maximum 120 consecutive calendar days.
 - c) Blasting shall be conducted between 10:00 a.m. and 2:00 p.m.
 - d) Blasting outside the above allowable times shall only occur during rare circumstances due to weather and/or federal MSHA regulations.
 - e) Hamm shall install or cause to be installed a seismograph on the closest property occupied by a residence and/or commercial building near the blasting area. This provision is dependent upon receiving permission from the property owner. Seismograph results will be provided to County on request.

- f) No explosives will be set in the ground overnight unguarded.
- iv. **Fencing:** Fencing at the Quarry shall include the following requirements:
 - a) A security gate and fence shall be placed at the entrance(s), i.e. access points, to the quarrying site from the main haul road. Secure gate(s) shall be locked during hours when no staff is present on the site. The entrance(s) shall be signed stating: The operator's name, business address and phone number; and "No Trespassing" signage shall be provided.
 - b) Fencing shall be placed surrounding the permitted crushing area, and shall be a minimum 5-strand barbed wire fence. "No Trespassing" signage shall be installed on the fence at maximum 500-foot intervals. Fencing shall remain until the entire project is finished and reclamation is complete and shall be regularly maintained.
 - c) Per the CUP a berm with a minimum height of six (6) feet shall be constructed in locations shown in the Environmental Impact Statement. As reclamation is completed, such berm may be used in the reclamation process and may be withdrawn at that time. Hamm must continue to leave berms on land where quarry operations may still be observed by public or private parties. All berms will be fully vegetated per the CUP.
- v. **Other Regulatory Restrictions:** The Quarry shall comply with all applicable regulations from the following agencies
 - a) KDHE, EPA, U.S. Mining and Safety Commission, Kansas Department of Health and Environment, Kansas State Board of Agriculture - DWR, Kansas State Conservation Commission, and other applicable agencies. Current and subsequent revisions to these regulations shall apply.
- 8. Hamm shall have the right to sell, transfer or assign the Subject Property, in whole or in part, to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that the sale is made in accordance with and subject to the terms and conditions of the CUP. In connections with the sale, transfer or assignment of the Subject Property, Hamm shall have the right, at its sole option, to assign the Agreement; provided, however, that the purchaser, assignee or transferee shall execute an agreement with the County under which such purchaser, transferee or assignee agrees to assume all of the obligations of Hamm under this Agreement. Upon the sale, transfer or assignment of the Subject Property, Hamm shall have no further obligations or liability under this Agreement.
- 9.. Hamm shall have the right to record this Agreement or a memorandum hereof.

- 10 Hamm Quarry shall have the right to use the Haul Roads for all transportation, egress, ingress, and similar purpose in connection with its operation of the Quarry, for so long as this Agreement remains in full force and effect.
11. All notice, demands and correspondence required or permitted by this Agreement shall be in writing and personally delivered to or sent by overnight mail, postage prepaid, addressed as follows:

If to the County, to:

Douglas County Engineer
Douglas County Public Works
1242 Massachusetts Street
Lawrence, Kansas 66044

If to Hamm, to:

Gary Hamm
Hamm, Inc.
609 Perry Place
P.O. Box 17
Perry, Kansas 66073

A party may change its address by giving notice in writing to the other party in the same manner as provided herein for notices. Thereafter, notices, demands and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, one (1) business day following deposit with the overnight mail carrier.

- 12 This Agreement constitutes the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiation or previous agreements related to the matters addressed in this Agreement and between the parties respecting this Agreement.
- 13 This Agreement will be reviewed annually in conjunction with the annual CUP review and may be amended from time to time or canceled only by the mutual written agreement of the parties. This Agreement supersedes all negotiations and previous agreements between the parties respecting the subject matter of this Agreement.
- 14 It is specifically understood by the parties that; (a) the use and operation of the Subject Property is a private development; (b) except with respect to enforcing the terms and conditions of the CUP, this agreement, zoning regulations, and other governmental functions, the County has no interest in or responsibilities for or duty to third parties concerning the use of the Subject Property; and (c) no

partnership, joint venture or other association is formed by this Agreement, and Hamm is not an agent of the County.

15. Upon termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in their performances of the provisions of this Agreement, which has occurred prior to such termination.
16. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provisions of this Agreement.
17. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.
18. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Agreement and/or the rights and obligations of the parties hereto.

IN WITNESS WHEREOF, the parties have each executed this Agreement on the date first above written.

BOARD OF COUNTY COMMISSIONERS
ON BEHALF OF COUNTY

HAMM, INC.

By: Nancy Thellman, Chair

By:

Date:_____

Date:_____

ATTEST:

County Clerk Date:_____

Exhibit A


[Legal Description of CUP Property]

East 73.01 acres of the Northwest Quarter of Section 3, Township 13, Range 18,
Douglas County, Kansas.

DRAFT

**HAMM-BUCHHEIM QUARRY
1453 E 550 RD/ COUNTY ROUTE 1029
ANNUAL COMPLIANCE REVIEW 2014**

<p>Condition 1. Entrance to site from County Road 1029 (E 550) be constructed to standards and specifications set by the County Engineer.</p>	<p>In 2013 the County Engineer indicated that Hamm should work with the County Public Works Department on improvements to bring the entrance into compliance with Douglas County Standards. The operator made necessary improvements to the access in 2013. The County Engineer indicated the access was satisfactory.</p> <p style="text-align: center;">Condition met.</p>
<p>Condition 2. That all applicable regulations of the Environmental Protection Agency, Kansas Department of Health and Environment, US Mining and Safety Commission, Kansas Department of Agriculture-Water Resources Division, and any other applicable agency be strictly adhered to, and that any permit required by these agencies be obtained</p>	<p style="text-align: center;">KDHE: Water Quality KWPC Permit No. I-KS31-PO10 H. Vic Montgomery</p> <p>Vic Montgomery noted by email on 9/16/2014 that the permit is up to date and no complaints have been received.</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">Pat Simpson KDHE Environmental Air Quality Permit</p> <p>Confirmed by email on September 2, 2014 that the quarry (0450038) is current on their permits and there have been no compliance issues since the last review.</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">Scott Carlson Conservation Division, KDA</p> <p>Provided the following information by email on September 2, 2014: "Hamm Quarries is currently in compliance at the Buchheim Quarry, Hamm Quarry #69, with the Surface Mining Land Conservation and Reclamation Act."</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">Sidney Garay MSHAW (Mine Safety and Health) Mine ID# 1401687</p> <p style="text-align: center;">Permit goes with equipment not the location intermittent operation</p> <p>Sidney Garay confirmed on October 8, 2014 that the permit is up to date via phone call.</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">ATF certificate permit # J4EUP002</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">Carol Lowery/ State Fire Marshall Storage of explosive materials Current permit issued 11/6/2012, Expires 11/6/2015 Permit no. DGESP001</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">Permits are up-to-date and no compliance issues have been identified.</p> <p style="text-align: center;">Condition met.</p>

<p>Condition 3. That the applicant, N. R. Hamm Quarry, Inc., enter into an agreement with the Douglas County Board of Commissioners in regard to the maintaining of that portion of Douglas County Road #1029 regularly used by N. R. Hamm Quarry, Inc. vehicles in the operation of the quarry for which the Conditional Use Permit. No. CUP-11-5-76, is approved.</p>	<ul style="list-style-type: none"> • Public Works staff met with John Strome, Ramon Gonzalez, Charlie Sedlock, and Pat Watkins to discuss a maintenance agreement. In 1976, a written agreement may not have been required As written agreements are standard today, one was developed with the 2013 review. • The agreement was developed in 2013 but wasn't signed at that time. Keith Browning will provide the agreement to the Commission at the Oct 15th meeting for signatures. • The agreement includes supplemental conditions for the CUP, which the applicant is agreeable to but isn't requesting as an amendment to the CUP such as: <ul style="list-style-type: none"> • Hours of operation, • List of permitted uses, • Fencing, and • Blasting hours.
<p>Condition 3 (cont.) Such agreement shall provide and require that upon the applicants opening of the aforementioned approved quarry he (N. R. Hamm Quarry, Inc.) shall be responsible for dust proofing said County Road No. 1029 (E 550 Rd) a minimum distance of 300 ft in either direction in front of any home along the affected portion of said County Road No. 1029 (E 550 Rd).</p>	<p>Hamm will pay for dust palliative for the entire distance of the haul road (E 550 Rd) from the south side of the intersection with N 1450 Rd to N 1600 Road (Route 442).</p> <p>Portion of E 550 Road included is shown in red.</p> 
<p>Condition 3 (cont.) Maintenance costs of this road shall, during period of quarry operation, be the responsibility of N. R. Hamm Quarry, Inc. for the duration of the Conditional Use Permit and said road shall be maintained in such manner as to prevent damage to vehicles utilizing the road and to prevent , to the extent practical, the occurrence of unsafe driving conditions that might result from the condition of the roads.</p>	<ul style="list-style-type: none"> • Dust palliative shall be provided each year quarry is active with a minimum of one full treatment applied in two applications. • If the dust palliative treatment is found to be no longer effective, in County's judgment, Hamm and County will provide appropriate additional dust control measures as the County determines in good faith. • In the event that the entrance is moved, dust control measures may be changed to reflect then applicable road uses, as determined by the County, • Upon execution of agreement, Hamm agrees to pay County a check in the amount required to complete one full dust palliative treatment in 2013. • Hamm agrees to donate road rock to County up to 250 tons per 20,000 tons of rock haled from quarry as the County requires for maintaining the haul road. • Item 4: "Hamm and the County acknowledge that this agreement

	<p>is intended to satisfy road maintenance requirements that the Board requires in terms and conditions of the CUP. If the payments are determined to be insufficient, the agreement can be renegotiated in good faith or the County (upon failure of renegotiations can withdraw from the agreement and demand compliance with the terms and conditions of the CUP.”</p> <p>The development agreement meets the requirements of Condition 3.</p> <p style="text-align: center;">Condition Met.</p>
<p>Cond. 4 That the plan of operation, setbacks and reclamation plan proposed by the applicant and attached to or shown on the application be followed,</p>	<p>Itemized review of this condition provided at the end of this report.</p>
<p>Condition 4 (cont.) ...and that the applicant file a performance bond with the County Zoning Administrator, in an amount set by the Board of County Commissioners, to insure compliance with the reclamation plans within 6 months of the termination of quarry operations, and that such bond shall also insure the maintenance of County Road 1029 (E 550 Rd) used by the quarry operation to original condition or as might otherwise be agreed to in accordance with Condition # 3. The amount of the performance bond shall be based upon \$1500/acre for any land area disturbed and not reclaimed at this site; however, the Board of County Commissioners may amend or require a revised base figure at any time they believe such to be reasonable.</p>	<p>The performance bond is included as an attachment.</p> <p style="text-align: center;">\$1500/acre for any land disturbed and not reclaimed (or as amended/revised by BoCC)</p> <p>The bond was increased in 2013 to cover a total of 15 acres. They currently have 5.5 acres open at this time, see figure below.</p> <p style="text-align: center;">Condition Met.</p> <div data-bbox="743 900 1395 1278" data-label="Image"> </div> <p>This condition also notes that the bond should include money to insure maintenance of E 550 Road. The road maintenance agreement contains a quarry donation of rock per hauled rock to satisfy this condition.</p> <p style="text-align: center;">This portion of Condition 4 has been met with the Road Maintenance Agreement.</p>
<p>Condition 5. That this Conditional Use Permit shall be subject to annual review by the planning staff.</p>	<p>This is the 2014 annual review of the quarry.</p> <p style="text-align: center;">Condition met.</p>
<p>Condition 6. That the berm be covered with vegetation meeting recommendations of the Soil Conservation service.</p>	<p>The berm on the south side of the property is vegetated. Any new berms that are installed shall be seeded per recommendations of the Soil Conservation Service, now the NRCS (National Resource Conservation Service).</p> <p style="text-align: center;">Condition met.</p>

NO MINING AREA/SCREENING ON WEST

"The property is divided into 2 very distinct elevations. A very high hill runs from the NW corner in a southerly direction 2,090 ft and in an easterly direction a distance of 550 ft. This area will not be mined and will act as a screen and buffer to the property adjoining on the west". (pgs 3-4, and site plan) The area in Figure 1 shows the no-mining area as shown in the site plan included in the Environmental Impact Statement.



Non-compliant: Quarrying is not occurring in the No Mining zone; however, stockpiles located in this area could conflict with the screening purpose. The operator indicated that the stockpiled material is the top soil which is being retained for reclamation of the current opening.

Action: The Operator will grade the top soil and seed it so it will assist in the screening of the quarry operations from the northwest. The top soil will be used for reclamation when the operations move to another opening. This work would be done with the construction of the new access drive and is expected to be completed by December 1, 2014.

With the 2013 annual review, the quarry operator provided a sketch of a revised sequencing plan to provide larger areas for machinery to operate in and to revise the order. The change in sequencing was approved by the County Commission. The sequencing plan below shows the sequencing outside of the no Mining Area:



SCREENING ON SOUTHERN BOUNDARY

“On the southern property boundary along the west 660 ft, there is a row of Osage Orange Trees that will remain and provide screening from the south.” (pg 4)



This photo, taken October 8, 2014, shows the vegetation along the south property line.

Condition Met.

Crushing will be done by portable equipment over a period of 90 days and then removed until the reserve supply has been diminished. (page 5, EIS)

Portable equipment was on site when we visited the site. There has been some discussion as to what was meant by ‘a period of 90 days’. The operation plan did not specify if these were calendar days, working days, or days of active crushing. The 2013 minutes reflect that staff’s opinion was that it was a total of 90 days and it was Hamm’s interpretation that it meant 90 days of crushing.

As there were no limits on days of operations when the CUP was approved, there was no distinction between working days and calendar days in the condition. If limits are applied to days of operation, as proposed in the Supplemental Conditions, it would be necessary to clarify if the condition refers to working or calendar days. Based on the lack of restrictions on the original CUP, it is assumed that the time limit applied to working days. Rather than requiring the operator to notify the County each day it works, 120 calendar days was set as the equivalent to 90 working days, taking into account weekends when work will not occur, maintenance days or holidays, and days where weather will not permit blasting/quarrying.

The Quarry began crushing rock on September 23, 2014.
120 calendar days from this date would be January 21, 2015.

- This is dependent upon the County Commission approval of the Road Maintenance Agreement and Supplemental Conditions Agreement.

(For comparison: 90 calendar days would be December 22.
If we consider only working days and the operator agrees to not quarry on the weekends, 90 days would be approximately January 13, 2015.)

When the CUP was established in 1976, portable rock crushing machinery was used along with dump trucks to move the rock throughout the site. Today’s equipment includes augers to move the rock throughout the quarry rather than dump trucks. It was

	<p>common practice for the quarry to use a portable rock crusher in one quarry, build up stock, and then move it to another to reduce cost. While the condition notes that the portable equipment will be removed, in Staff's opinion, the intent was that quarrying would cease until the supplies had been diminished at which time the crushing could commence again. Rather than requiring the operator to remove the entire rock crushing and moving system, the operator would need to report to Zoning and Codes when the quarrying has ceased and when it begins again. The operator must report this to MSHA and would report it to Zoning and Codes.</p> <p>The road congestion reported earlier this year was caused by the Operator moving in the equipment while rock was being hauled. Removing this requirement would increase the safety on E 550 Road.</p> <p>Operations are currently compliant with this condition, but clarification of the condition is needed.</p>
<p>National Pollutant Discharge Elimination System (NPDES) Permit (page 5, EIS)</p>	<p>The quarry has a valid NPDES permit. KS Permit No.: I-KSS31-PO10 Federal: KS-0081213 Permit valid to March 31, 2018 Condition met.</p>
<p>Entrance road, stockpile areas and screening dikes will be built as first step of quarrying (page 5, EIS)</p>	<p>These features were installed with first step of quarrying. Condition met.</p>
<p>Sequential reclamation with exception of first area. (pages 5-6, EIS)</p>	<p>Reclamation will occur sequentially; however, the first area opened will be the last area to be reclaimed. The overburden would be used for screening berms, etc.</p>
<p>"...as shown on the site plan, some openings will not be recovered as they will become a part of the lake." (pg 6, EIS)</p>	<p>The exact location of the lake is not known at this time, but will be determined through the operation of the quarry.</p>
<p>Stockpiling is done on the property in such a manner as to inhibit dust. Haul roads are watered and unwashed crusher-run products are stockpiled as far as necessary from adjoining property lines. (pg 6, EIS)</p>	<p>The stockpile area is located in the southern portion of the property. Stockpiling is done with a radial stacker that creates less dust than the methods used in 1976 as there is less movement of the stockpile material. Stockpiles must observe the 75 ft setback noted on page</p>
<p>The abrupt elevation of the hill will provide screening on the west. The west ½ of the south boundary will be screened by a hedge row. The remainder of the boundary will be screened by the building of earth berms as quarrying progress to that particular area. (pg 6-7, EIS)</p>	<p>An earth berm was built south of the quarrying area.</p> <p>The hill provides screening to the west and the hedge row remains along the south property line. (Aerial and picture below)</p>




The site plan shows berming along E 550 Road, which is in place as far as quarrying has progressed. (Pictures from E 550 Road are included as Attachment A.) The current quarry location is well screened from E 550 Road. As the quarry operations move toward the north, berming will need to be installed.

The site plan also indicated that berming would be installed in the southwest corner of the site, south of the big hill. This berming has not been installed.

The quarry is not compliant with all the screening requirements of this condition. The section of berming in the southwest corner of the site has not been installed. This berming will be added to the site. The operator indicated that materials would be available to build this berm with the opening of Cut 3. It is estimated that this will be completed by next year's review, dependent upon the market for rock remaining steady.



The original CUP did not state that type of berm; however, berms approved for other quarries range from 4 ft in height (Eudora

	Quarry) to 8 ft in height (Big Springs Quarry). In staff's opinion, a 6 ft high berm would be adequate.
Crushing plants are equipped with dust control systems, (pg 7, EIS)	The operator indicated that means of production have changed since 1976. The current practice is for KDHE and EPA to rate a plant and equipment and issue a 'wet' or 'dry' permit. This quarry is permitted 'dry' and passed an inspection by KDHE. Dust control has been approved by KDHE.
Operators maintain the equipment keeping mufflers and noise suppressors in good repair. They provide ear plugs and protectors for employees and have a noise level meter to provide our own measurement and control. (pg 7, EIS)	The operator indicated that they maintain their equipment and mufflers in good repair. Ear plugs and protectors for employees are required and they have use a noise meter level.
The operator employs the use of delays and conservative charges to safely break the ledge. (pg 7, EIS)	The operator indicated that they typically blast between 10 AM and 2 PM each day they are in operation. This allows them to blast smaller areas. They installed a seismograph on the property with the commencement of the operations in January 2013 and installed another on a neighboring property on March 18 th , 2013. The seismograph reports are available for review by contacting the Quarry operator. These steps are included in the Supplemental Conditions Agreement.
The operator proposes a setback distance of 75 ft. (pg 8, EIS)	<p>The stockpile extends into portions of the 75 ft setback on the southwest side of the quarry. The stockpiles will need to be pulled back out of this setback. With other CUPs the setbacks indicated if they were for quarrying or blasting. This condition doesn't specify so it is assumed it is for quarrying, blasting, and stockpiling.</p> 
Any spoil piles created by the mining operation will be utilized in reclamation as fill each time a box cut is closed. (pg 8, EIS)	Overburden/spoil piles will be used to sequentially reclaim the quarried area. No overburden piles visible on the site. When they move into the next cut, the overburden will be used to reclaim the existing cut. This will be evaluated with the next annual review.
Explosive control is maintained by the superintendent on site. He makes daily inventory and has only access to the explosive magazines. (pg 8, EIS)	The materials are stored in 1 location on site. The operator indicated that the superintendent has the only access to the explosive magazines and makes a daily inventory.
Operation plan shows 17 sequencing areas from south to north. (Figure 3)	The Commission approved revised sequencing areas with the 2013 compliance review to accommodate the larger equipment used

today. Note: the drawing provided in 2013 showed a revised sequencing, but overlapped the 'no mining boundary'. A more accurate sequencing plan is below.

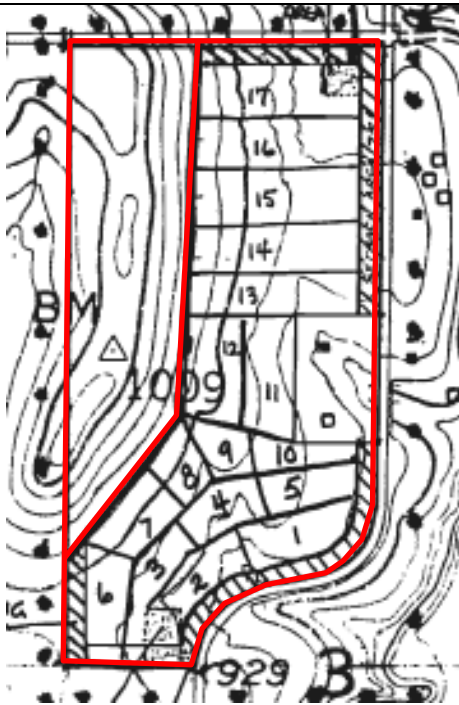


Figure 3a Original sequencing plan.

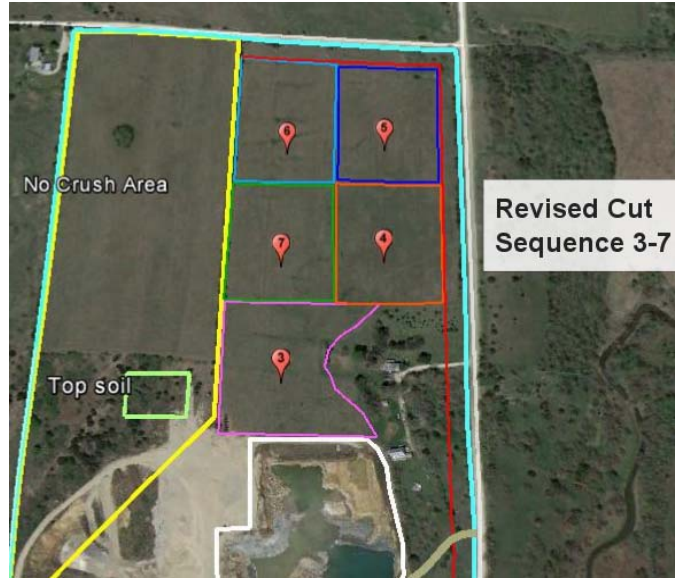


Figure 3b. Revised sequencing plan.

RECLAMATION PLAN

The property, because of its unusual topography, will be partially restored as pasture land, graded to support ultimate reseeding and partially as a large lake.

No part of the quarry has been reclaimed to date. The previously quarried area is being used for the stockpile area. This area will be reclaimed when no longer used for stockpiling.









Lindsey Plattner

Marsh USA Risk & Insurance Services
15 West South Temple, Suite 700
Salt Lake City, UT 84101
801 533 3625
LINDSEY.GATES@MARSH.COM
www.marsh.com

May 16, 2013

RAMON GONZALEZ
HAMM, INC.
609 PERRY PLACE
PERRY, KS 66073

Subject:

Bond Number: 327013054

**Bond Description: BUCHHEIM QUARRY RECLAMATION BOND SITE #69
DOUGLAS COUNTY**

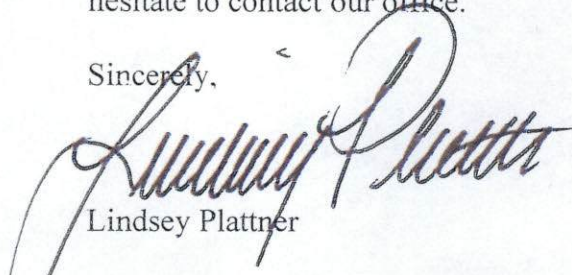
Dear Roman:

We are pleased to enclose the Rider for the above-captioned bond. Prior to filing this Rider with the STATE OF KANSAS, the following items need to be completed:

1. Rider signed by authorized officer
2. Officer's name and title inserted below signature
3. Signature of witness
4. Corporate seal affixed

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact our office.

Sincerely,


Lindsey Plattner

Enclosure

**CHANGE
RIDER**



To be attached to and form a part of Bond Number 327013054, dated the 11TH day of JUNE, 2012,
issued by Liberty Mutual Insurance Company (the "Surety") on behalf of
HAMM, INC.

in favor of **STATE OF KANSAS** (the "Principal")

(the "Obligee").

The Principal and the Surety hereby consent to changing the attached bond as follows:

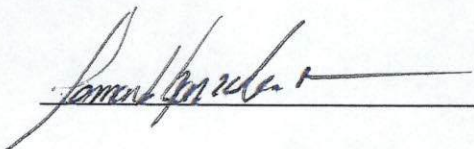
**THE BOND AMOUNT IS INCREASED TO \$22,500.00
THE ACREAGE IS INCREASED TO 15 ACRES**

This change is effective the 11TH day of JUNE, 2013.

The attached bond shall be subject to all of its terms, conditions and limitations except as herein modified.

DATED as of this 16TH day of MAY, 2013.

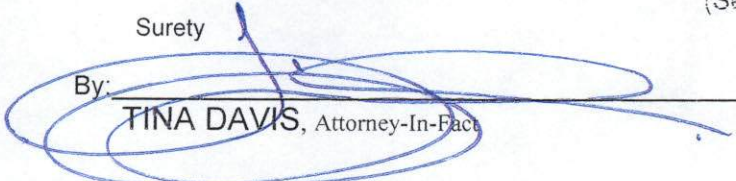
WITNESS/ATTEST:



HAMM, INC. (Seal)
Principal

By: 
Name: Brad Hen
Title: G.M.

LIBERTY MUTUAL INSURANCE COMPANY (Seal)
Surety

By: 
TINA DAVIS, Attorney-In-Fact

ACCEPTED:

Date: _____

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6034062

American Fire and Casualty Company
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Jessica Arnold; Lindsey Plattner; Lisa Hall; Tina Davis

all of the city of Salt Lake City, state of UT each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 14th day of March, 2013.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss
COUNTY OF KING

On this 14th day of March, 2013, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.



By: KD Riley
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 16TH day of MAY, 20 13.



By: David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

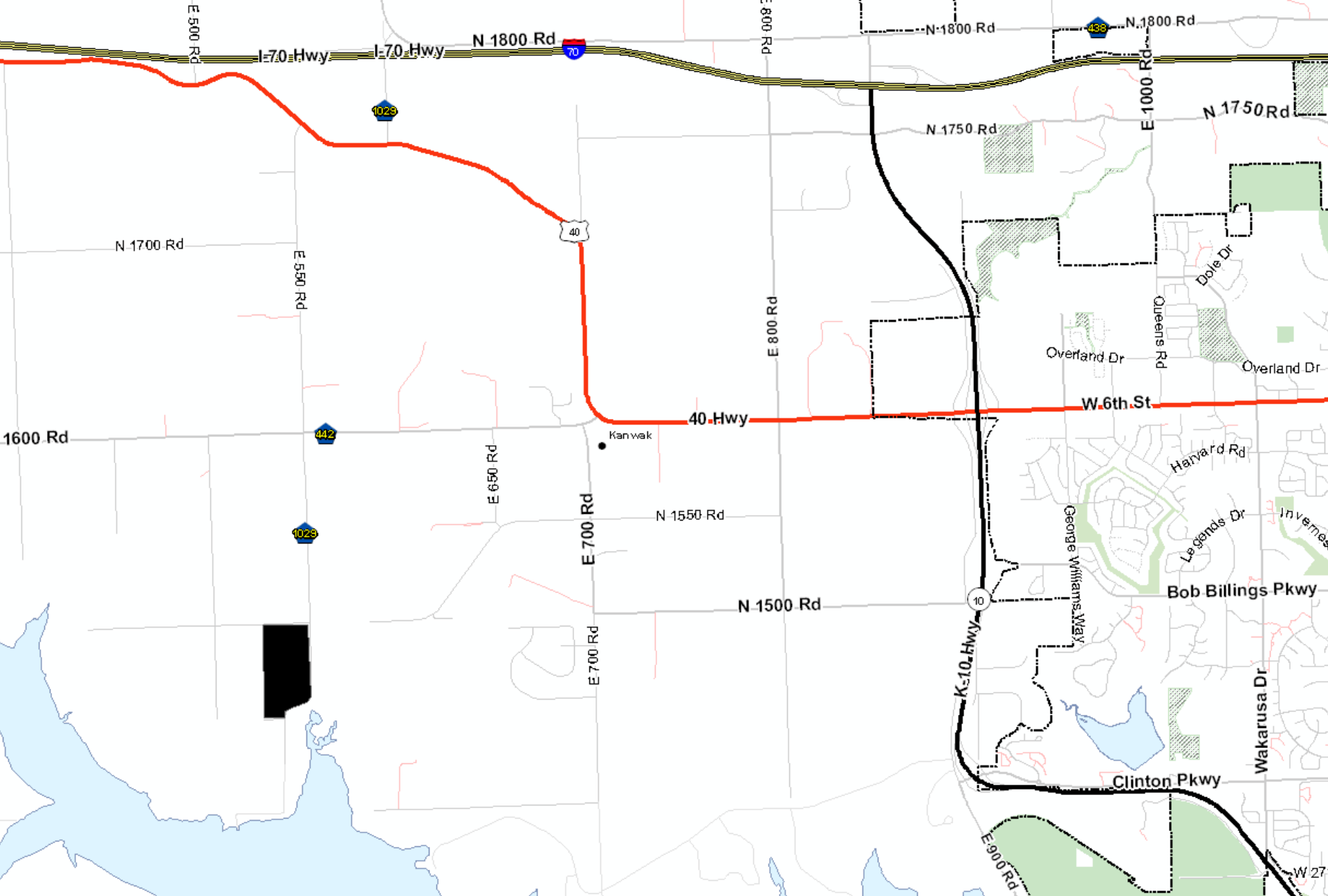
To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



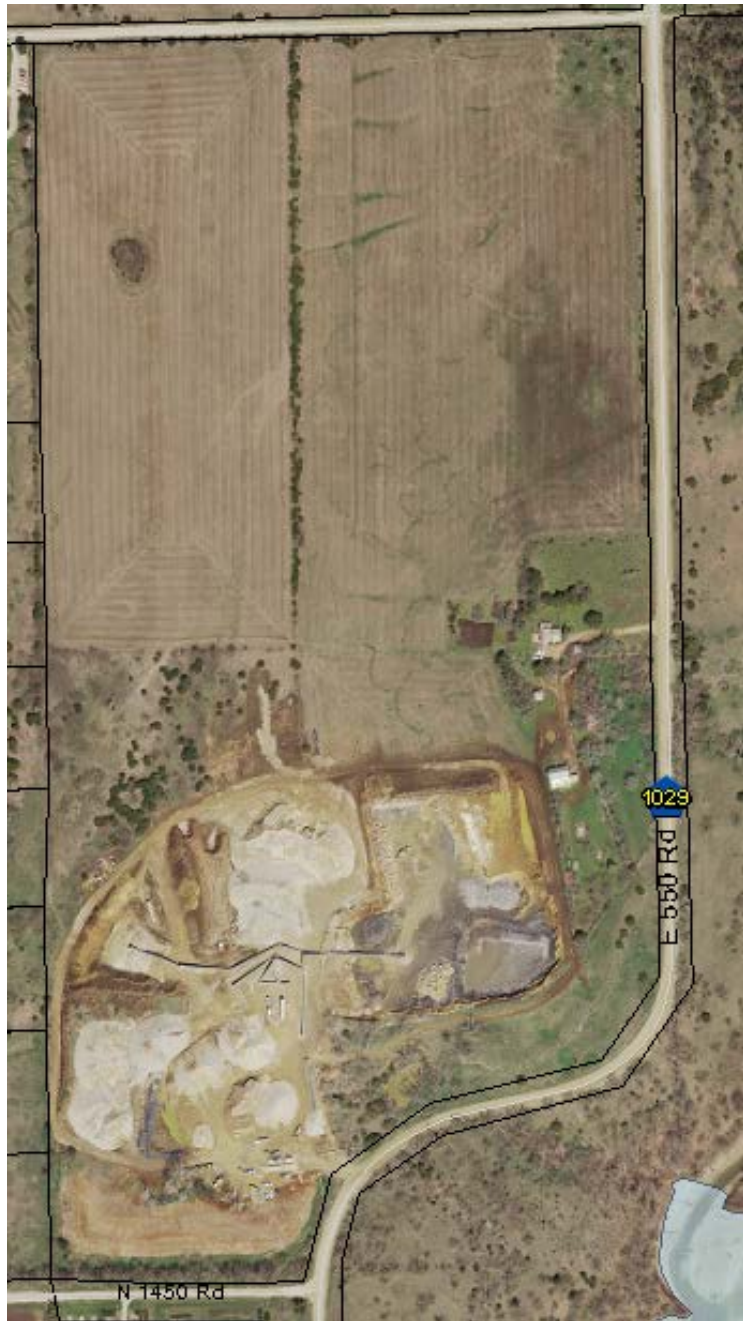
City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

CUP-3-13-76
Hamm Buchheim Quarry
1453 E 550 Road
Annual Review

October 15, 2014
Board of County Commissioners



Location Map



Condition 1.

Entrance to site from County Road 1029 (E 550) be constructed to standards and specifications set by the County Engineer.

Condition 2.

That all applicable regulations be adhered to and all necessary permits be obtained.

Condition 3.

Maintenance Agreement
for E 550 Road.

Dust palliative.

Cost of maintenance.

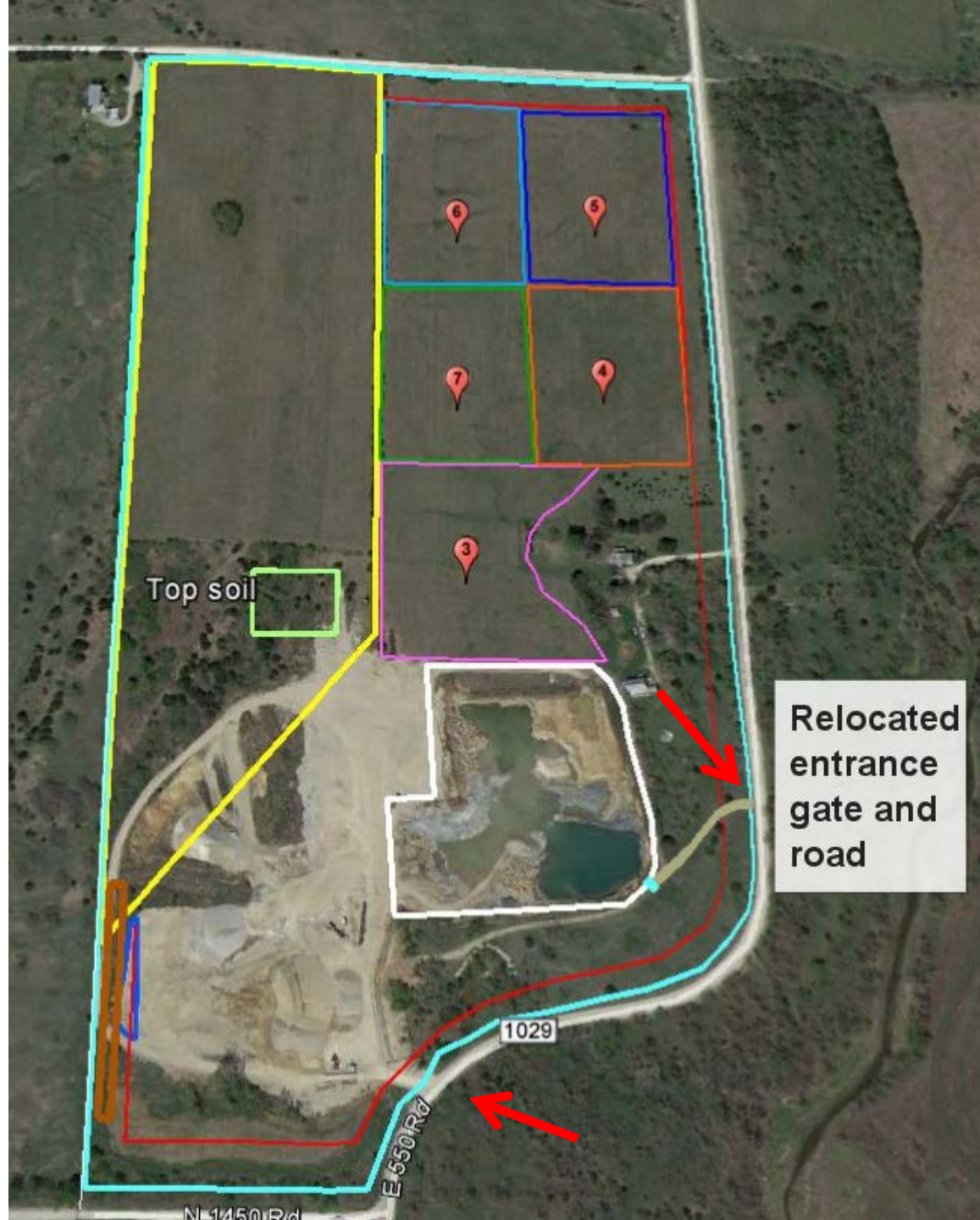


Donation of Rock 250 tons per 20,000 tons of rock hauled by truck from quarry in lieu of maintenance or bond.

Agreement reviewed annually in conjunction with Compliance Review.

Access point may be revised.

Revised Access Point



SUPPLE MENTAL CONDITIONS

PERMITTED USES

DAYS/HOURS OF OPERATION:

7 am to 6 pm MONDAY – FRIDAY

EXCLUDING:

New Year's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day and following day

Christmas Day and following day

120 DAYS

BLASTING HOURS

10 am to 2 pm, with exception

SEISMOGRAPH PLACEMENT

FENCING

Berm height

Condition 4 Performance Bond



5.5 acres
pit area

Crushing for a period of 90 days

- Original CUP did not distinguish, calendar and working days.
 - After 90 days remove the equipment until supplies have been diminished.

**120 days—equipment remains
Supplemental Conditions**

SW corner— berm and 75 ft setback



Conclusion

The following compliance issues have been identified and compliance measures / timelines established:

- * Regrading of top soil pile in 'No Mining / Screening' area—12/1/14
- * Installation of berm and removal of stockpiles from 75 ft setback in SW corner.—with opening of Cut 3 (Agmnt. notes min. 6 ft berms)

BoCC Action requested

To consider the Road Maintenance Agreement and Supplemental Conditions and approve and sign, if appropriate, or return to staff with directions for revisions.

Oct. 15, 2014

Niki Schneider's Response to Proposed Road Maintenance Agreement and Supplemental Operating Conditions AND Hamm/Buchheim 2014 Annual Review

Is this maintenance Agreement a part of the CUP ???

1. Part 1, section c. Why should both parties pay? The original CUP states " Maintenance costs of this road shall, during period of quarry operation, be the responsibility of Hamm Quarry for the duration of the CUP and said road shall be maintained in such a manner as to prevent damage to vehicles utilizing the road and to prevent, to the extent practical, the occurrence of unsafe driving conditions that might result from the condition of the roads. " Hamm should be paying for labor for grading of the road, not the taxpayers.
2. Part 2. Has Hamm given the county monthly statements?
3. Part 4. I do not understand the last sentence?? " County can withdrawn from this agreement and demand compliance with the terms and conditions of the CUP? "
4. Part 7. ii, b) "Processing and extraction of limestone: 7:00am-6:00pm M-F" This should be 8:00am- 5pm M-F. !!! The noise from the crushing is horrible.
5. Part 7. ii, e. if production demand requires additional processing and extraction time outside the normal schedule, application for specific hours of operation for a specific period may be requested to the County Commission. Additional hours of operation for limited periods must be approved by the county Commission. " Basically, they can do whatever they want.!!! I think, at the very least, neighbors should be notified of any future change in schedule.
6. Part 7. iii, b) Blasting - " Blasting and crushing will be permitted for a maximum of 120 days." What happened to complying with the conditions of the CUP?
7. Part 7. iv, b) Fencing, "surrounding the permitted crushing area" Is this around just the blasting area or also the area of crushing?
8. Part 14, (b) except with respect to enforcing the terms and conditions of the CUP," That has NOT been done very well !!!!

Moving on to the Review:

1. Condition 3- So the road maintenance agreement of 2013 wasn't ever signed????!!!! So much for enforcing the CUP.
2. Condition 3- Road maintenance costs. As I stated before the County should enforce the CUP and require Hamm to pay for maintenance costs including the grading that is needed through the duration of the CUP.
3. Condition 4-(cont.) Performance Bond - The CUP states " for any land disturbed and not reclaimed" Look at the photos ! Nearly half of their land is disturbed. NOT JUST 5.5 acres. This is a violation of the CUP.
4. NO MINING AREA/SCREENING ON WEST- Look at photo, which, by the way, is old, that is not the stock pile of topsoil, that is part of their operation, road and all.
5. Crushing will be done by portable equipment over a period of 90 days. IN VIOLATION.!!!! It was said in the minutes of the 2013 review that it was staff's opinion that it was a total of 90 days. NOW everyone is changing it to what Hamm

wants and not what was CLEARLY stated in the original CUP. " OVER A PERIOD OF 90 DAYS " ALSO, " in staff's opinion, the intent was that quarrying would cease until supplies had been diminished at which time the crushing could commence again. Rather than requiring the operator to remove the entire rock crushing and moving system , etc," It very clearly states in the operation plan that they will remove the equipment until reserve supply has been diminished. AND in last years review, it clearly states and was written by staff, " Portable equipment was on site. It will be removed when quarrying is complete until the reserve supply has been diminished. " WHY HAS STAFF CHANGED THEIR OPINION ON THE INTENT? Could that possibly be because of pressure from Hamm?

6. "...as shown on the site plan, some openings will not be recovered as they will become part of the lake." Staff states, " the exact location of the lake is not known at this time, but will be determined through the operation of the quarry." The reason the location is not known is because Hamm filled it in with debris they brought in from other jobs.
7. Stockpiling- IT is everywhere and it is NOT less dusty.
8. The abrupt hill on the west will provide screening. Staff wrote, " The hill provides screening to the west and the hedge row remains along the south property line. " NOT SO!!! The hill to the west does not block the view to their operations. I have taken many photos and sent them to everyone proving that fact. And what's with this timeline to getting it fixed??? Oct. of next year????? VIOLATION !!!
9. Operators maintain the equipment keeping mufflers and noise suppressors in good repair. There are regulations for the safety of the workers, but no regulations for the noise to the neighborhood. ????
10. The operator states a setback of 75ft. This is in their "OPERATION PLAN" and it is for all of their operation, NOT just blasting and stock piling. And here is another example of the staff "ASSUMING" But Staff said it was for quarrying and to me that means everything done in the process of quarrying!!!! They have a road RIGHT NEXT TO the west property line.

Now, again, I have shown to the Staff and the County Commissioners the violations of the original CUP. Over and over again from last year to this year. It has not been just one violation last year. It keeps happening. And now, Hamm and the Staff want to produce this very creative document to include all the things that Hamm wants to change in the original CUP. Why aren't they made to abide by that document? Yes, the neighbors have gained a little ground, but as should be !!!! We were only trying to have everybody follow the rules set up by these two parties. The only thing not included in the original CUP was the hours of operation. That is a huge issue. Back then this was rural, with only 2 neighbors. Yes, it is still somewhat rural, but now we are a much larger neighborhood and still growing. They should NOT be allowed to start crushing and moving their heavy equipment all over the property at 7am and not until 6 pm. And by the way, they blasted at 9:44am this morning. That is just another example of them NOT being a good neighbor. So much for the proposed blasting time of 10am- 2pm. Please help the citizens of Douglas County.



Heavy equipment, noise, dust, & visual no berm



Close to property line
No berm

is a 6' berm going to
take care of this?



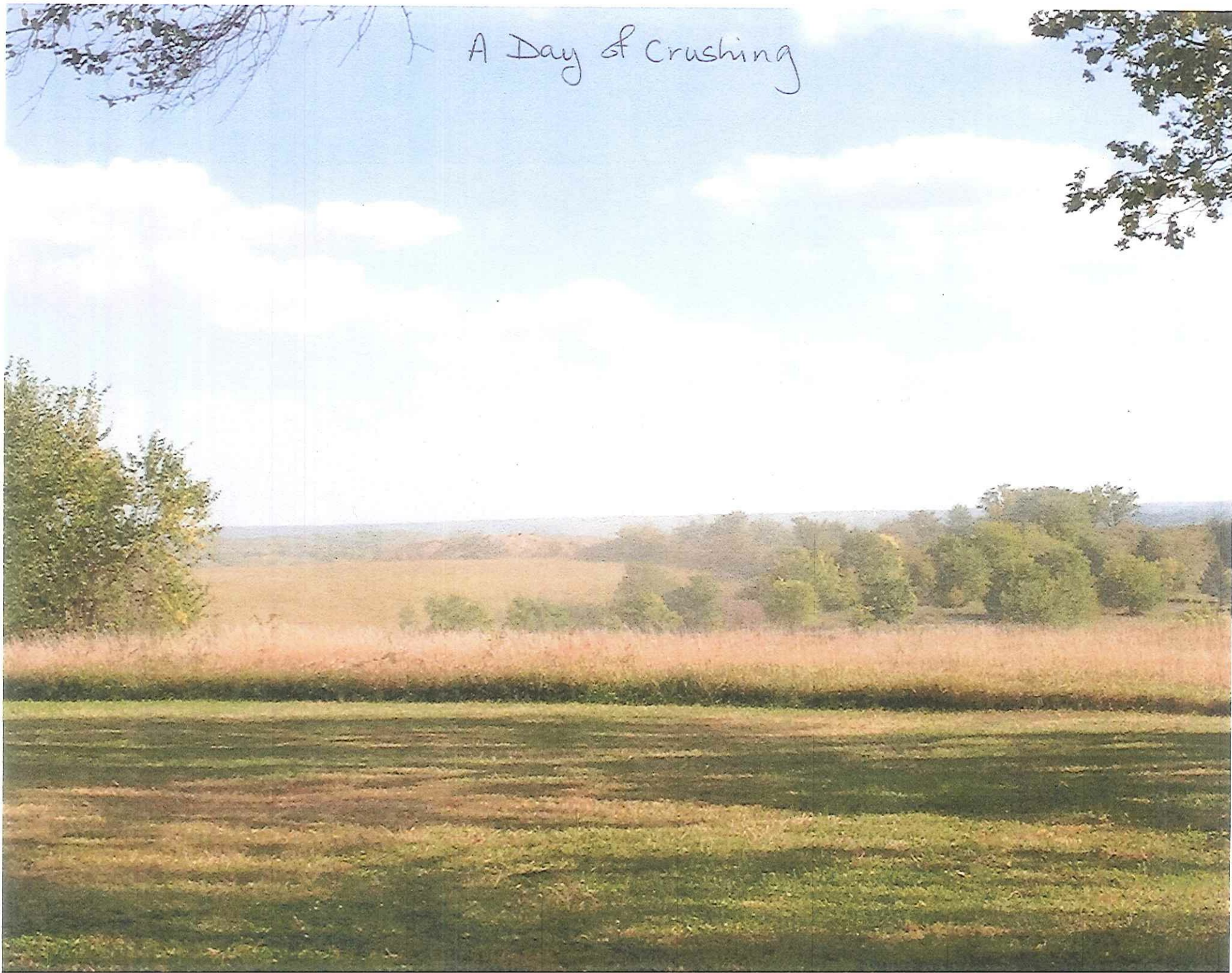
Close to property line
no berm



A day of No crashing



A Day of Crushing



HAMM GARY L TRUSTEE
4301 S ATLANTIC AVE
PONCE INLET, FL 32127

03

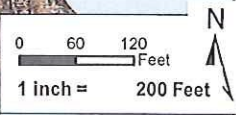
UNITED STATES OF AMERICA
601 E 12TH ST, FED BLDG 656
KANSAS CITY, MO 64106

N 1450 Road

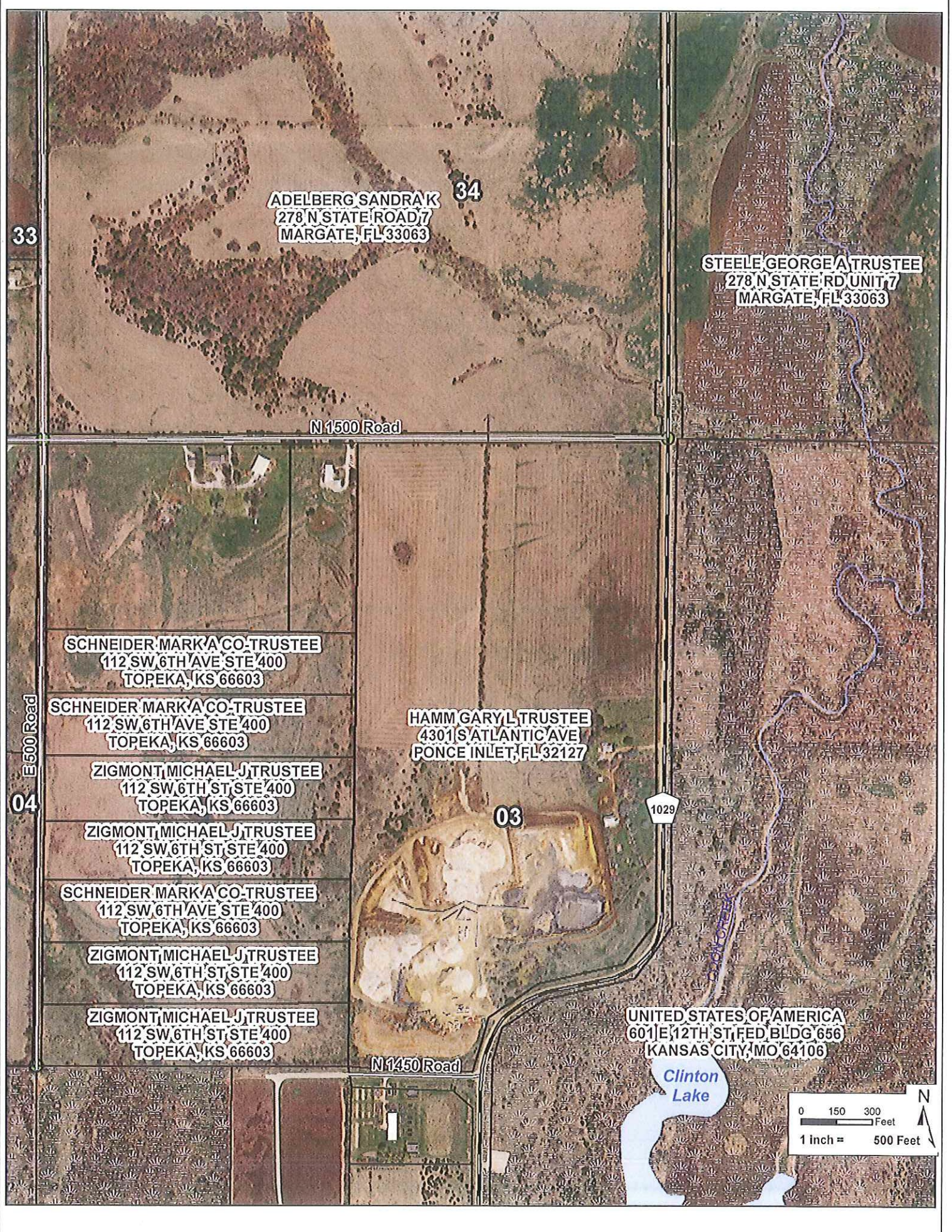
DAVIS SUSAN H TRUST
1200 MISSISSIPPI ST
LAWRENCE, KS 66044

1029

Clinton Lake



MOON CREEK



34
ADELBERG SANDRA K
278 N STATE ROAD 7
MARGATE, FL 33063

STEELE GEORGE A TRUSTEE
278 N STATE RD UNIT 7
MARGATE, FL 33063

N 1500 Road

SCHNEIDER MARK A CO TRUSTEE
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