

6:15pm

Work Session:

**Burbach Preliminary Feasibility/Market Study
Swimming Pool**

AGENDA

CITY OF VALLEY CENTER

7:00 pm

March 6, 2007

City Hall - 121 S. Meridian

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. INVOCATION — Ministerial Alliance:**
- 4. PLEDGE OF ALLEGIANCE**
- 5. APPROVAL OF AGENDA** p2
- 6. CLERK’S AGENDA**
 - A. Minutes of the February 20th Meeting p2
 - B. Appropriation Ordinance p2
- 7. PUBLIC FORUM (Citizen input and requests)**
- 8. COMMITTEES AND COMMISSIONS—REPORTS**
 - A. Park Board – Arrowhead Park p3
 - B. Swimming Pool Committee p3
- 9. OLD BUSINESS** p4
- 10. NEW BUSINESS**
 - A. Proposed Contract – Land Development PEC p4
 - B. Proposed Ordinance – Electric Franchise Agreement: Westar Energy p9
 - C. REAP By-Laws p16
- 11. STAFF REPORTS** p17
- 12. GOVERNING BODY REPORTS** p17
- 13. EXECUTIVE SESSION** p17
- 14. ADJOURN**

Approval of Agenda

City Staff recommends motion to approve the agenda as presented/amended.

Clerk's Agenda

A. Minutes of the February 20th Meeting:

Attached are the minutes from the meeting of February 20, 2007 meeting.

City Staff suggests motion to approve the Council Meeting Minutes as presented.

B. Appropriation Ordinance:

Attached is the proposed appropriation ordinance for March 6, 2007 as prepared by City Staff.

City Staff suggests motion to approve the appropriation ordinance as presented.

PUBLIC FORUM

Committees and Commissions – REPORTS

A. Park Board – Arrowhead Park:

A presentation on the proposed development plan for Arrowhead Park is scheduled.

B. Swimming Pool Committee:

Old Business

New Business

A. Proposed Contract – Land Development PEC

Below is proposed contract from PEC for platting, survey, geotech and environmental services for the City Owned property north of the Public Safety Building.

The contract provides the following scope of services:

A. Scope of Services

1. Prepare preliminary and final plats as per City of Valley Center Subdivision Regulations.
2. Prepare drainage study.
3. Order plat binder with abstract company (abstract fees by CLIENT).
4. Prepare application and file with City of Valley Center (application fees by CLIENT).
5. Represent CLIENT at public hearings (2).
6. Prepare plat documents as required by the City of Valley Center.
7. Record plat with Sedgwick County Clerk.
8. Set irons for plat and block corners.
9. Prepare topographic and boundary survey of site to be platted.
10. Geotechnical investigation – drill 10 to 12 borings to a depth of 15 feet for preliminary investigation of soil contamination.
11. Environmental assessment – A.E.C. will monitor drillings, obtain soil and water samples for contamination testing and prepare a written report on the results.

Services identified at a cost not to exceed \$22,000.

City Staff suggests motion to direct the Mayor and Staff to enter into the proposed contract for land development services in an amount not to exceed \$22,000.



January 22, 2007

City of Valley Center
116 S. Park
Valley Center, KS 67147

Attention: I. D. Creech
City Administrator

Reference: Platting, Survey, Geotech and Environmental Services for
Property north of Public Safety Building (50± Acre)
PEC File No. 36-07000-2502

Dear Mr. Creech:

This letter is written to serve as an agreement between the City of Valley Center, Kansas (CLIENT) and Professional Engineering Consultants, P.A. (PEC) to provide professional services for the above referenced project, hereinafter called the PROJECT.

Specifically, PEC proposes to perform the Scope of Services as outlined in Paragraph A. below, which are provided for your review and approval.

A. Scope of Services

1. Prepare preliminary and final plats as per City of Valley Center Subdivision Regulations.
2. Prepare drainage study.
3. Order plat binder with abstract company (abstract fees by CLIENT).
4. Prepare application and file with City of Valley Center (application fees by CLIENT).
5. Represent CLIENT at public hearings (2).
6. Prepare plat documents as required by the City of Valley Center.
7. Record plat with Sedgwick County Clerk.
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10. Geotechnical investigation – drill 10 to 12 borings to a depth of 15 feet for preliminary investigation of soil contamination.
11. Environmental assessment – A.E.C. will monitor drillings, obtain soil and water samples for contamination testing and prepare a written report on the results.

DIRECTORS:
D.E. MALTBIE, P.E.
M.D. SCHOMAKER, P.E.
J.H. BAILEY, P.E., Ph.D.
D.I. NORTON, P.E.
B.E. REMSBERG, P.E.
G.K. GREENWOOD, P.E.
D.E. HAGER, P.E.
M.W. BERRY, P.E.
J.B. GEORGE, P.E.
R.A. SCHLITT, P.E.

ASSOCIATE
DIRECTORS:
K.L. ROOD, P.E.
W.G. BRITSON, P.E.
T.M. LENZ, P.E.
R.R. YOUNG, P.E.
J.P. MOORE, P.E.
J.L. MARTIN, P.E.
W.G. MOHR, P.E.
W.D. HUBBARD, P.E.
B.J. EDMUNDSON, P.E.
D.L. DOWNES, P.E.

303 S. TOPEKA
WICHITA, KANSAS
67202
316-262-2691
316-262-3003 FAX
www.pec1.com

WICHITA
TOPEKA
TULSA
LAWRENCE
PITTSBURG

B. Responsibility of CLIENT

The CLIENT agrees to provide the following pursuant to PEC accomplishing the Scope of Services outlined herein.

1. Provide all application fees, abstractor fees, and filing fees associated with the plat.

C. Exclusions

The following shall be specifically excluded from the Scope of Services to be provided by PEC.

1. Infrastructure design – this can be accomplished under a separate agreement after platting, if necessary.
2. FEMA flood plain study and Letter of Map Revision – this can be accomplished under a separate agreement, if necessary.

D. Payment Provisions

PEC proposes to perform the Scope of Services on the basis of a factor of 2.7 times the hourly rate of those individuals working on the project, plus direct expenses. CAD machine time will be billed as a reimbursable expense at \$16.00/per hour. The total cost for these services is not to exceed \$22,000.00.

In addition, the CLIENT shall provide all required filing fees, abstractor's fees, plat binder, recording fees, etc.. These costs are not included in the fee noted above.

Unless otherwise agreed upon, billings will be made once a month for work completed the previous month. Taxes are not included in stated fees. Client shall reimburse PEC for any sales, use and value-added taxes, which apply to these services. All project invoices shall be paid prior to PEC filing the final plat.

E. Time of Performance

PEC proposes to begin work on the PROJECT following receipt of an executed copy of this agreement and to complete the Scope of Services in 120 days exclusive of any delays beyond the control of PEC.

Mr. I. D. Creech
January 22, 2007
Page 3

This letter and the "Standard Conditions" attached hereto comprise the entire agreement between the CLIENT and PEC. They may be altered only by Supplemental Agreement.

Thank you for contacting us to provide professional services on the subject PROJECT. Should you have questions or if additional information is required, please do not hesitate to call. Return receipt of an executed copy of this letter will serve as our contract and notice to proceed with the work.

Very truly yours,


PROFESSIONAL ENGINEERING CONSULTANTS, P.A.



Rob Hartman, A.S.L.A.
Manager, Land Development Division

RMH:amha

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By: 
Title: Dir MGR
Date: 1/22/07

ACCEPTED:

CITY OF VALLEY CENTER, KANSAS

By: _____
Title: _____
Date: _____

PEC STANDARD CONDITIONS

1. **STANDARD OF CARE:** Professional Engineering Consultants, P.A. ("PEC") shall provide professional services according to the agreed upon scope of services. PEC will perform the services with the level of care and skill ordinarily exercised by other consultants of the same profession under similar circumstances at the time the services are performed, and in the same locality.

2. **USE OF DOCUMENTS:** Drawings, specifications, reports, programs, manuals, cost estimates, or other documents, including documents on electronic media, prepared under this Agreement are instruments of service and as such are only applicable to the subject PROJECT. Use of these documents for any other purpose without written authorization and consent of PEC is prohibited. PEC shall retain ownership thereof.

3. **INSURANCE:** PEC and the Client agree to each maintain statutory Worker's Compensation, Employer's Liability Insurance, General Liability Insurance, and Automobile Insurance coverage for the duration of this agreement. Additionally, PEC will maintain Professional Liability Insurance for PEC's negligent acts, errors, or omissions in providing services pursuant to this Agreement. If the Client is a design professional, then the Client agrees to maintain Professional Liability Insurance for its negligent acts, errors, or omissions in providing services pursuant to this Agreement. If a project is Design-Build, the Client and all subcontractors providing professional design or other services (e.g., architects, engineers, inspectors) shall maintain professional or similar liability insurance for claims arising from its negligent performance of said services. Proof of insurance shall be provided, upon request, prior to commencement of said services.

4. **NO GUARANTEE:** PEC does not provide a warranty or guarantee, express or implied, for any portion of the scope of services including drawings, specifications, reports, programs, manuals, cost estimates, or other documents of service. Items of beneficial use to the owner, whether or not included in the contract documents, shall not be the responsibility of PEC.

5. **INDEMNIFICATION/HOLD HARMLESS:** PEC agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client and its employees from any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) resulting from PEC's negligent acts, errors, or omissions through services provided pursuant to this Agreement by PEC or anyone for whom PEC is legally liable. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless PEC, its employees and subconsultants from any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) resulting from the negligent acts, errors, or omissions by Client or those contractors, subcontractors, consultants, or anyone for whom Client is legally liable, and arising from the project(s) that is the subject of this agreement. PEC is not obligated to indemnify the Client in any manner whatsoever for the Client's own negligence. If any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) result from the concurrent negligence of PEC

and the Client, this indemnification shall only apply to the extent of each party's proportion of the responsibility.

6. **DISPUTES:** Any action or claims arising out of or related to this Agreement or the project that is the subject of this Agreement shall be governed by Kansas law. Good faith negotiation and mediation are express conditions precedent to the filing of any legal action. Mediation shall be conducted in accordance with the latest edition of the Construction Mediation Rules of the American Arbitration Association.

7. **ASSIGNMENT OR SUBLETTING OF CONTRACT:** Client shall not assign, transfer, or sublet any rights, duties, or interests accruing from this Agreement without the prior written consent of PEC. This Agreement shall be binding upon the Client, its successors and assigns.

8. **NON PAYMENT/TERMINATION OF AGREEMENT:** If the Client fails to make payment for services and expenses within 30 days following receipt of an invoice, PEC may, after giving seven days written notice to the Client, without liability for delay charges, suspend services under this Agreement until PEC has been paid in full for all amounts due. Each party to this Agreement reserves the right to terminate the Agreement at any time, without cause, upon 15 days written notice and subject to payment to PEC for the value of services rendered up to the time of termination.

9. **EXTRA WORK:** Services not specified in the Scope of Services set forth in this Agreement or due to regulatory changes shall be considered "extra work". No "extra work" will be performed without additional compensation per a supplemental agreement.

10. **FORCE MAJEURE:** The Client shall not hold PEC responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of PEC, or that could not have been reasonably foreseen and prevented including, but not limited to, fire, weather, floods, earthquakes, epidemics, war, riots, terrorism, strikes, and unanticipated site conditions.

11. **AGREEMENT SOLELY FOR PARTIES' BENEFIT:** This agreement is solely for the benefit of PEC and Client. Nothing herein is intended in any way to benefit any third party or otherwise create any duty or obligation on behalf of PEC or Client in favor of such third parties.

12. **LIMITATION OF LIABILITY:** To the fullest extent permitted by law, PEC's total liability to Client is limited to the greater of \$50,000 or two times PEC's fee, for any and all damages or expenses arising out of this Agreement from any cause(s) or under any theory of liability. In no event shall PEC be liable for consequential damages, including, without limitation, loss of use or loss of profits, incurred by Client or its subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

B. Proposed Ordinance – Electric Franchise Agreement: Westar Energy

Attached for consideration and first reading is proposed franchise agreement with Westar to provide electric service within the City Limits and via the rights-of-ways of the City of Valley Center for a period of fifteen (15) years.

The current twenty (20) year franchise will expire on April 19th, 2007.

The proposed franchise agreement contains a five percent (5%) franchise fee assessment.

If you wish to proceed, City Staff suggests motion to approve the proposed ordinance granting to Kansas Gas and Electric Company, a Kansas Corporation, doing business as Westar Energy, an electric franchise including the right to construct, operate and maintain electric transmission, distribution and street lighting facilities within the corporate limits of the City of Valley Center, Kansas on first reading.

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO KANSAS GAS AND ELECTRIC COMPANY, A KANSAS CORPORATION, DOING BUSINESS AS WESTAR ENERGY, AN ELECTRIC FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION, DISTRIBUTION AND STREET LIGHTING FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF VALLEY CENTER, KANSAS.

THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VALLEY CENTER, KANSAS:

Section 1. Definitions.

For purposes of this Franchise, the following words and phrases shall have the meanings given herein:

City as the Grantor – shall mean the City of Valley Center, Kansas.

Company as the Grantee – shall mean Kansas Gas and Electric Company, a Kansas Corporation, doing business as Westar Energy.

Distributed or Distribution – shall mean all sales, distribution, or transportation by the Company or by others through the Facilities of the Company in the Right-of-Way to any consumer for use within the City.

Facilities – shall mean all electric distribution lines, substations, works, and plants together with all necessary appurtenances thereto.

Gross receipts – shall mean any and all compensation and other consideration derived directly by the Company from any Distribution of electric energy to a consumer for any use within the City, including domestic, commercial and industrial purposes, through charges as provided in tariffs filed and approved, and including without limitation interruptible sales and single sales; except that such term shall not include revenues from any operation or use of any or all of the Facilities in the Right-of-Way by others nor shall such term include revenue from certain miscellaneous charges and accounts, including but not limited to delayed or late payment charges, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, and temporary service charges.

Public Improvement – shall mean any existing or contemplated public facility, building, or capital improvement project, financed by the City, including without limitation, streets, alleys, sidewalks, sewer, water, drainage, Right-of-Way improvement, and Public Projects.

Public Project – shall mean any project planned or undertaken and financed by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature paid for with public funds.

Public Project for Private Development – shall mean a Public Project, or that portion thereof, that primarily benefits a third (3rd) party.

Right-of-Way – shall mean present and future streets, alleys, rights-of-way, and public easements, including easements dedicated to the City in plats of the City for streets and alleys but not including any Utility Easement.

Street Right-of-Way – shall mean the entire width between property lines of land, property, or an interest therein of every way publicly maintained where any part thereof is open to the use of the public for purposes of vehicular traffic, including street, avenue,

boulevard, highway, expressway, alley, or any other public way for vehicular travel by whatever name.

Utility Easement – shall mean an easement owned by or dedicated to the City for the purpose of providing the Company and other utilities access to customers and users of any utility service.

Section 2. Grant.

There is hereby granted to Company, the non-exclusive right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in, through, and along the Right-of-Way of the City for the purpose of supplying electric energy to the City and the inhabitants thereof for the full term of this Franchise; subject, however, to the terms and conditions herein set forth. Nothing in this grant shall be construed to franchise or authorize the use of the Company's Facilities or the Right-of-Way by the Company or others, for any purpose not related to the provision of electric energy. The Company may not allow a subsidiary, affiliate, or a third (3rd) party to acquire rights to occupy the Rights-of-Way under this Franchise; provided, that nothing in this section shall prevent Company from allowing the use of its Facilities by others when such use is compensated to the City under the provisions of a franchise granted by the City to any such third party.

Section 3. Term.

a. The term of this Franchise shall be fifteen (15) years from the effective date of this Ordinance.

b. Upon 60 days advance written notice by the City, the franchise fee percentage rate may be changed on the fifth, tenth or fifteenth anniversary of the effective date of this Ordinance.

c. Upon written request of either the City or the Company, the franchise shall be reopened and renegotiated at any time upon any of the following events:

1. Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or

2. Change in the structure or operation of the electrical energy industry which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or

3. Any other material and unintended change or shift in the economic benefit to the City or a change the Company did not anticipate upon accepting the grant of this Franchise.

d. Amendments under this section, if any, shall be made by ordinance as prescribed by statute. The franchise shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to subsection (c).

Section 4. Compensation to the City.

a. In consideration of and as compensation for the franchise hereby granted to the Company by the City, the Company shall make an accounting on a monthly basis to the City of all electric energy that has been distributed within the City. The Company shall pay the City:

A sum equal to five percent (5%) of the Gross Receipts received from such Distribution of electric energy; and the above sum shall be adjusted for uncollectible receivables and for receivables which are later collected.

b. Payment of the compensation above shall be effective on the first day of the first month after final passage and approval by the City and acceptance by the Company. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance 711-87. Such payments shall be made to the City under procedures, which are mutually agreed to by the Company and the City within thirty (30) days of the last day of the month to which such accounting shall apply.

c. Notwithstanding anything to the contrary in this Franchise, the fee provided for in this Section 4 shall not become effective within any area annexed by the City until 30 days after the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the city detailing the annexed area.

d. Company will use commercially reasonable efforts to ensure the accuracy of its records and of the determination of the amount of Gross Receipts subject to the fee provided for in this Section 4. In the event and to the extent the accounting rendered to the City by the Company is found to be incorrect due to Company's failure to use commercially reasonable efforts as provided herein, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Company agrees that all of its books, records, documents, contracts and agreements as may be reasonably necessary for an effective compliance review of this Ordinance shall upon reasonable notice and at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said accounting. Notwithstanding the obligation herein, the Company shall have the right to require the reasonable protection of proprietary information of the Company.

Section 5. Payment and Charges.

The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales and excise taxes, or charges made for privileges which are not connected with the electric energy business, will be imposed on the Company and are not covered by the payments herein.

Section 6. Use of Right-of-Way.

a. The use of the Right-of-Way under this Franchise by the Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to use, placement, location, or management of utilities located in the City's Right-of-way. In addition, the Company shall be subject to all laws, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits, fees, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the Right-of-Way; provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, policy, resolution, or ordinance proposed, adopted, or promulgated by the City. Further, the Company shall comply with the following:

b. The Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The Company shall

coordinate the installation of its Facilities in the Right-of-Way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to conflict with such Public Improvement.

c All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Right-of-Way damaged or removed by the Company in its activities under this Franchise shall be fully repaired or replaced promptly by the Company without cost to the City, however, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be prorated among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto. Nothing in this Franchise shall require the Company to repair or replace any materials, trees, flowers, shrubs, landscaping or structures that interfere with the Company's access to any of its Facilities located in a Utility Easement.

d Except in the event of an emergency, as reasonably determined by the Company, the Company shall comply with all laws, rules, regulations, policies, resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to any construction, reconstruction, repair, or relocation of Facilities which would require any street closure which reduces traffic flow. Notwithstanding the foregoing exception all work, including emergency work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected.

e. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Facilities located within the Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents, or authorized contractors. The Company shall designate and maintain an agent, familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in the Right-of-Way during and for the design of Public Improvements. At the request of the Company, the City may include design for Facilities in the design of Public Projects. Also at the request of the Company, the City and/or its contractor(s) or agent(s) shall provide accurate and timely field locations of proposed Public Projects in the event the Company is required to install new and/or relocate its Facilities.

f. The Company shall promptly locate, remove, relocate, or adjust any Facilities located in the Right-of-Way if reasonably necessary and requested by the City for a Public Project. Such location removal, relocation, or adjustment for a particular Public Project shall be performed by the Company without expense to the City, its employees, agents, or authorized contractors, and shall be specifically subject to rules and regulations of the City pertaining to such. If additional location, removal, relocation, or adjustment is the result of the inaccurate or mistaken information of the Company, the Company shall be responsible for costs associated with such without expense to the City. Likewise, if additional location, removal, relocations or adjustment is the result of inaccurate or mistaken information of the City, the City shall reimburse the Company for any additional expense necessarily incurred by the Company directly due to such inaccurate or mistaken information. The Company shall only be responsible for removal, relocation, or adjustment of Facilities located in the Right-of-Way at the

Company's sole cost once each five (5) years for that particular facility. The City shall reimburse the Company for the removal, relocation, or adjustment of the Company's Facilities located in the Right-of-Way if required before the expiration of five (5) years from the date of the last relocation, removal, or adjustment of that particular facility.

g. The Company shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development initiated after the effective date of this Ordinance. The expenses attributable to such a project shall be the responsibility of the third (3rd) party upon the request and appropriate documentation of the Company. Before such expenses may be billed to the third (3rd) party, the Company shall be required to coordinate with the third (3rd) party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner. The Company may require payment in advance of estimated costs or relocation prior to undertaking any work required to accommodate any new Public Project for Private Development initiated after the effective date of this Ordinance.

h. The City may continue to provide a location in the Right-of-Way for the Company's Facilities as part of a Public Project, provided that the Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

i. It shall be the responsibility of the Company to take adequate measures to protect and defend its Facilities in the Right-of-Way from harm or damage. If the Company fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City. The Company shall be responsible to the City and its agents, representatives, and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the Company to perform any of its obligations under this Ordinance. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when working near the Company's Facilities.

j. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way shall be in accordance with applicable present and future federal, state, and City laws and regulations, including but not limited to the most recent standards of the Kansas Corporation Commission and U.S. Department of Transportation. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Franchise may be additional to or stricter than such minimum standards.

k. The City encourages the conservation of the Right-of-Way by the sharing of space by all utilities. Notwithstanding provisions of this Franchise prohibiting third (3rd) party use, to the extent required by federal or state law, the Company will permit any other franchised entity by an appropriate grant, or a contract, or agreement negotiated by the parties, to use any and all Facilities constructed or erected by the Company.

l. Permission is hereby granted to the Franchisee to trim trees upon and overhanging the right-of-way and utility easements. Franchisee shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269. All pruning operations shall be performed by personnel qualified to perform the work and in accordance with the latest versions of ANSI Z133.1 (Safety

Requirements for Pruning, Repairing, Maintaining and Removing Trees, and Cutting Brush) and ANSI A300 (Part 1) (Standard Practices for Tree, Shrub, and Other Woody Plant Maintenance). For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger.

Section 7. Indemnity and Hold Harmless.

The Company shall indemnify and hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including reasonable attorney fees, to the extent occasioned in any manner by the Company's occupancy of the Right-of-Way. In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the Right-of-Way by Facilities of the Company, then upon notice by the City to the Company, the Company shall assume responsibility for the defense of such actions at the cost of the Company, subject to the option of the City to appear and defend.

Section 8. Right of Assignment.

This Franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

Section 9 Acceptance of Terms by Company.

Within thirty (30) days after the final passage and approval of this Ordinance, the Company shall file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Ordinance. This Ordinance shall constitute a non-exclusive contract between the City and the Company.

Section 10. Conditions of Franchise.

This non-exclusive franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

Section 11. Invalidity of Ordinance.

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining provisions of this Ordinance.

Section 12. Effective Date of Ordinance.

This Ordinance shall take effect and be in force on the first day of the first month after its passage and approval by the City, acceptance by the Company, and publication in the official city newspaper.

Section 13. Repeal of Conflicting Ordinances.

Ordinance No. 711-87, which heretofore granted a non-exclusive franchise to the Company, and which became a contract between the City and the Company in accordance with its terms, and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby canceled, annulled, repealed, and set aside.

PASSED and APPROVED by the Governing Body on the ____ day of _____, 2007.

Michael D. McNown, Mayor

ATTEST: _____
Kristine A. Polian, City Clerk

C. REAP By-Laws:

Notation made reference the REAP by-laws previously distributed.
Should you wish to offer changes, this would be the time for such.

Staff Reports

City Clerk

Police Chief

Fire Chief

Parks & Public Properties

Community Development

City Superintendent

City Engineer

City Attorney

City Administrator

GOVERNING BODY REPORTS

MAYOR McNOWN

COUNCILMEMBER BLACK

COUNCILMEMBER NORDSTEDT

COUNCILMEMBER ROBERTS

COUNCILMEMBER BLUMANHOURST

COUNCILMEMBER HOUSTON

COUNCILMEMBER YARNELL

Executive Session:

Staff suggests motion to go into executive session for 20 minutes to discuss non-elected personnel, City Administrator and City Clerk to attend.

REGULAR COUNCIL MEETING
FEBRUARY 20, 2007 CITY HALL
121 S. MERIDIAN

Mayor McNown called the meeting to order at 7:00 pm with the following members present: Virginia Black, Cheryl Nordstedt, Bess Roberts, Dale Blumanhourst, Michael Houston and Richard Yarnell.

Members absent: None

Staff present: 1.0. Creech- City Administrator
 Kristine Polian, City Clerk
 Steve Mertins, Assistant City Superintendent
 Robert Tormey, Fire Captain
 Barry Arbuckle, City Attorney
 Eldon Miller, Community Development Officer
 Neal Owings, Parks Superintendent
 Walter Kuykendall, Police Chief Interim

Press present: The Ark Valley News

APPROVAL OF AGENDA

McNown added an Executive Session to the Agenda after Governing Body Reports.

Houston moved, second by Blumanhourst, to approve the agenda as amended. Vote yea: unanimous. Motion carried.

CLERKS AGENDA

JANUARY 16, 2007 MINUTES

Nordstedt moved, second by Roberts, to approve the January 16, 2007 Minutes as presented. Vote yea: unanimous. Motion carried.

APPROPRIATION ORDINANCE 2106/07

Black moved, second by Yarnell, to approve Appropriation Ordinance No. 02/20/07. Vote yea: unanimous. Motion carried.

BIDS: PRAIRIE LAKES PHASE 2 STREET AND INCIDENTAL DRAINAGE IMPROVEMENTS

Roberts moved, second by Houston, to accept the bids from Cornejo & Sons for Prairie Lakes Street and incidental Drainage improvements in the amount of \$369,709.57 and direct the Mayor and Staff to do all things necessary to complete the project. Vote yea: unanimous. Motion carried.

REQUEST TO DIPOSE OF SURPLUS/UNSERVICEABLE PROPERTY

Roberts moved, second by Houston, to dispose the surplus and unserviceable property identified. Vote yea: unanimous. Motion carried.

COMMITTEES AND COMMISSIONS

SWIM POOL COMMITTEE

Bob Daniels discussed the feasibility study presented by Burbach Aquatics. Asked the Council to consider the study, which proposed a pool at a cost of 4.5 million dollars.

Mayor McNown stated that the Council still needed to consider all research being done by the Campus Task Force, but knows that there will probably be more questions at a later time regarding the feasibility study. Thanked Daniels for his time and effort.

OLD BUSINESS

PROPOSED ANNEXATION PHASE VII

Roberts moved, second by Houston, to adopt Resolution 518-07 establishing a public hearing date for the annexation of certain properties into the City of Valley Center. Vote yea: Black, Nordstedt, Roberts, Houston and Yarnell. Opposed: Blumanhourst. Motion carried.

STAFF REPORTS

FIRE CHIEF TORMEY

Stated that Clearwater is interested in the air compressor that is on the list of property to be disposed, so he is thankful the Council has agreed to dispose of the unused property.

PARKS SUPERINTENDENT OWINGS

Said that THE LINE TRIMMING Westar was doing was going well and they were making good headway. Westar will be providing free mulch to the city and citizens, as well as firewood.

COMMUNITY DEVELOPMENT OFFICER MILLER

Reminded Council that there will be a WAMPO meeting February 22 to discuss the railroad. Said the Railroad Committee would not meet until next month, in which there would be representatives from BNSF and KDOT, among others.

CITY ADMINISTRATOR CREECH

Said that the KDHE Water Loan expansion to the west side of the city has been approved by the State and the franchise agreement for Westar will ~ discussed at the next meeting. Also, there are some proposed changes to the REAP bylaws, so if the Council is interested in any changes to please give them to Councilmember Roberts to take to the next REAP meeting. Stated that Troy Heimerman is in attendance to observe city operations, as he is pursuing his Masters of Public Administration.

GOVERNING BODY REPORTS

MAYOR MCNOWN

Stated that he received a message from Kelly Cunningham and spouse stating they were very appreciative to the Police Department and Cindy Plant for their work on retrieving the Cunningham's dog. In appreciation, they were donating dog beds, toys, etc., to the City of Valley Center.

Said that he attending the KOMAIKORA training session in Abilene put on by the League of Kansas Municipalities and that it was very beneficial to attend.

COUNCILMEMBER BLACK

Stated that the consensus of the Campus Task Force is that it is time to move forward. Said that they will be asking for funding for site and survey of the land by the high school in the future. Requested that Staff bring back a recommendation to the Council for an architecture firm to get designs for a potential building to consider.

Councilmember Nordstedt asked if the Task Force worked with the Pool Committee.

Black stated that there is a member from the Pool Committee on the Task Force representing their interests, and there is discussion of a possible meeting between Burbach Aquatics, the Pool Committee and the Task Force.

Council consensus is to have PEC bring a contract to them for site and survey work.

COUNCILMEMBER BLUMANHOURST

Stated that he will not be attending the next meeting.

EXECUTIVE SESSION

Houston moved, second by Roberts, to go into Executive Session to discuss non-elected personnel for 30 minutes at 7:36.

Houston reported that non-elected personnel was discussed and that no action was taken.

Meeting adjourned at 8:06 p.m.

Kristine A. Polian, City Clerk

VENDOR SET: 01

BANK : APBK INTRUST CHECKING

VENDOR	NAME / I.D.	DESC	CHECK TYPE	CHECK DATE	DISCOUNT	AMOUNT	CHECK NO#	CHECK AMOUNT
0060	A T & T I-200702213402	WELLS, ALARMS & CIRCUITS	R	2/22/2007		925.75CR	036631	925.75
0378	CASUAL MALE BIG & TALL I-7060	UNIFORM	R	2/22/2007		178.00CR	036632	178.00
0093	CINGULAR WIRELESS I-200702213405	CELL PHONE BILL	R	2/22/2007		188.23CR	036633	188.23
0549	KANSAS GAS SERVICE I-200702213407	GAS BILL	R	2/22/2007		3,693.95CR	036634	3,693.95
0122	LOGO DEPOT & INDUSTRIAL UNIFORM I-0208568-IN	UNIFORMS	R	2/22/2007		168.75CR	036635	168.75
0299	E.B. HOIDALE CO INC I-1076415 & 20070131	REPAIR GAS PUMP	R	2/22/2007		602.16CR	036636	602.16
1047	RUCHARD L DUNBAR I-200702213401	INVESTIGATOR	R	2/22/2007		1,456.26CR	036637	1,456.26
0109	SAM'S CLUB I-200702213406	SAM'S CHARGES	R	2/22/2007		71.91CR	036638	71.91
0094	WASTE MANAGEMENT OF WICHI I-200702213403	TRASH SERVICE	R	2/22/2007		336.37CR	036639	336.37
0062	WESTAR ENERGY I-200702213408	ELECTRIC BILL	R	2/22/2007		9,459.00CR	036640	9,459.00
0145	WICHITA WATER & SEWER I-200702213404	WATER PURCHASE	R	2/22/2007		20,972.07CR	036641	20,972.07

* * T O T A L S * *	NO#	DISCOUNTS	CHECK AMT	TOTAL APPLIED
REGULAR CHECKS:	11	0.00	38,052.45	38,052.45
HANDWRITTEN CHECKS:	0	0.00	0.00	0.00
PRE-WRITE CHECKS:	0	0.00	0.00	0.00
DRAFTS:	0	0.00	0.00	0.00
VOID CHECKS:	0	0.00	0.00	0.00
NON CHECKS:	0	0.00	0.00	0.00
CORRECTIONS:	0	0.00	0.00	0.00
REGISTER TOTALS:	11	0.00	38,052.45	38,052.45

TOTAL ERRORS: 0

PACKET: 00715 3-06-07 TP06 HAND CHECK SPREAD

VENDOR SET: 01

BANK : APBK INTRUST CHECKING

VENDOR	NAME / I.D.	DESC	CHECK TYPE	CHECK DATE	DISCOUNT	AMOUNT
0042	ANDALE FARMERS CO-OP I-200702283431	DIESEL SEPT-NOV 06	H	1/04/2007		3,107.3
0171	WICHITA WINWATER WORKS I-140272 I-140273 I-140274 I-140845 I-200702283430	SUPPLIES INV# 140272 SUPPLIES INV#140273 METER ASSMBLY #INV140274 SUPPLIES INV# 140845 METER USG INV# 140857	H H H H H	1/05/2007 1/05/2007 1/05/2007 1/05/2007 1/05/2007		131.0 39.9 1,402.0 960.0 594.0
0186	A T & T I-200702283428	PHONE BILL NOVEMBER 06	H	1/12/2007		1,067.8
0188	A T & T I-200702283441	LIFT STATIN PH BILL 11-06	H	1/12/2007		32.0
0109	SAM'S CLUB I-200702283410	2006 SAM'S CHARGES	H	2/23/2007		420.9
0115	CINTAS CORPORATION #451 I-200702283409	V.C. LOGO SHIRTS	H	2/23/2007		3,586.4
0818	KWIK SHOP I-200702283412	2006 GAS PURCHASE	H	2/23/2007		25.9
0160	OFFICE DEPOT CARD PLAN I-200702283442	OFFICE DEPOT CARD	H	2/23/2007		393.5
0001	AFLAC I-200702283411	INSURANCE PREMIUMS	H	2/26/2007		168.2
0005	KANSAS DEPT OF REVENUE I-200702283435 I-200702283436 I-200702283437 I-200702283438	1/5; 1/19 KS WITHHOLDING JAN-MO StateWithholdings 1st 1/2 Feb KsWithhold 2nd 1/2;Mo St Withhold	R R R R	3/02/2007 3/02/2007 3/02/2007 3/02/2007		3,462.0 76.9 1,768.6 1,620.7
0007	INTRUST CARD CENTER I-200702283413 I-200702283414	INTRUST CREDIT CARD 2006 INTRUST CARD EXP.	R R	3/02/2007 3/02/2007		489.6 1,072.0
0010	KPERS I-200702283439 I-200702283440	1/19/07 KPERS 2/2/07 KPERS	R R	3/02/2007 3/02/2007		3,666.1 3,776.7

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A / P CHECK REGISTER

PACKET: 00715 3-06-07 TP06 HAND CHECK SPREAD

VENDOR SET: 01

BANK : APBK INTRUST CHECKING

VENDOR	NAME / I.D.	DESC	CHECK TYPE	CHECK DATE	DISCOUNT	AMOUNT
0026	B & B KLASSEN ENTERPRISES INC I-70100004;7010012	TOP SOIL, FUEL & ROCK	R	3/02/2007		495.9
0039	AIRGAS MID SOUTH I-106308834	SUPPLIES & PARTS	R	3/02/2007		99.1
0041	AMERICAN WATER WORKS ASSN I-2000540308	SUBSCRIPTION & DUES	R	3/02/2007		150.0
0063	ELDON MILLER I-200702283433	MILEAGE	R	3/02/2007		272.1
0065	LIBERTY EXTERMINATING I-23634	PEST CONTROL SERVICE	R	3/02/2007		120.0
0076	USA BLUE BOOK I-30746;31585;31817;	SUPPLIES, PARTS & REPAIRS	R	3/02/2007		691.4
0077	VALLEY CLEANING COMPANY I-200702283419	FEB CLEANING SERV	R	3/02/2007		168.0
0083	CARQUEST AUTO PARTS STORE I-200702283416	VEHICLE MAINTAINANCE	R	3/02/2007		295.8
0096	DER PRINTING HAUS I-2938 I-2939	ENVELOPES Feasibility Study... book	R R	3/02/2007 3/02/2007		169.5 190.0
0097	SEDGWICK CO CODE ENFORCE I-200702283424	JAN 2007 BLDG PERMITS	R	3/02/2007		2,818.7
0115	CINTAS CORPORATION #451 I-200702283434	UNIFORM CLEANING	R	3/02/2007		452.9
0129	PIXIUS COMMUNICATIONS LLC I-487508	INTERNET ACCESS	R	3/02/2007		89.9
0150	CRAIN CHEMICAL I-8237	MECHANIC FRIEND PLUS	R	3/02/2007		100.2
0162	RICE FOSTER ASSOCIATES I-2	COMP PLAN	R	3/02/2007		732.0

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A / P CHECK REGISTER

PACKET: 00715 3-06-07 TP06 HAND CHECK SPREAD

VENDOR SET: 01

BANK : APBK INTRUST CHECKING

VENDOR	NAME / I.D.	DESC	CHECK TYPE	CHECK DATE	DISCOUNT	AMOUNT
0166	SHELLEY ELECTRIC I-51642	Troubleshoot flow meter	R	3/02/2007		141.0
0170	G.W. VAN KEPPEL COMPANY I-C96469; C96406	VEHICLE MAINTENANCE	R	3/02/2007		435.0
0171	WICHITA WINWATER WORKS I-4204;4183;4224;423	WICHITA WINWATER WORKS	R	3/02/2007		3,701.3
0179	INCODE I-51593	TIME CLOCK MAINTENANCE	R	3/02/2007		390.0
0188	A T & T I-200702283418	PUMP & SUB STATION PHONE	R	3/02/2007		150.5
0238	MIDWEST TRUCK EQUIPMENT I-5359	SNOW PLOW BLADES	R	3/02/2007		767.5
0239	POSTMASTER I-200702283426	POSTAGE	R	3/02/2007		320.0
0258	CITY OF WICHITA I-AR701702	SLUDGE HAULING	R	3/02/2007		1,200.0
0264	ROSEY JACKSON I-200702283423	REIMBURSED EXPENSES	R	3/02/2007		10.5
0274	WATER TECH INC I-98984; 98983	EQUIPMENT	R	3/02/2007		2,285.8
0297	KANSAS ARBORISTS ASSN I-200702283421	TRAINING	R	3/02/2007		175.0
0299	P.B. HOIDALE CO INC I-1078948	LINE DETECTOR TESTS	R	3/02/2007		369.5
0322	KS MUNICIPAL UTILITIES I-7099	MEMBERSHIP DUES	R	3/02/2007		542.0
0326	KANSAS FOREST SERVICE I-200702283422	TREE BOARD	R	3/02/2007		5.0

PACKET: 00715 3-06-07 TP06 HAND CHECK SPREAD

VENDOR SET: 01

BANK : APBK INTRUST CHECKING

VENDOR	NAME / I.D.	DESC	CHECK TYPE	CHECK DATE	DISCOUNT	AMOUNT
0334	FOLEY EQUIPMENT CO I-PCSL0524320;..3471	VEHICLE MAINTENANCE	R	3/02/2007		1,742.4
0366	MAXIMUM OUTDOOR EQUIPMENT I-132289	SUPPLIES & PARTS	R	3/02/2007		19.1
0415	PITNEY BOWES INC I-200702283417	POSTAGE METER RENTAL	R	3/02/2007		333.9
0434	DR. RUSSELL HORN I-363708	MEDICAL CARE	R	3/02/2007		80.0
0442	DELL MARKETING L.P. I-T88209819; T939996	COMPUTER & D/PORT	R	3/02/2007		3,065.1
0493	SBC I-200702283443	PHONE BILL	R	3/02/2007		122.1
0525	TRUCK PARTS & EQUIPMENT (aka POWER DRIVE INC) I-780011	VEHICLE MAINT.	R	3/02/2007		1,617.9
0538	VALLEY CENTER HISTORICAL SOCIETY I-200702283420	VC PHONE BOOKS	R	3/02/2007		45.0
0649	WESTERN IMAGING INC I-32183 I-32578	OFFICE SUPPLIES TYPEWRITER SERVICING	R R	3/02/2007 3/02/2007		150.8 212.1
0693	THE SIGN SHOP I-270421	Re do 'No Gun' signs	R	3/02/2007		80.0
0748	DOCUFORCE I-22712;12158;23377	Toshiba maint. & supplies	R	3/02/2007		437.9
0862	ECONO SIGNS LLC I-885765; 886159	SIGNS	R	3/02/2007		222.4
0930	NATIONAL PEN COMPANY I-14018934	VC MUGS	R	3/02/2007		1,470.7
0978	DARLA'S FLOWER & COFFEE I-10212	FLOWERS	R	3/02/2007		147.9

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 PACKET: 00715 3-06-07 TP06 HAND CHECK SPREAD
 VENDOR SET: 01
 BANK : APBK INTRUST CHECKING

A / P CHECK REGISTER

VENDOR	NAME / I.D.	DESC	CHECK TYPE	CHECK DATE	DISCOUNT	AMOUNT
0984	PTS I-7108	Past due Lyon Pk phone	R	3/02/2007		81.6
1034	HD SUPPLY WATERWORKS LTD I-4589550	MARKING PAINT	R	3/02/2007		1,725.0
1050	KANSAS STATE UNIVERSITY I-200702283425	TRAINING	R	3/02/2007		90.0
1051	INTERACTIVE COMPUTER DESIGNS, INC I-51593	Annual time clock maint.	R	3/02/2007		390.0
1052	WICHITA EAGLE I-200702283432	NIE SPONSORSHIP VC HS	R	3/02/2007		250.0
0235	CUSIP SERVICE BUREAU I-683432	2006-2 GO BOND	H	11/07/2006		513.0
0432	GILMORE & BELL I-200702283429	TEMP NOTE 2006-02 11/1/06	H	11/15/2006		2,500.0
0186	A T & T I-200702283427	Phone Bill October 06	H	12/05/2007		1,086.0
0245	BERRY WORKSPACE SOLUTIONS I-183890	TRACTOR BLADE INV#1838906	H	12/09/2006		306.8

* * T O T A L S * *	NO#	DISCOUNTS	CHECK AMT	TOT
REGULAR CHECKS:	50	0.00	45,556.45	
HANDWRITTEN CHECKS:	13	0.00	16,335.27	
PRE-WRITE CHECKS:	0	0.00	0.00	
DRAFTS:	0	0.00	0.00	
VOID CHECKS:	0	0.00	0.00	
NON CHECKS:	0	0.00	0.00	
CORRECTIONS:	0	0.00	0.00	
REGISTER TOTALS:	63	0.00	61,891.72	

TOTAL ERRORS: 0

PACKET: 00715 3-06-07 TP06 HAND CHECK SPREAD

VENDOR SET: 01

BANK : APBK INTRUST CHECKING

VENDOR	NAME / I.D.	DESC	CHECK TYPE	CHECK DATE	DISCOUNT	AMOUNT
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** POSTING PERIOD RECAP **

FUND	PERIOD	AMOUNT
010	12/2006	306.85CR
010	1/2007	3,142.09CR
010	2/2007	3,900.13CR
010	3/2007	19,960.22CR
010	12/2007	764.43CR
110	3/2007	3,796.30CR
150	2/2007	40.00CR
150	3/2007	6,800.89CR
220	3/2007	10.25CR
350	11/2006	3,013.00CR
610	1/2007	3,261.91CR
610	2/2007	196.69CR
610	3/2007	10,132.81CR
610	12/2007	133.91CR
620	1/2007	930.13CR
620	2/2007	458.38CR
620	3/2007	4,855.98CR
620	12/2007	187.75CR
=====		
ALL		61,891.72CR