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RESOLUTION NO. 8292

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Project No. T-861003.00 (HTE #862620) which provides for the construction of water and sanitary sewer service to the new Kanza Fire Commerce Park more specifically described herein.

BE IT RESOLVED by the Council of the City of Topeka, Kansas, that it finds the following described public improvement to be necessary and in the public interest and does hereby authorize Project No. T-861003.00 with a project budget summarized herein and fully set forth on the attachment hereto:

A. GENERAL NATURE OF IMPROVEMENT:

This project will extend water and sanitary sewer service to the new Kanza Fire Commerce Park. The water project will include approximately 9,500 lineal feet (LF) of 18-inch ductile iron pipe (DIP) waterline 925 LF of 24-inch DIP waterline, mechanical joint fittings and blocks, 4 fire hydrant settings, related trench and backfill. The sanitary sewer project will include 3,375 LF of 18-inch sewer pipe, 2,100 LF of 15-inch sewer pipe, 13 standard manholes, 130 vertical feet (VF) of additional depth for manholes, related trench and backfill and both projects will require additional related appurtenances for a complete project. The project will also include the acquisition of an approximately two acre tract of land including necessary easements needed for a future elevated water tower.

B. TOTAL PROJECT BUDGET COST:

\$3,126,000.00

C. SOURCE OF FUNDS:

U.S. Environmental Protection Agency Grant Award	\$ 485,000.00
Growth Organization of Topeka/Shawnee County	<u>\$2,641,000.00</u>
TOTAL:	\$3,126,000.00

39 BE IT FURTHER RESOLVED that the City Manager is authorized to execute the
40 Development Agreement between the City and the Growth Organization of
41 Topeka/Shawnee County, attached hereto as Exhibit A and any other documents
42 necessary to accomplish the project authorized by this resolution.

43 ADOPTED and APPROVED by the City Council September 28, 2010.

44 CITY OF TOPEKA, KANSAS

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William W. Bunten, Mayor

50 ATTEST:

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Brenda Younger, City Clerk

CONTRACT FOR DEVELOPMENT
OF PUBLIC UTILITY INFRASTRUCTURE IMPROVEMENTS

CITY OF TOPEKA CONTRACT NO. 40722

THIS CONTRACT, made and entered into this 5th day of October, 2010, by and between the City of Topeka, Kansas, a Kansas municipal corporation of Shawnee County, Kansas, hereinafter referred to as the "City," and Growth Organization of Topeka/Shawnee County, Inc. hereinafter referred to as the "Developer."

WHEREAS, the Developer desires City to make certain improvements totaling approximately \$3,126,000.00 to the public infrastructure of the City of Topeka by extending water and sanitary sewer lines and such public infrastructure improvements will benefit Kanza Fire Commerce Park; and

WHEREAS, the City has made application for and received provisional approval from United States Environmental Protection Agency (the "EPA") Special Infrastructure Grant funding for the construction of the public infrastructure improvements in the amount of \$485,000.00; and

WHEREAS, said EPA grant requires that matching funds of at least \$396,819.00 be paid toward the cost of the public infrastructure improvement project; and

WHEREAS, the Developer agrees to pay for the costs of the improvements including the matching funds required under the grant with no participation in the cost by the City; and

WHEREAS, the City and the Developer desire to enter into an agreement as to the responsibilities and obligations of each as the same relates to the construction of the improvements by the City and payment by the Developer.

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

1. DEFINITIONS.

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

a. *Engineer* shall be the duly licensed engineer firm selected by the Developer to design the public utility infrastructure improvements and prepare the Final Plans and specifications.

b. *Final Completion* shall be the consummation of the transaction contemplated by this Contract accomplished by completion of the Public Utility Infrastructure Improvements Project by the City.

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

d. *Public Infrastructure Improvements Project* or *Project* shall mean the public utility infrastructure improvements set forth in the project description attached hereto as Exhibit A and incorporated herein. The Public Infrastructure Improvements Project will include acquisition of any necessary permanent utility or temporary construction easements, preliminary and final design, plans,

engineering, regulatory permits, demolition, debris removal and disposal, site environmental remediation, construction, construction inspection, special inspections, construction management, all construction and other costs normally associated with a project of this type not specifically excluded herein.

e. *Project Costs* shall mean all costs for the complete Public Infrastructure Improvements Project, including but not limited to design, plan preparation, staking, inspection, City administration including design review by City engineering staff, geotechnical reports, environmental assessment and remediation, easement acquisition, appraisals, excavating, trenching, boring, landscaping, grading and seeding, piping, manholes, valves, hydrants and other materials and all other costs necessary for a complete project.

f. *Site* shall mean any permanent or temporary easements necessary for the Public Infrastructure Improvements Project.

2. GENERAL DESIGN.

The Developer agrees at its sole cost to have Final Plans prepared by a professional design group. The Public Infrastructure Improvements Project which will be constructed and owned by the City.

3. CONSTRUCTION PLANS AND CITY COUNCIL APPROVAL.

The City and the Developer acknowledge and agree that no work shall commence under this Contract unless and until each of the following conditions have been met, satisfied or waived, as the case may be. Further it is understood and agreed that in the event that all conditions are not met or expressly waived by both parties, this Contract shall terminate.

4.1 Construction Plans.

The Developer shall have caused the Final Plans to be prepared no later than thirty (30) days from the date of this Contract by Engineer and delivered to the City for the review and approval by the City through its public works director within fifteen (15) days after receipt of the same. The Final Plans shall reflect all the dimensions and specifications of the Public Infrastructure Improvements Project. At such time as the City has approved all of the Final Plans, the same shall be initialed and approved by an authorized representative of each party and a complete set delivered to each party.

4.2 Site Acquisition.

The Developer shall obtain and deliver to the City such temporary construction and permanent utility easements by which the public infrastructure improvements may be constructed for the City. Each such temporary construction or permanent utility easement shall be acceptable in form and substance to the City's legal counsel. Provided, however, the Developer shall use reasonable efforts to obtain the parcel necessary for the future water tower site. In the event that the Developer is unable to obtain the site, the City may pursue condemnation to acquire that site.

The Site shall be conveyed to the City free of any contamination by hazardous or toxic wastes or substances at levels or concentrations exceeding those permitted by applicable laws and regulations.

4.3 City Council Approval.

The City Council shall consider and pass a resolution to approve Public Infrastructure Improvement Project No. T-861003.00 (HTE #862620) for the

construction of the Project and authorize a project budget in the amount of \$3,126,000.00 of which \$2,641,000.00 will be funded from the Developer and \$485,000.00 from federal EPA grant funds, subject to the terms and conditions of this Contract.

4.4 EPA Grant Approval. The EPA shall provide Final Approval of the Special Infrastructure Grant and verify that the full grant amount of \$485,000.00 is fully funded and available for the payment of eligible construction costs.

5. CONTRACTOR SELECTION AND AWARD OF CONTRACT.

Upon completion of each of the conditions set forth in Section 4, this Contract shall become binding on both parties. Further, when the conditions are met and satisfied, the City shall proceed with selection of contractor and award of the contract by City to selected contractor. Said contract shall have a construction cost which will not exceed \$2,956,385.00.

6. PAYMENT OF PROJECT COSTS.

6.1 Developer Responsibility. The Developer shall pay for all Project Costs with no reimbursement from or participation by the City.

6.2 Payments. Developer agrees to make three (3) equal installment payments to City in a total amount not to exceed \$3,126,000.00 to be used by the City to pay for the Project Costs. Said installment payments shall be made to the City of Topeka, Treasurer, 215 SE 7th Street, Topeka, KS 66603 and shall be due as follows:

Payment No. 1	34% of the awarded contract amount plus an additional amount equal to 10% of the awarded contract price to cover city administration fees and contingencies	Due prior to execution of construction contract between City and Contractor ESTIMATED DUE DATE: 11/15/2010
Payment No. 2	33% of the awarded contract price	Due 90 days after commencement of work ESTIMATED DUE DATE: 2/15/2011
Payment No. 3	33% of the awarded contract price	Due 180 days after commencement of work ESTIMATED DUE DATE: 5/15/2011

6.3 Early Payment. In the event that the City expends all funds for the Project Costs prior to the date of the next installment payment, the City shall require Developer to make a full or partial installment payment prior to the next payment date by providing Developer five (5) days written notice specifying the amount due.

6.4 Reduced Payment Amounts. The amount of the installment payments after the initial payment shall be reduced by the amount of EPA grant funds received by the City for eligible expenses.

6.5 Monthly Statements. The City shall provide developer with a monthly statement listing the amount of installment payments made by Developer, EPA Grant payments received by the City and payments made by City for Project Costs.

6.6 Project Costs Not Covered by EPA Grant Funds. Developer understands and agrees that the EPA may not pay all \$485,000.00 of grant funds

to reimburse the City for the Project Costs. Further, Developer agrees that it shall not be eligible for a refund of any portion of installment payments applied to Project Costs not eligible or covered by EPA Grant payments.

6.7 Final Accounting. Upon Final Completion of the Project the City shall provide within 90 days an accounting of the expenditures for Project Costs and shall refund to Developer any portion of the installment payments paid by Developer that exceed the Project Costs less the EPA Grant Funds received by City.

7. GENERAL PROVISIONS.

7.1 No Waiver.

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

7.2 Indemnification.

Developer shall indemnify and hold harmless City and any of its officers, employees or elected officials from any damages, costs or expenses, including attorney's fees and other expenses of litigation incurred by or on behalf of the City and any of its officers, employees or elected officials resulting from City's construction of the Project, the City performance under this Contract, or Developer's failure to make payments under this Contract or Developer's breach of any of the terms or conditions under this Contract.

7.3 Applicable Law.

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

7.4 Entire Contract.

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

7.5 Headings.

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

7.6 Interpretation.

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

given or delivered by registered or certified mail, such notice shall be deemed given or delivered three (3) business days after the date on which the sealed envelope containing the Notice is deposited in the United States mail, properly addressed and with proper postage prepaid.

7.9 Parties Bound.

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

7.10 Severability.

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

7.11 Time.

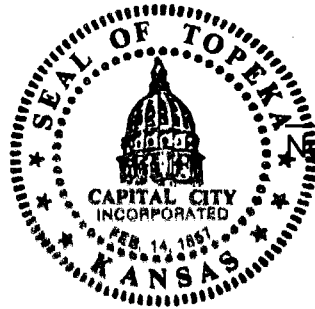
Time is of the essence of this Contract.

7.12 No Third Party Beneficiaries.

This Contract is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

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

CITY OF TOPEKA, KANSAS



Norton N. Bonaparte, Jr., City Manager

ATTEST:

Brenda Younger, City Clerk

APPROVED AS TO FORM AND LEGALITY

DATE 9/30/10 BY BBC

GROWTH ORGANIZATION
OF TOPEKA/SHAWNEE COUNTY

Douglas S. Kinsinger, President and CEO

EXHIBIT A

PROJECT DESCRIPTION

Project No. T-861003.00

Kanza Fire Commerce Park Utilities Improvement

(T-281027.00 Water Improvements & T-401024.00 Sanitary Sewer Improvements)

This project will extend water and sanitary sewer service to the new Kanza Fire Commerce Park. The water project will include approximately 9,500 linear feet (LF) of 18-inch ductile iron pipe (DIP) waterline 925 LF of 24-inch DIP waterline, mechanical joint fittings and blocks, 4 fire hydrant settings, related trench and backfill. The sanitary sewer project will include 3,375 LF of 18-inch sewer pipe, 2,100 LF of 15-inch sewer pipe, 13 standard manholes, 130 vertical feet (VF) of additional depth for manholes, related trench and backfill and both projects will require additional related appurtenances for a complete project. The project will also include the acquisition of an approximately two acre tract of land including necessary easements needed for a future elevated water tower.

The project is generally located at SW 65th and University Boulevard and progresses south to Topeka Boulevard and Gary Ormsby Drive.