

37<sup>TH</sup> STREET AGREEMENT

THIS AGREEMENT is made and entered into on this 16<sup>th</sup> day of April, 2009, by and between the City of Wichita, Kansas ("Wichita"), and the City of Maize, Kansas ("Maize").

RECITALS

WHEREAS, Wichita and Maize desire that improvements be made to 37<sup>th</sup> Street North between Tyler Road on the east and Maize Road on the west, and that the intersection of 37<sup>th</sup> Street North and Maize Road be signalized (the "Project"); and,

WHEREAS, a portion of the Project is located within Wichita and a portion is located within Maize; and,

WHEREAS, Wichita is willing to pay all costs associated with the improvements in the Project, provided that Maize de-annexes the portion of the Project that is now located within Maize.

NOW, THEREFORE, for and in consideration of the mutual benefits, promises and covenants, the parties hereto agree as follows:

1. **CONDITION PRECEDENT.** This Agreement and the obligations and duties of the parties hereunder are conditioned upon the de-annexation by Maize of the part of the Project that is located within the corporate limits of Maize, the annexation into Wichita of the portion of the Project being de-annexed by Maize, and the entering into between Maize and Wichita of Addendum No 1 to the K.S.A 12-2908 Agreement.

2. **PURPOSE.** The purpose of this Agreement is to provide for the construction and financing of the Project. The improvements will consist of the widening of 37<sup>th</sup> Street North between Tyler Road on the east and Maize Road on the west to a five-lane urban section with curbs, guttering and storm sewer design, built in a manner that meets or exceeds Wichita standards by which it builds other similar roadways in Wichita. In addition, the improvements will include the signalization of the intersection of 37<sup>th</sup> Street North and Maize Road to a standard that exists at similar intersections within Wichita that have recently been built.

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3. **MANNER OF COMPLETION AND FINANCING.** (a) Wichita agrees to pay one hundred percent (100%) of the cost of constructing the Project. Such costs shall include but not be limited to cost of design, utility relocation, construction, construction engineering, and any and all other Project costs that might be incurred in connection with the construction of the Project.

(b) Wichita agrees to acquire and pay for the cost of any right-of-way acquisition that is needed for the Project.

(c) Wichita shall be responsible for bidding and administration of the Project. In addition, Wichita shall be responsible for all legal and engineering matters connected to the Project, and Wichita shall be responsible for financing the Project.

(d) In the event federal or state funding is used to pay the costs of the Project, Wichita shall pay to Maize a sum that is the equivalent of fifty percent (50%) of such funding.

4 BINDING AGREEMENT Wichita and Maize both acknowledge and agree that this Agreement is a legal and binding agreement, enforceable in accordance with its terms and conditions set forth herein.

5 REVIEW BY MAIZE. Prior to letting the Project, Wichita shall provide a copy of the plans and specifications for the Project to Maize for review and approval. Maize shall have fifteen (15) days from the date the plans and specifications are provided to Maize Staff to review them. Maize shall review the plans and specifications for compliance with the terms and conditions set forth herein. Maize shall not unreasonably withhold its approval of the plans and specifications and if Maize has not notified Wichita of specific provisions that are not in compliance within such time for review, Wichita may proceed with the letting of the Project

6 INDEMNIFICATION. (a) To the extent permitted by law, Wichita does hereby release, discharge, indemnify and hold harmless Maize, its agents, servants and employees from any and all liabilities and damages of whatsoever nature and arising from whatsoever cause, relating to and arising from errors and/or omissions from the design of the Project or from errors and/or omissions resulting from the construction, means and methods used in the construction of the Project This release and indemnification shall survive the termination of this Agreement.

(b) To the extent permitted by law, Maize does hereby release, discharge, indemnify and hold harmless Wichita, its agents, servants and employees from any and all liabilities and damages of whatsoever nature and arising from whatsoever cause, relating to claims arising acts, errors, and/or omission occurring prior to the date of de-annexation by Maize of the part of the Project located within the corporate limits of Maize, except to the extent that such act, errors, and/or omissions were caused by Wichita, its agents, servants and employees. This release and indemnification shall survive the termination of this Agreement.

7. MAIZE UTILITIES. Maize shall have the right to install and maintain its sewer and water lines, pipes, etc., into the part of the right-of-way of 37<sup>th</sup> Street North

between Tyler Road and Maize Road that is being de-annexed by Maize under this Agreement. Such right of installation and maintenance shall not interfere with the use of the roadway as a street and shall be done in a manner that complies with rules and regulations established by Wichita that apply to other users of Wichita street rights-of-way such as utility companies. The license to install and maintain sewer and water lines, pipes, etc., into the part of the right-of-way of 37<sup>th</sup> street as granted in this Section 7 shall survive this termination of this Agreement.

8. NOTICE. Any notice required to be given hereunder shall be in writing by hand-delivery, certified or registered letter sent to the following.

If to Wichita:

City Clerk  
City Hall  
455 North Main  
Wichita, KS 67202

If to Maize:

City Clerk  
City Hall  
10100 Grady Avenue  
P. O. Box 245  
Maize, KS 67101

9. ENFORCEABILITY. If one or more provisions of this Agreement are hereafter found void or unenforceable as provisions contrary to the law, the remaining provisions shall nevertheless continue in full force and effect, and only such provisions as are specifically found invalid shall be null and without effect.

10. STATE LAW. This Agreement shall be subject to and governed by the laws of the State of Kansas.

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

CITY OF WICHITA, KANSAS

Attest:

By \_\_\_\_\_  
Carl Brewer, Mayor

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

(Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rehenstorf, Director of Law

CITY OF MAIZE, KANSAS

By: Clair E. Donnelly  
Clair Donnelly, Mayor

Attest:

Jocelyn Reid  
Jocelyn Reid, City Clerk

(Seal)



APPROVED AS TO FORM:

Tom Powell  
Tom Powell, City Attorney

3/16/2009

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**ADDENDUM NO. 1 TO K.S.A. 12-2908 AGREEMENT**

On this 14<sup>th</sup> day of March, 2009, the City of Wichita, Kansas ("Wichita"), and the City of Maize, Kansas ("Maize"), are hereby entering into this Addendum No 1 to K.S.A. 12-2908 Agreement (the "Agreement").

**RECITALS**

WHEREAS, Wichita and Maize entered into the Agreement in 2005; a copy of the Agreement is attached hereto and marked as "Attachment "A" to Addendum No 1 to K.S.A. 12-2908 Agreement"; and,

WHEREAS, under the Agreement, Wichita is authorized to operate a sanitary sewer system and to make certain sewer improvements within certain portions of the city limits of Maize; and,

WHEREAS, Maize is extending the grant it made to Wichita in the Agreement to include the providing of water utility services within the same portion of Maize that sanitary sewer services are being provided by Wichita, and,

WHEREAS, Wichita and Maize, at the same time this Addendum No. 1 is being entered into, are entering into an agreement that pertains to the de-annexation, annexation and paving of 37<sup>th</sup> Street North between Tyler Road and Maize Road, and,

WHEREAS, pursuant to K.S.A. 12-2908, and amendments thereto, Wichita and Maize are authorized and empowered to enter into this Addendum No. 1, and the governing body of each city has duly authorized the execution and delivery on its behalf of this Addendum No. 1.

NOW, THEREFORE, in consideration of the promises set forth herein, and of the mutual benefits to Wichita and Maize which shall accrue by virtue of this Addendum No. 1, the parties agree as follows.

1. **CONDITION PRECEDENT.** This Addendum No. 1 and the obligations and duties of Wichita and Maize hereunder are conditioned upon Wichita and Maize entering into the 37<sup>th</sup> Street Agreement and the de-annexation by Maize of the part of 37<sup>th</sup> Street North between Tyler Road and Maize Road that is within the corporate limits of Maize and the annexation of this same road by Wichita into Wichita and upon Wichita constructing the 37<sup>th</sup> Street Project and the subject intersection in compliance with terms and conditions set forth in the 37<sup>th</sup> Street agreement.

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2. **SECTION 1(c) AND SECTION 1(g) AMENDED.** Section 1(c) and Section 1(g) of the Agreement shall be amended to read as follows.

(c) **“Authorized Improvements”** shall mean water utility improvements and sewer improvements within the Designated Area which are initiated in accordance with the provisions of Section 8 of the Agreement.

(g) **“Facilities”** shall mean water utility lines, pipes and meters and all necessary appurtenances thereto that are constructed and installed within Maize by Wichita and shall mean sanitary sewer lines, pipes, sewer manholes and all necessary appurtenances thereto that are constructed and installed within Maize by Wichita.

3. **SECTION 1(n), SECTION 1(o) AND SECTION 1(p) ADDED.** The following subsections shall be added as additional subsections to Section 1 of the Agreement.

(n) **“Wichita Water Utility Services”** shall mean delivery of Wichita treated water, that meets the drinking water standards of drinking water that is delivered to Wichita residents and that meets primary drinking water standards as set by rules and regulations adopted by the Secretary of Health and Environment, to residents, businesses and public facilities within the Designated Area.

(o) **“Maize Equivalent Fee”** shall mean the fee that would be collected on a monthly basis from users of the Wichita sewer and water system within the Designated Area if Maize water and sewer billing rates as established by Maize ordinance and amendments thereto were assessed to such users. Maize shall provide Wichita its billing rates in writing. The billing rates shall be reviewed annually and updated in writing when Maize amends its billing rates. Wichita shall calculate the Maize Equivalent Fee on a monthly basis using current Maize billing rates and based upon actual usage of users of the Wichita sewer and water system within the Designated Area, provided that Wichita shall not be required to adjust the Maize billing rates that it uses more frequently than on an annual basis.

(p) **“Wichita Monthly Fee”** shall mean the total amount of money collected by Wichita on a monthly basis from users of the Wichita sewer and water system within the Designated Area based upon Wichita billing rates as established by Wichita ordinance and amendments thereto, and shall not include delinquent or uncollectable accounts, except when payment is actually received by Wichita.

4. **SECTION 1(h) DELETED.** Section (1)(h) shall be deleted from the Agreement.

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5. **SECTION 3 AMENDED.** Section 3 of the Agreement shall be amended to read as follows

**SECTION 3. PURPOSE.** The purpose of the Agreement is to make Sanitary Sewer Services and Water Utility Services from Wichita available to residences, businesses and public facilities within the Designated Area.

6. **SECTION 4(b) AMENDED.** Section 4(b) of the Agreement shall be amended to read as follows.

(b) Nothing in this grant shall be construed to authorize the use of Facilities or the Right-of-Way, by Wichita or others, for any purpose other than the providing of Sanitary Sewer Services and Water Utility Services to residences, businesses, and public facilities in the Designated Area

7. **SECTION 5 AMENDED.** Section 5 of the Agreement shall be amended to read as follows:

**SECTION 5. GRANT FEE.** In consideration of the grant and privilege hereby granted, Wichita shall remit on a monthly basis a monthly grant fee ("Monthly Grant Fee") to Maize that equals the difference between the Maize Equivalent Fee and the Wichita Monthly Fee, provided, however, the Monthly Grant Fee shall not be less than five percent (5%) of the Wichita Monthly Fee, as calculated and adjusted on an annual basis. The aforesaid payments shall be made to Maize on or before the last day of the month following the month for which the Monthly Grant Fee was calculated

8. **SECTION 6 AMENDED.** Section 6 of the Agreement shall be amended to read as follows.

**SECTION 6. CONSTRUCTION STANDARDS.** All work performed in the construction, reconstruction or operation, maintenance and repair of Facilities shall be performed in a safe, thorough and reliable manner using proper procedures and materials of good, durable quality, all according to the standards of the industry. All construction, including installation, shall conform to all applicable federal and state laws and regulations, Maize ordinances and regulations. Any property damaged or destroyed by Wichita shall be repaired or replaced by Wichita and reasonably restored to equal or better condition than existed prior to the damage. Any pavements, sidewalks or curbing taken up, or any and all excavations made by Wichita shall be done in such a manner as to give the least inconvenience to the inhabitants of Maize, and shall be replaced or repaired at Wichita's expense to an equal or better condition than existed prior to the damage, such work to be accomplished in a manner as expeditious and safe as possible. Wichita shall not

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place Facilities where the same will interfere with existing or planned for the future gas, cable, telephone fixtures, or where the same might interfere with safe and convenient travel on, over and across rights-of-way.

9. **SECTION 8 AMENDED.** Section 8 of the Agreement shall be amended to read as follows

**SECTION 8. INITIATION OF PROJECTS.** (a) Wichita shall have the authority pursuant to the provisions of State Law or the Charter Ordinance to accept petitions for the initiation of water and/or sewer and improvements, provided such water and/or sewer improvements are located in and serve properties within the Designated Area. Upon the filing of such petitions, Wichita shall have the authority granted by State Law or the Charter Ordinance with respect to such projects. Despite anything to the contrary in State Law or the Charter Ordinance, Wichita shall not have the authority under this Agreement to initiate water and/or sewer improvement projects within the Designated Area by any means other than acceptance of a valid petition of the owners of record of the proposed benefit district filed under State Law or the Charter Ordinance. Wichita shall not have the authority to initiate projects within the Designated Area for improvements other than water and/or sewer improvements.

(b) Wichita shall follow the same policies in the Designated Area as to permitting and operating alternative water and/or sewers in the Designated Area as Wichita follows in the non-incorporated areas of Sedgwick County.

10. **SECTION 11 AMENDED.** Section 11 of the Agreement shall be amended to read as follows:

**SECTION 11. FINANCING.** The undertaking by Wichita to construct, operate, maintain and serve users of a Sanitary Sewage Service System and the Water Utility Service System within the Designated Area shall be financed through the collection of sewer and water utility charges collected by the Wichita Water and Sewer Utility from properties served by the Authorized Improvements, from special assessments authorized by Section 9 of the Agreement and from the proceeds of notes and bonds authorized by Section 10 of the Agreement.

11. **WATER TOWERS.** Wichita water towers that are constructed to serve Maize residents and that are located in Maize shall contain the Maize logo as prescribed by Maize

12. **FULL FORCE AND EFFECT.** Except as amended in this Addendum No. 1, the terms and conditions set forth in the Agreement shall remain in full force and effect.

3/16/09

This Addendum No 1 to K S A 12-2908 Agreement was executed and delivered this 16<sup>th</sup> day of March, 2009

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

Attest:

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

(Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, City Attorney

CITY OF MAIZE, KANSAS

By Clan E. Donnelly  
Clan Donnelly, Mayor

Attest:

Jocelyn Reid  
Jocelyn Reid, City Clerk

(Seal)

APPROVED AS TO FORM:

Tom Powell  
Tom Powell, City Attorney



3/16/09

**EMERGENCY WATER SUPPLY CONTRACT**

THIS CONTRACT made and entered into this 16<sup>th</sup> day of March, 2009, by and between THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, a municipal corporation, hereinafter called the "Seller", and THE CITY OF MAIZE, SEDGWICK COUNTY, KANSAS, a municipal corporation, hereinafter called "Purchaser."

WITNESSETH:

WHEREAS, the Seller and Purchaser wish to enter into a water purchase contract for the purpose of providing potable water at wholesale from the Seller to Purchaser for emergency supply needs for a period of twenty (20) years, and,

WHEREAS, Purchaser has a primary source of water supply; and,

WHEREAS, Purchaser, in response to communication from the Kansas Department of Health & Environment, wishes to maintain a connection to the Seller's water supply in order to have another source of supply in the event of an interruption or curtailment of water supply from Purchaser's primary source of supply.

NOW, THEREFORE, in view of the premises aforesaid, and in consideration of the mutual covenants and promises herein contained, it is agreed by and between the parties that:

**I. CONNECTION AND RIGHT TO RECEIVE WATER SERVICES**

1.1 The Seller hereby grants permission to Purchaser to connect a water line to an existing water supply line on the Seller's water system, and the Seller agrees to supply water to Purchaser on an emergency basis on such terms as the Seller and Purchaser shall mutually agree. An emergency shall be deemed to exist in the event of conditions commonly considered a force majeure (e.g., water supply line break, contamination or interruption of water supply, power failure that affects source of supply pumping, and other similar conditions beyond Purchaser's control) Water shall not be supplied from the Seller to Purchaser simply for the purpose of providing peak demand(s) for water service to Purchaser. The Seller may at any time, and as often as the Seller deems necessary, require and Purchaser shall provide documentation as to the nature of the need for the emergency activation. Failure to provide said documentation within five (5) working days, or failure of such documentation to reasonably justify continued emergency status, shall constitute justification for either the curtailment of water service from the Seller to Purchaser, application of a non-emergency rate for the water supplied, or both, at the discretion of the Seller.

1.2 The potable water to be sold and purchased shall, at the point of connection, meet the applicable purity standards of the State of Kansas and the United States

**II. WATER METERING AND FLOW**

2.1 All water sold to Purchaser shall be measured by a master meter installed as specified by the Seller. The vault, meter, backflow preventer and other appurtenances shall be owned and properly maintained by the Seller. Authorized personnel of both the Seller and Purchaser shall have access to the vault and its contents at all times

2.2 Both the Seller and Purchaser shall have the right at any time to test the master meter. If Purchaser requests the meter test, the test will be conducted by the Seller at Purchaser's expense and in the presence of Purchaser's representative if desired. If the meter is found to be inaccurate according to the standards of the American Water Works Association, either the meter will be repaired or another meter will be substituted and an adjustment for the preceding water billing period shall be processed. If the meter is found to be over-registering, the billing adjustment shall include a credit for the Seller's meter test charge.

2.3 The Seller does not guarantee to maintain any specific pressure for its service, and no complaint concerning the pressure shall give any right of claim by Purchaser or its customers against the Seller. Purchaser agrees to hold the Seller harmless from and indemnify it against any claim arising from the water quantity, pressure or lack thereof as supplied under this Contract.

2.4 The Seller shall make a reasonable effort to provide water pursuant to the terms of this Contract; however, interruptions or curtailment of service as a result of conditions constituting force majeure or as a result of lack of capacity shall not give any right of claim of Purchaser or its customers against the Seller. The Seller specifically reserves the right to curtail and/or interrupt service to Purchaser on those occasions when the Seller determines that such service to Purchaser would be detrimental to the delivery of service to the Seller's retail and wholesale water service customers

**III. OPERATION AND MAINTENANCE**

3.1 Authorized representatives of Purchaser shall be permitted to open and close the connection to the Seller's water system by use of a valve located in the meter vault referred to in this Contract. Purchaser shall notify the Seller whenever any usage is made either by telephone or facsimile transmission of the opening or closing of the connection immediately. Purchaser will, within forty-eight (48) hours of such action, provide the Seller a written explanation of the need for the connection and the expected duration of the connection, except no report shall be required when the operation of the valve is for a contractually-provided event.

3.2 The Seller shall have the backflow preventer tested on no less than an annual basis. Further, the Seller shall have the meter tested no less than once in every three (3) years of this Contract. All such tests shall be performed by persons qualified to perform such tests.

3.3 The water use by Purchaser under this Contract is of an emergency nature and is not to be Purchaser's primary source of water supply. If the Seller should, at any time, be deemed to be Purchaser's primary source of water supply, the terms of this Contract would then be renegotiated

3.4 The parties agree to the following regularly occurring usages by Purchaser:

a. Monthly: The connection shall be opened at least once per month for the purpose of preventing "stale" water in the connecting line and in that portion of Purchaser's system adjacent to the connection to the Seller's system. The duration of each such connection shall not exceed eight (8) hours unless otherwise agreed to by the Seller.

b. Semi-annual testing: No more than twice each year, Purchaser may conduct an extended test for the purpose of determining the ability of the emergency water supply connection to provide water to meet the demand of Purchaser's customers and otherwise operate Purchaser's water system. Such testing shall only be conducted during months outside of the Seller's peak demand period. For the purposes of this Contract, those off-peak months shall be considered December, January, February, and March. Such test shall be conducted only after prior approval of the date and time is given to Purchaser by the Seller. The duration of such semi-annual tests shall not exceed forty-eight (48) hours unless otherwise agreed to by the Seller.

c. Biennial testing: Commencing in 2009, and every other odd-numbered year thereafter, Purchaser may conduct a test of its system and the emergency supply of water from the Seller during one of the peak months of April, May, June, July, August, September, October, or November. Such testing shall be conducted only after prior approval of the date and time is given to Purchaser by the Seller. The duration of such test shall not exceed forty-eight (48) hours unless otherwise agreed to by the Seller.

3.5 The Seller shall be fully responsible for the operation and maintenance of the facilities owned by the Seller necessary for the provision of service to Purchaser. The supply line from the point of connection to the metering location shall be owned and maintained by the Seller. Both the Seller and Purchaser agree to hold the other harmless of and from any claim or legal action against the other arising from the operation and/or maintenance by the Seller or Purchaser of the water system owned by each party for any part of their respective systems.

#### IV. RATES, CHARGES AND BILLING

(a) The Purchaser shall pay the Seller each month a minimum monthly payment equal to the existing minimum monthly charge for an outside the City of Wichita customer with a meter connection of the diameter of the Purchaser's. Such minimum charge shall be assessed by the Seller and paid by the Purchaser whether or not any water use actually occurs during that month

(b) The rate applicable to the Purchaser for the volume of water used for testing of the system as described in Article III of this contract shall be the second block of the wholesale rate as established by ordinance by the Seller and as amended from time to time by action of the governing body of the Seller.

(c) In the event of emergency activation of the connection and subject to verification of emergency status as described at paragraph 2.1, the rate applicable to the Purchaser for the volume of water metered during the period of such emergency shall be the uniform wholesale rate as established by ordinance by the Seller and as amended from time to time by action of the governing body of the Seller

(d) The Purchaser agrees to pay the Seller an amount to be computed at the rates applicable under this contract within twenty-five (25) days after receipt of a bill from the Seller for water provided during the preceding billing period. The meter shall be read no more often than once per month. The Seller shall bill Purchaser each month on the basis of the minimum monthly charge plus the charges for metered volume of water

**V. NATURE OF WATER SERVICE**

5.1 The parties hereto recognize that the Seller is not a primary source of water supply to Purchaser. As such, the Seller has not made nor will it make plans for nor will it reserve capacity for delivery of water to Purchaser either now or in the future. The parties agree and understand that the availability of water from this source is subject to the Seller having capacity over and above that required by its retail and wholesale water service customers and the lack of availability of water from Purchaser's connection to the Seller from time to time shall not give rise to any claim on the part of Purchaser or its customers against the Seller. In the event sufficient capacity is available, the Seller shall make reasonable effort to provide water in accordance with this Contract. The Seller retains the right to curtail service by closing the connection to Purchaser's system at any time the Seller deems necessary, in its sole discretion, to supply the needs of its existing retail and wholesale water service customers.

**VI. TERM**

The term of this contract shall be twenty (20) years. This contract shall be renewed and extended under the terms and conditions set forth herein for an additional twenty (20) year term unless either party gives at least three (3) years written notice of intent not to renew

IN WITNESS WHEREOF, the parties have hereunto caused this EMERGENCY WATER SUPPLY CONTRACT to be executed by their duly authorized officers as of the date first written herein above.

CITY OF WICHITA, KANSAS

Attest:

By: \_\_\_\_\_  
Carl Brewer, Mayor

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

(Seal)

APPROVED AS TO FORM:

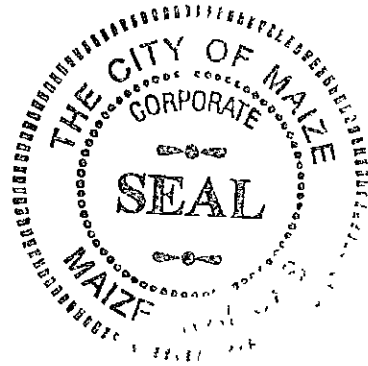
\_\_\_\_\_  
Gary Rebenstorf, Director of Law

CITY OF MAIZE, KANSAS

By: Clair E. Donnelly  
Clair Donnelly, Mayor

Attest:  
Jocelyn Reid  
Jocelyn Reid, City Clerk

(Seal)



APPROVED AS TO FORM.

Tom Powell  
Tom Powell, City Attorney

3/16/09

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