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**SETTLEMENT AGREEMENT AND RELEASE**

THIS SETTLEMENT AGREEMENT AND RELEASE is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between THE CITY OF WICHITA, KANSAS ("Wichita"), and THE CITY OF MAIZE, KANSAS ("Maize").

**RECITALS**

WHEREAS, Wichita filed a lawsuit in the Eighteenth Judicial District Court, Sedgwick County, Kansas, entitled *City of Maize, Kansas v. City of Wichita, Kansas*, that is now pending in the Kansas Court of Appeals Case No. 04-91649-A (the "Lawsuit") against Maize, wherein Wichita challenged certain annexation ordinances wherein Maize annexed certain land into Maize; and,

WHEREAS, Wichita and Maize desire to settle the Lawsuit in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto, for mutual promises, covenants and considerations set forth herein, agree as follows:

1. **12-2908 Agreement.** Wichita and Maize have entered into an Agreement under the authority of K.S.A. 12-2908 (the "K.S.A. 12-2908 Agreement"). This K.S.A. 12-2908 Agreement is attached hereto as Attachment "A" and is adopted by reference herein as though fully set forth herein.

2. **Contingency.** This Settlement Agreement and Release is contingent upon the Charter Ordinance referenced in the K.S.A. 12-2908 Agreement becoming effective without a valid petition protesting the Charter Ordinance being filed within sixty-one (61) days of final publication of the Charter Ordinance.

3. **Dismissal of Lawsuit.** Wichita shall file a motion to dismiss the Lawsuit if and when the Charter Ordinance takes effect.

4. **City Limit Boundaries.** (a) The current city limits for Maize and Wichita that are in the vicinity of each other including the land in dispute in the Lawsuit shall remain, as is, with the exception that certain streets, in accordance with terms and conditions hereafter set forth, may hereafter be de-annexed by Wichita and annexed by Maize.

(b) Attachment "B" is incorporated by reference herein as though fully set forth herein.

(c) After the date first above written (the "Commencement Date"), Maize shall not annex land that is south of the red line as drawn on Attachment "B" that is between Ridge Road on the east and 157<sup>th</sup> Street West on the west. Wichita may annex such land.

(d) After the Commencement Date, Wichita shall not annex land that is north of the red line as drawn on Attachment "B" that is south of 53<sup>rd</sup> Street North, east of 157<sup>th</sup> Street West, and west of the red line as shown on Attachment "B". Maize may annex such land.

5. **Sewer Lines Outside City Limits.** Maize shall not provide sanitary sewer services to property shown as being located outside the city limits of Maize, including if the property is in the future annexed into Maize, that is shown as being served by Wichita on the map attached hereto as Attachment "C," and which is incorporated by reference herein as though fully set forth herein. If such land is annexed by Maize, then the territory served by Wichita under this Agreement shall be automatically extended to cover such land. Maize may provide Sanitary Sewage Services to property located outside the current city limits of Maize that is designated to be served by Maize in Attachment "C". Wichita shall not provide services to property shown on Attachment "C" to be property that is to be provided with Sanitary Sewage Services by Maize.

6. **Street Jurisdiction.** (a) Wichita shall de-annex one or more of the following streets if requested to do so by Maize on or before January 1, 2010:

- (1) 37<sup>th</sup> Street from the east city limits of Maize, west to the one-half section line between 119<sup>th</sup> Street and 135<sup>th</sup> Street;
- (2) Maize Road, north from the current south boundary line of Maize;
- (3) Tyler Road from the south city limits of Maize, north to K-96 Highway.

(b) After said land has been de-annexed by Wichita, Maize shall annex said land into Maize.

7. **Release/Discharge.** Each party does hereby forever release and discharge the other party, all their respective agents, attorneys, heirs, officials, officers and assigns, from any and all liability, claims, demands, actions, causes of action, suits, damages and obligations of every kind and nature whatsoever, which they now have or at any time hereafter may have, based upon, or by reason of any matter, cause, thing, circumstance, act, or omission whatsoever arising from or related to the Lawsuit.

8. **Attorneys Fees.** The non-prevailing party shall pay the attorney fees incurred by the prevailing party in any lawsuit brought by either party to this Agreement that arises from a dispute of the parties hereto that involves this Agreement or the K.S.A. 12-2908 Agreement.

10. **Entire Agreement.** The parties hereto declare and represent to each other that no promises, inducements or agreements not herein expressed have been made by the parties, and that this Agreement contains the entire agreement between the parties hereto, and that the terms of this Agreement are contractual and not mere recitals.

11. **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Kansas.

12. **Amendments/Modifications Only in Writing.** This Agreement may be amended, modified, suspended or cancelled only by written instrument executed by the parties.

13. **Understanding of the Agreement.** Each of the parties has fully read this Agreement and received the assistance of independent legal counsel and understands each and every term of this Agreement.

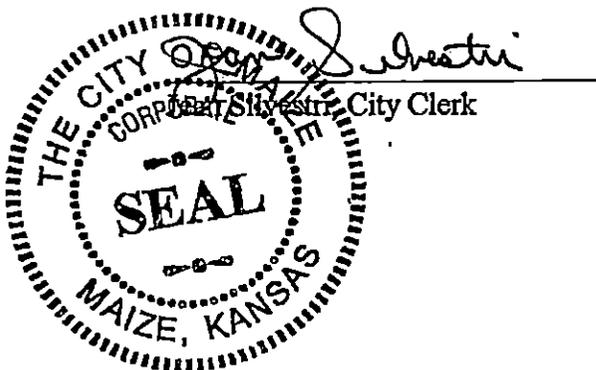
IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement and Release to be executed as of the day and year first above written.

"Maize"

CITY OF MAIZE, KANSAS

By:   
Clair Donnelly, Mayor

ATTESTED TO:



"Wichita"

CITY OF WICHITA, KANSAS



By: *Carlos Mayans*  
CARLOS MAYANS, Mayor

ATTESTED TO:

*for* *Datony E. Ellis, Deputy*  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

*Gary E. Reinhardt*

OFFICIAL COPY

Attachment "A" to Settlement Agreement and Release

K.S.A. 12-2908 AGREEMENT

This Agreement (the "Agreement") pursuant is entered into by and between the City of Wichita, Kansas ("Wichita"), and the City of Maize, Kansas ("Maize"), authorizing Wichita to operate a sanitary sewage system, to make certain sewer improvements within the city limits of Maize, to levy special assessments to pay the costs of such sewer improvements, and to issue special assessment bonds in connection therewith.

RECITALS

WHEREAS, all cities in the State of Kansas are authorized to construct, maintain, and operate a sanitary sewage system and are authorized to make municipal works or improvements which confer a special benefit upon property within a definable area of the city, and are further authorized to levy and collect special assessments upon property in the area deemed by the governing body to be benefited by such improvement, and to provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of such special assessments; and,

WHEREAS, pursuant to a Charter Ordinance of Wichita to be hereafter adopted and passed and K.S.A. 10-101, *et seq.*, as amended, Wichita is authorized to issue temporary notes to pay costs of such improvements during the progress of any improvement, and is authorized to issue general obligation bonds payable from the collection of special assessments to pay the final costs of such improvements, provided that the amount of any such general obligation bonds outstanding at any time shall not exceed the bonded debt limitations of Wichita; and,

WHEREAS, K.S.A. 12-2908 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other cities on a basis of mutual advantage and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and,

WHEREAS, Wichita and Maize are each a "municipality" as such term is defined in K.S.A. 12-2908; and,

WHEREAS, in consideration of the settlement of a lawsuit in the Eighteenth Judicial District Court, Sedgwick County, Kansas, wherein Wichita challenged certain annexation ordinances whereby Maize annexed certain land into Maize, Wichita and Maize have determined that it is in their best interests that Wichita and Maize cooperate with one another to facilitate the construction and financing of sewer improvements within certain areas within the city limits of Maize, in order to secure to Wichita and Maize the economic and other benefits to be derived through the orderly and efficient financing of such sewer improvements; and,

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WHEREAS, Maize is granting to Wichita the authority to construct, operate, maintain and service users of a sanitary sewage system within streets, easements and alleys (the Right-of-Way) in certain areas within the Maize city limits, all in accordance with the terms and conditions set forth herein; and,

WHEREAS, pursuant to K.S.A. 12-2908, Wichita and Maize each are authorized and empowered to enter into this Agreement, and the governing body of each city has duly authorized the execution and delivery on its behalf of this Agreement for the purpose of establishing the relationships and respective duties and obligations of the parties hereto.

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 Interlocal Cooperation Agreement, the parties hereto agree as follows:

**SECTION 1. DEFINITIONS.** Unless otherwise specified, the following terms as used in this Agreement shall mean as follows:

- (a) "K.S.A. 12-2908" shall mean K.S.A. 12-2908.
  - (b) "Agreement" shall mean this Agreement entered into by and between the City of Wichita, Kansas, and the City of Maize, Kansas.
  - (c) "Authorized Improvements" shall mean sewer improvements within the Designated Area which are initiated in accordance with the provisions of Section 8 hereof.
  - (d) "Charter Ordinance" means a Charter Ordinance in the form attached hereto as Attachment "A" and which is incorporated herein as though fully set forth herein that charters Wichita from underneath K.S.A. 13-10,107 and 13-10,109.
  - (e) "Designated Area" shall mean the area shown on Attachment "B" hereto which is incorporated by reference herein as though fully set forth herein as being within the corporate limits of Maize and as being designated to be served Sanitary Sewage Service by Wichita.
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- (f) "Expanded Area" shall mean the area shown on Attachment "C" hereto which is incorporated by reference herein as though fully set forth herein that Maize may hereafter annex.
  - (g) "Facilities" shall mean Sanitary Sewage Service lines, pipes, sewer manholes and all necessary appurtenances thereto that are constructed and installed within Maize by Wichita.

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(h) "Gross Receipts" shall mean all monies received by Wichita from operation of its Facilities within Maize that are derived from providing Sanitary Sewage Service to the properties and inhabitants of Maize.

(i) "Maize" shall mean the City of Maize, Kansas.

(j) "Right of Way" shall mean present and future Streets, alleys, rights-of-way and public easements, including easements dedicated in plats of Maize for Streets, alleys and utilities.

(k) "Sanitary Sewage Service(s)" shall mean collection of sanitary sewage from residents, businesses and public facilities.

(l) "Streets" shall mean the entire width between the 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 traffic by whatever name.

(m) "Wichita" shall mean the City of Wichita, Kansas.

**SECTION 2. TERM.** This Agreement shall remain in full force and effect until 11:59 p.m. on December 31, 2045.

**SECTION 3. PURPOSE.** The purpose of the Agreement is to make sanitary sewage services from Wichita available to residences and businesses within the Designated Area of Maize.

**SECTION 4. GRANT.** (a) There is hereby granted to Wichita, the nonexclusive right and privilege to construct, maintain, extend and operate its Facilities in, through and along the Right-of-Way within the Designated Area for the full term of this Agreement, subject to the terms and conditions set forth herein.

(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 provision of Sanitary Sewage Services to property and inhabitants within the Designated Area.

(c) Wichita shall not allow a subsidiary, an affiliate or a third-party to acquire the rights to occupy the Right-of-Way under this Agreement.

(d) The Designated Area shall be expanded to include, effective upon annexation, any land shown on Attachment "C" as land that may be annexed by Maize in the future.

Attachment "A" to Settlement Agreement and Release

**SECTION 5. GRANT FEE.** In consideration of the grant and privilege hereby granted, Wichita shall remit five percent (5%) of its Gross Receipts as defined in Section 1(f) herein, derived from its operations in Maize. The aforesaid payments shall be made to Maize, without demand, no later than the last day of the month following the month in which the receipts upon which the fee is based are received.

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

**SECTION 7. BOOKS AND RECORDS.** Wichita shall provide Maize or Maize audit representatives with reasonable access to company records and information documenting the total gross receipts from sales within Maize. In addition, the following records and reports shall be provided to Maize upon request:

- (a) A copy of rules, regulations, terms and conditions adopted by Wichita that affect Wichita's customers in Maize.
- (b) A copy of Wichita's current schedule of rates and service charges applicable to the customers in Maize.

**SECTION 8. INITIATION OF PROJECTS.** (a) Wichita shall have the authority pursuant to the provisions of the Charter Ordinance to accept petitions for the initiation of sewer improvements, provided such 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 the Charter Ordinance with respect to such projects. Despite anything to the contrary in the Charter Ordinance, Wichita shall not have the authority under this Agreement to initiate sewer improvement projects within the Designated Area by any means other than acceptance of a valid petition signed by one hundred percent of the owners of record of the proposed benefit district filed under the Charter Ordinance. Should it become necessary to initiate sewer improvements without a one hundred percent petition, Wichita may take such action as is permitted by the Charter Ordinance, but only

Attachment "A" to Settlement Agreement and Release

with the prior approval of the governing body of Maize. Wichita shall not have the authority to initiate projects within the Designated Area for improvements other than sewer improvements.

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

**SECTION 9. LEVY OF SPECIAL ASSESSMENTS.** Wichita shall have the authority to adopt assessment plans, prepare assessment rolls, hold hearings, levy assessments, charge service assessments, and assess benefit fees in connection with Authorized Improvements, all in accordance with the provisions of the Charter Ordinance.

**SECTION 10. ISSUANCE OF NOTES AND BONDS.** Wichita shall have the authority to issue general obligation temporary notes of the City of Wichita during the progress of any Authorized Improvements and to issue general obligation special assessment bonds of the City of Wichita, payable by special assessments paid in connection with Authorized Improvements, all in accordance with the provisions of the Charter Ordinance and K.S.A. 10-101, *et seq.* Any such temporary notes or bonds shall be an obligation of Wichita, shall be included in the calculation of bonded debt limitations of Wichita, and may be issued as part of a larger issue of temporary notes or bonds of Wichita financing the costs of other special assessment projects approved by the governing body of Wichita. Any such bonds or notes shall not be an obligation of Maize and shall not be included in the calculation of bonded debt limitations of Maize. Any ordinance of the governing body of Wichita approving the issuance of notes or bonds pursuant to this Section 10 shall state that said notes or bonds are issued by Wichita on behalf of and with the consent and approval of Maize and pursuant to the provisions of this Agreement.

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

**SECTION 12. DISPOSITION OF PROPERTY UPON TERMINATION.** All real and personal property acquired or constructed pursuant to the terms of this Agreement shall be the property of Wichita during the term of this Agreement. Upon termination of this Agreement, Maize shall take title to Wichita real and personal property located in the Right-of-Way and Maize may use, remove or dispose of the same.

Attachment "A" to Settlement Agreement and Release

**SECTION 13. ABANDONMENT OF SERVICE.** Upon termination of this Agreement or abandonment of this Agreement by Wichita, Maize shall take title to the Facilities, and may use, remove or dispose of the same.

**SECTION 14. INDEMNIFICATION.** Wichita shall, at all times, defend, indemnify and hold harmless Maize and the individual members of Maize's governing body, its officers, employees and agents from any and all claims, demands, actions, suits, damages, costs, charges or expenses resulting from the construction, reconstruction, maintenance or operation of the Facilities within Maize. Upon timely written notice from Maize, Wichita shall defend Maize in any action or proceeding brought thereon, except to the extent that such was caused by the negligent or intentional conduct of Maize, its officers, employees or agents. Wichita certifies that it maintains a self-insurance plan that is sufficient to cover exposure under this indemnification.

**SECTION 15. SERVICE PROCEDURES.** Wichita shall provide timely service for the purposes of responding to service stoppages, emergencies and service requests as well as providing maintenance of its Facilities.

**SECTION 16. RESERVATION OF RIGHTS.** Maize, as to Wichita's use of Rights-of-Way under this grant, reserves the right to adopt, in addition to the provisions contained herein and in addition to existing applicable ordinances, such additional ordinances and/or regulations as Maize shall find necessary in the exercise of its police power; provided, however, such ordinances and/or regulations shall be reasonable and not materially in conflict with the rights and privileges granted in this Ordinance or with any applicable provisions of federal or State law or regulation.

**SECTION 17. ADMINISTRATION.** Except as specifically set forth herein, Wichita shall be responsible for the construction, operation and maintenance of the Authorized Improvements, for the levy of special assessments within the Designated Area and for the issuance of notes and bonds to finance the Authorized Improvements. Maize hereby authorizes authorized officers of Wichita to execute and deliver on behalf of Maize such documents, agreements or certificates as shall be necessary to implement and carry out the intention of this Agreement.

**SECTION 18. EFFECTIVE DATE AND CONTINGENCY.** This Agreement shall be in full force and effect upon execution by the parties hereto and upon the Charter Ordinance becoming effective. This Agreement shall be null and void if a valid petition protesting the Charter Ordinance is filed with Wichita within sixty-one (61) days of the final publication of the Charter Ordinance.

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**SECTION 19. NONASSIGNABILITY.** Wichita shall not assign its rights, benefits and privileges or its obligations, duties and liabilities created by this Agreement to any other entity.

Attachment "A" to Settlement Agreement and Release

**SECTION 20. 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  
Maize City Hall  
123 Khedive  
Maize, Kansas 67101

**SECTION 21. 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.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

Attachment "A" to Settlement Agreement and Release

THIS K.S.A. 12-2908 AGREEMENT WAS EXECUTED AND DELIVERED this \_\_\_\_ day  
of \_\_\_\_\_, 2005.



Attest:

*Karen Sublett*  
for Karen Sublett, City Clerk  
(Seal)

CITY OF WICHITA, KANSAS

By: *Carlos Mayans*  
Carlos Mayans, Mayor

APPROVED AS TO FORM:

*Gay E. Reber*

CITY OF MAIZE, KANSAS

By: *Clair E. Donnelly*  
Clair Donnelly, Mayor

Attest:

*Jean Silvestri*  
Jean Silvestri, City Clerk





# City of Maize

Sedgwick County, Kansas



## Legend

“Attachment C”  
Sewer Lines Outside  
City Limits



Area outside City of Maize that Maize will not provide sewer service to and Wichita will provide sewer service to.



Area outside City of Maize that Wichita will not provide sewer service to and Maize will provide sewer service to.

DATE: 3/2/2005

It is understood that the Sedgwick County GIS, Division of Information and Operations, has no indication or reason to believe that there are inaccuracies in information incorporated in the base map.

The GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or the data displayed.

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