

TESTIMONY OF THE CITY OF LAWRENCE IN SUPPORT OF ITS PETITION TO ANNEX LAND COMMONLY KNOWN AS THE FORMER FARMLAND INDUSTRIES PROPERTY, AND ADJACENT RIGHT-OF WAY, LOCATED EAST OF THE LAWRENCE CITY LIMITS ON K-10 HIGHWAY.

The City respectfully submits this testimony in support of its Petition for approval from the Board of County Commissioners of Douglas County to annex the Former Farmland Industries Property and adjacent right-of-way. The information provided herein is supplemental to the City's Report and Service Plan for the Proposed Annexation presented to the Board on May 4, 2009. This document provides information on the Former Farmland Industries property held in a Trust, the City's efforts to acquire the property, the reasons for the City's desire to annex the property at this time, and the statutory requirements for a county approved annexation under K.S.A. 12-521.

Background

The former Farmland Nitrogen Facility is owned by a Remediation Trust created under the Farmland Bankruptcy Plan after the company filed for bankruptcy in 2002. The trustee of that trust, SELS Administrative Services, Inc., controls the property and is the entity that has the authority to sell or lease the property, subject to the approval of the Kansas Department of Health and Environment (KDHE). The property has ongoing environmental issues. Remediation of the property is being performed by SELS Administrative Services with oversight by KDHE. Substantial funds were placed in a Remediation Trust to hopefully provide for the remediation and administrative costs associated with the property. KDHE is the "primary beneficiary" of the trust so that KDHE can work to ensure the trust funds are appropriately used to clean the property. The Remediation Trust also has a "residual beneficiary" which may, under the trust terms, obtain any remaining or residual funds from the trust, to the extent the funds are not needed for the former Farmland properties in the trust. Capitana

Redevelopment Group, L.L.C. ("Capitana") purchased the residual beneficiary interests in early 2009.

The City has an offer to purchase the former Farmland Lawrence Nitrogen Facility from SELS. SELS Administrative Services has not accepted the City's offer, although KDHE communicated its approval of the City's offer to the FI Kansas Remediation Trust Trustee. The City remains interested in acquiring the property or partnering with others to acquire the property.

If the City succeeds in acquiring the property or entering into a partnership on the property to develop it, the property must be within the City in order for the City to debt finance any public improvements or to install public improvements on the property pursuant to the City's development policy. If the City is not successful in acquiring the property or the property remains in the hands of SELS Administrative Services, the City Commission believes it is in the community's interest for the City to annex the property so the City's land use, building, property maintenance, and other City regulations will apply to the property. The Farmland Industries Redevelopment Plan, an amendment to Horizon 2020, the Comprehensive Plan for Lawrence and Unincorporated Douglas County, which was adopted by both the City and the County, provides that annexation of the property by the City of Lawrence must occur before the site is redeveloped. For these reasons, the City is pursuing the annexation of the subject property and adjacent right-of-way.

Kansas Annexation Law

In Kansas, a city's expansion of its geographic boundaries is controlled by state statutes, K.S.A. 12-519 et seq. Cities do not have inherent powers outside of the state statutes to annex territory. There are three types of annexation under Kansas law. In a unilateral annexation, the city itself makes the final decision whether to annex the territory. In an island annexation the City seeks, with the property owner's consent, to annex land located within the same county

as the city, but the annexation area is not adjoining the City. The third type, and the type under which the City seeks to annex the former Farmland Nitrogen Property, is a county approved annexation. The procedures for a county approved annexation are found in K.S.A. 12-521.

County Approved Annexation Procedures

The City begins a county approved annexation by filing a petition with the Board of County Commissioners requesting the County Commission convene a public hearing on the advisability of the proposed annexation. A report detailing the City's plan for extending services to the area to be annexed accompanies the City's petition. The City's petition was presented to the Board on May 4, 2009, along with a copy of its service plan.

The County Commission's hearing is held between sixty (60) and seventy (70) days of the date the petition is presented to the County. Notice of the time and place of the hearing is sent to each landowner involved, along with a sketch of the area to be annexed. The public hearing notice, including a list of the property owners, the legal description of the area proposed to be annexed, and a sketch of the area are also published in the newspaper prior to the public hearing. The City mailed its notice to the property owners on May 12, 2009. Notice of the Board's public hearing and a sketch of the proposed annexation area were published in *The Lawrence Journal World* on July 1, 2009.

The City's petition is submitted to the planning commission having jurisdiction over the area. On May 20, 2009, the Lawrence-Douglas County Metropolitan Planning Commission met and determined the City's petition for annexation of the former Farmland Industries property is compatible with Horizon 2020, the Comprehensive Plan for Lawrence and Unincorporated Douglas County, and the Farmland Industries Redevelopment Plan, the adopted comprehensive land use plan applicable to the area to be annexed and the City of Lawrence. The Lawrence-Douglas County Metropolitan Planning Commission forwarded its findings to the City and County in compliance with K.S.A. 12-530.

Board of County Commission's Hearing on the Proposed Annexation

The County convenes a public hearing on the proposed annexation. In receiving the City's presentation on the proposal for annexation, including the extension of municipal services, and as the Board hears other testimony offered concerning the advisability of the annexation, the Board sits as a quasi-judicial body. The Board must consider the effect of the annexation on the "orderly growth and development on the entire community involved, including the City and the land proposed to be annexed." K.S.A. 12-521. The Board has broad discretion in evaluating the information it receives in the public hearing. The County can approve the annexation as petitioned by the City, or it may approve a part of the area proposed to be annexed, or it can deny the annexation in whole.

K.S.A. 12-521 requires the Board to make specific written findings and conclusions determining whether the proposed annexation will cause manifest injury to the owners of land proposed to be annexed, or to owners of land in areas near or adjacent to the land proposed to be annexed or to the City if the annexation is not approved. Manifest injury as it applies to landowners has been described as the "imposition of material or substantial burdens upon the landowners without accompanying material or substantial compensating benefits." *In re Appeal of City of Lenexa*, 232 Kan. 568, (1983). The Board's findings and conclusions are based upon the preponderance of the evidence presented to the Board. K.S.A. 12-521(c). To aid in the determination of manifest injury, the statute provides fourteen (14) factors for the Board to consider. The Board may consider other factors in addition to the fourteen (14) set forth in K.S.A. 12-521. The City submits the following information on each of the 14 factors for the purpose of demonstrating that manifest injury will not result from the proposed annexation.

1. **Extent to which any of the area is devoted to agricultural use.** Approximately thirty (30) acres of the Proposed Annexation Area, located generally north of the rail spur to North 1500 Road, appear to be devoted to agricultural use. An additional 70 acres, more or less, scattered throughout the Proposed Annexation Property may be cut for hay or used for pasture, from time to time, according to leases provided by attorneys representing the FI Kansas Remediation Trust.
2. **Area of platted land relative to unplatted land.** The entire Proposed Annexation Area is unplatted.
3. **Topography, natural boundaries, storm and sanitary sewers, drainage basins, transportation links or any other physical characteristics which may be an indication of the existence or absence of common interest of the city and the area proposed to be annexed.** The topography of the area consists of rolling hills, with the steepest slopes located in the north and northwest sections of the Proposed Annexation Area. The Proposed Annexation Area is bordered on three sides by existing City boundaries; on the west, the south, and the east. City infrastructure and municipal services are provided in the areas adjacent to the Proposed Annexation Area. The Proposed Annexation Area is bordered on the north by East 1500 Road and the Burlington Northern Santa Fe Railroad. Approximately seventy percent (70%) of the perimeter of the Proposed Annexation Area is adjacent to existing City boundaries.

The Former Farmland Industries property has active City water service, but has no consumption. As for transportation links, K-10 Highway, a heavily-traveled state highway, connects Lawrence and Douglas County to Johnson County and the Kansas City Metropolitan area. The City's transit system provides service to East Hills Business Park, passing the Proposed Annexation Area en route to the business park.

4. **Extent and age of residential development in the area to be annexed and adjacent land within the city's boundaries.** There are no residential developments in the Proposed Annexation Area. Along the west boundary of the Proposed Annexation Area, there are two mobile home parks. One was platted in 1964 and the other in 1994. Also along the west boundary of the Proposed Annexation and north of 19th Street, is a single-family residential development that was platted in 2003.
5. **Present population in the area to be annexed and the projected population growth during the next five years in the area proposed to be annexed.** The area to be annexed has no residences, and therefore, it has no population. Its projected population growth during the next five years is also zero. It is anticipated that Kansas Department of Health and Environment (KDHE), in its capacity as environmental regulator, will place land use restrictions on the Proposed Annexation Area that will prohibit residential development in the Proposed Annexation Area for several years.

6. **The extent of business, commercial and industrial development in the area.** The area is currently under the control of FI Kansas Remediation Trust, a trust formed and funded by a bankruptcy court following the filing of bankruptcy by the former Farmland Industries Nitrogen Manufacturing Plant. It is believed that the Trust is engaged in some business in the area, including leasing portions of the Proposed Annexation Area, for the growing of crops, and perhaps for pasture uses or hay cultivation. It appears the Trust is permitting the storage or parking of moving trucks in a parking lot on the site. There are business, commercial, and industrial developments surrounding the Proposed Annexation Area. See Page 8 of the City's Report and Service Plan for a description of the land uses surrounding the Proposed Annexation Area.
7. **The present cost, methods and adequacy of governmental services and regulatory controls in the area.**
- a. **Streets:** Aside from K-10 Highway which borders the property on the South, and East 1500 Road which borders it on the north, the local road system is limited. Wakarusa Township maintains East 1500 Road outside of the Lawrence city limits. Kansas Department of Transportation maintains K-10 Highway. 19th Street reaches its end on the west edge of the property. No roads extend into the property from East Hills Business Park and no roads bisect the Proposed Annexation Area.
 - b. **Water:** The City provides water service to the Former Farmland Industries property, however, consumption, if any, has been minimal.
 - c. **Waste water service:** The Proposed Annexation Area does not appear to be provided sewer service by a governmental entity. It may have a lagoon or septic system, although the Lawrence-Douglas County Health Department has no records related to the former Farmland Industries property.
 - d. **Storm water utility service:** There are no storm water utility facilities serving the Proposed Annexation Area provided by a governmental entity. An open drainage ditch that begins near the center of the proposed area runs north, northeast to the railroad embankment. The storm water travels in the ditch following East 1625 Road to the Kansas River. One detention pond exists in the western portion of the Proposed Annexation Area.
 - e. **Refuse service:** It is believed that private haulers provide refuse collection for the property.
 - f. **Fire Protection Services:** The Wakarusa Township provides fire service from its station located at 300 West 31st Street. The Wakarusa Township Fire Department has both full time and part-time employees, with a majority of its members being volunteers. Through mutual aid agreements, the township fire department may call on other fire departments when needed.

- g. Law Enforcement:** The Douglas County Sheriff's Office provides law enforcement services to the Proposed Annexation Area.
 - h. Parks and Recreation:** There are no parks or recreation facilities in the Proposed Annexation Area. The Douglas County Fairgrounds is located adjacent to the western boundary of the Proposed Annexation Area.
 - i. Other Municipal Services:** The Proposed Annexation Area is not currently served by public transit services.
- 8. The proposed cost, extent and the necessity of governmental services to be provided by the city proposing annexation and the plan and schedule to extend such services.** Please see the City's Report and Service Plan filed with the Board with the City's Petition.
- 9. The tax impact upon property in the city and the area.** Using the 2008 ad valorem tax levies, the FI Kansas Remediation Trust, through SELS Administrative Services, LLC as Trustee (hereinafter SELS) will experience an overall increase in the tax mill levies from 110.669 to 118.366 after annexation. SELS will no longer pay the Wakarusa Township and Northeast Kansas Library System mill levies (17.7 mills and 1.25 mills, respectively), but will pay the Lawrence mill levy of 26.647. It is estimated that after annexation, using 2009 property appraisal data and 2008 mill levies, the increase in mill levies will translate into an increase in the ad valorem property taxes on the entire property of \$1,295.
- 10. Extent to which residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources.** There are no residents in the Proposed Annexation Area. The area is dependent upon the City of Lawrence for water. There are no existing social, economic, employment, cultural or recreational opportunities or resources in the Proposed Annexation Area. It is reasonable, given the property's proximity to the City of Lawrence, to expect the City of Lawrence to provide the governmental and related community opportunities and resources to the Proposed Annexation Area.
- 11. Effect of the proposed annexation on the city and other adjacent areas, including but not limited to other cities, sewer and water districts, improvement districts, townships or industrial districts, and subject to the provisions of K.S.A. 12-521a, fire districts.** The proposed annexation will not negatively affect other cities. Eudora is located approximately four miles east of the Proposed Annexation Area. The Proposed Annexation Area is not within a water district or a fire district. There is no known sewer, improvement or industrial districts in the Proposed Annexation Area. The Wakarusa Township will lose an estimated \$2,978.00 in ad valorem property taxes after the property is annexed. The township's 2009 assessed valuation as of July 1, 2009 is \$63,621,171. The 2009 assessed valuation of the Proposed Annexation Area is \$168,255. The loss in

assessed valuation to the Wakarusa Township equates to 0.2645% of its total assessed valuation. The annexation will not burden residents of the City of Lawrence. The cost of the municipal services that will be provided immediately upon annexation as outlined in the City's Report and Service Plan can be provided within budgeted City resources. Major infrastructure enhancements such as the enhanced water and sewer capacity, street lights and new roads within the Property will be financed pursuant to the City's development policies with some or all of the costs paid for by the development with the opportunity for public incentives for certain development.

12. **Existing petitions for incorporation of the area as a new city or for the creation of a special district.** There are no known petitions for incorporation of the area as a new city or for the creation of a special district.
13. **Likelihood of significant growth in the area and in adjacent areas during the next five years.** Farmland's operations at the facility ceased in 2001 because of rising energy costs, a downturn in the fertilizer market, and the eventual bankruptcy of Farmland Industries in 2002. Since 2001, there has been no industrial activity at the site. The future of the property is under the control of FI Kansas Remediation Trust, SELS Administrative Services, L.L.C., Trustee, and subject to the approval of the Kansas Department of Health and Environment and Capitana, L.L.C. If these parties reach an agreement regarding its future, the area may experience growth in the next five years. It is likely that growth in the area will be phased as infrastructure is extended to the site. If the parties do not reach an agreement regarding its future, the property may remain in a state similar to its current state.
14. **Effect of annexation upon the utilities providing services to the area and the ability of those utilities to provide those services shown in the detailed plan.** There are few utilities actively providing services to the former Farmland Industries property currently. The effect of annexation upon the utilities providing services to the area will be minimal. The City's utilities and services are prepared to provide the services outlined in the City's Report and Service Plan.

CONCLUSION

Approving the City's petition to annex the former Farmland Industries property and adjacent right-of-way will promote the orderly growth and development of the entire community. The Proposed Annexation Area is nearly surrounded by existing City boundaries. The annexation will connect East Hills Business Park, existing City territory, with the larger Lawrence community. Approval of the annexation will create a large contiguous area within the City suitable for planned industrial and commercial development. Furthermore, the Farmland Industries Redevelopment Plan, amending

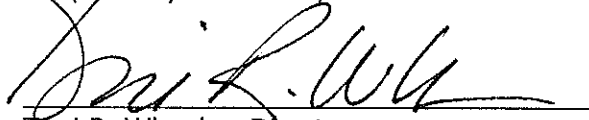
Horizon 2020, the Comprehensive Plan for the City and Unincorporated Douglas County, provides that annexation of the property by the City must precede redevelopment of the site. Finally, in order for the City to debt finance any public improvements or install public improvements on the property, the property must be within the City pursuant to the City's development policy.

The annexation, if approved, will not result in manifest injury to the owners of the land proposed to be annexed, or to the owners of land in areas near or adjacent to the Proposed Annexation Area. The difference in the property tax levy on the area after annexation is an increase of approximately seven percent (7%). The additional tax burden is offset by enhanced fire protection and law enforcement services, the availability of Lawrence refuse and transit services, road maintenance and snow removal, and other City services. Water, sanitary sewer, road construction, street light and traffic control light installation, built to City standards, will be available after annexation, as the property redevelops, and will greatly enhance the value of the property.

If the annexation is not approved, the City will suffer manifest injury. The City has a very high interest in seeing that the property's environmental issues are appropriately and diligently remediated, the site is cleaned, its appearance improved, and the property is returned to an appropriately planned development that brings jobs and an increased tax base to the City and the County. After annexation, the City's land use, building, property maintenance, and other local regulations will apply to the property. Moreover, given the property's location--near the City's eastern gateway on a major state highway, surrounded on three sides by the City--the City's growth and development will be compromised if the annexation is disapproved.

For these reasons, the City requests its petition for annexation of the Former Farmland Industries property and adjacent right-of-way be approved as presented.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Toni R. Wheeler", is written over a horizontal line.

Toni R. Wheeler, Director
Legal Department
City of Lawrence, Kansas