



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**February 14, 2019**

Department Administration

Director Approval Kelly Passauer

**AGENDA ITEM** Consider authorizing the Mayor to sign an assignment of agreement to extend water services; and an addendum to agreement to extend water services.

**SUMMARY RECOMMENDATION** Approve assignment and addendum.

**BACKGROUND** The attached agreement assigns an “Agreement to Extend Water Services” with Independence Recreation Commission originally approved by the City Commission on July 5, 2001 to USD 446. The July 5, 2001 minutes indicate that a motion was approved extending both water and sewer service. While water has already been extended to the property, paragraph 5 of the original agreement addresses connecting to the City sanitary sewer system. The attached addendum modifies paragraph 5 of the original agreement that states that USD will reimburse the City \$15,000 which is the current estimated cost of labor and materials to connect this property to the City’s sanitary sewer system.

**BUDGET IMPACT** N/A -- Labor and material costs for City crews to install the sanitary sewer collection lines will be reimbursed by USD in the amount of \$15,000.

**SUGGESTED MOTION** I move to authorize the Mayor to sign an assignment of agreement to extend water services; and an addendum to agreement to extend water services.

**SUPPORTING DOCUMENTS**

1. Assignment of agreement
2. Addendum to agreement
3. Original agreement
4. Excerpt of Minutes of the July 5, 2001 City Commission Meeting

**ASSIGNMENT OF AGREEMENT  
TO EXTEND WATER SERVICES**

COMES NOW, **Independence Recreation Commission**, aka Independence-USD 446 Recreation Commission, hereafter IRC, and for valuable consideration, hereby assigns, transfers and conveys unto **Unified School District 446 Independence, Kansas**, all its rights and interest in the agreement titled "Agreement to Extend Water Services" between IRC and the City of Independence, Kansas, hereafter City, dated July 5, 2002, recorded in Book 517 at Page 374, pertaining to the following described real estate:

See Exhibit "A" attached hereto and incorporated herein by reference.

**Independence Recreation Commission**

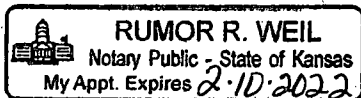
2-1-19  
Date

By: Christy Mavers  
Christy Mavers, Chairman of the Board

STATE OF KANSAS     )  
  ) SS:  
MONTGOMERY COUNTY )

*Be It Remembered* that this 1 day of Feb, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Christy Mavers, Chairman of the Board of **Independence Recreation Commission**, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my seal, the day and year last above written.



Rumor R. Weil  
NOTARY PUBLIC

My commission expires: 2-10-2022

**CONSENT OF CITY OF INDEPENDENCE, KANSAS**

COMES NOW, the **City of Independence, Kansas**, hereafter City, and hereby consents to the above and foregoing Assignment from IRC to **Unified School District 446 Independence, Kansas**.

**CITY OF INDEPENDENCE, KANSAS**

By: \_\_\_\_\_  
LOUIS YSUSI, Mayor

ATTEST:

\_\_\_\_\_  
DAVID W. SCHWENKER, City Clerk

STATE OF KANSAS     )  
                                  ) SS:  
MONTGOMERY COUNTY    )

***Be It Remembered*** That on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Louis Ysusi, Mayor, and David W. Schwenker, City Clerk of City of Independence, Kansas, who are personally known to me to be the same persons who executed the above and foregoing instrument of writing and such persons acknowledged the execution of the same.

***In Witness Whereof***, I have hereunto set my hand and seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

Ex. A

LEGAL DESCRIPTION:

A tract of land located in a portion of the Southwest Quarter of the Northwest Quarter of Section 26, Township 32 South, Range 15 East of the 6th Principal Meridian, Montgomery County, Kansas and being more particularly described as follows:  
COMMENCING at the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 26;  
THENCE S.01°43'07"E. along the East line of said Southwest Quarter of the Northwest Quarter a distance of 300.00 feet to the POINT OF BEGINNING;  
THENCE continuing S.01°43'07"E. along said East line a distance of 600.00 feet;  
THENCE S.88°42'35"W. a distance of 1200.00 feet;  
THENCE N.01°43'07"W. a distance of 900.00 feet to the North line of said Southwest Quarter of the Northwest Quarter;  
THENCE N.88°42'35"E. along said North line a distance of 670.00 feet;  
THENCE S.01°43'07"E. a distance of 300.00 feet;  
THENCE N.88°42'35"E. a distance of 530.00 feet to the POINT OF BEGINNING and containing 920,974 square feet or 21.143 acres, including those portions used for County Road Right of Way purposes.

## **ADDENDUM TO AGREEMENT TO EXTEND WATER SERVICES**

*This Addendum* is entered into between the **CITY OF INDEPENDENCE, KANSAS**, hereafter “City” and **UNIFIED SCHOOL DISTRICT 446 INDEPENDENCE, KANSAS**, hereafter “District.”

*Whereas*, on July 5, 2001, City and the Independence Recreation Commission aka Independence - USD 446 Recreation Commission, hereafter “IRC”, entered into an agreement titled “Agreement to Extend Water Services” pertaining to the following described real estate owned by District:

Legal Description as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

*And Whereas*, IRC has assigned its interest in the Agreement to Extend Water Services to District.

*And Whereas*, in order for the Assignment by IRC to District to be valid and effective, the City must consent to it.

*Now Therefore*, in consideration of the mutual covenants and agreements hereinafter contained, the parties agree to the following:

1. **Consent to Assignment.** City will execute an appropriate Consent to the Assignment of the Agreement to Extend Water Services from IRC to District.

2. **Connection to Sanitary Sewer System.** Paragraph 5 of the Agreement to Extend Water Services is amended to read as follows:

At District’s sole option, District may connect to City’s sanitary sewer system. If District elects to connect to City’s sanitary sewer system, City shall provide the labor and materials and, in exchange, District shall pay City the sum of \$15,000.00.

3. **Remaining Terms and Conditions.** All remaining terms and

conditions of the Agreement to Extend Water Services shall remain in full force and effect less modified by mutual agreement of City and District.

**CITY OF INDEPENDENCE, KANSAS**

\_\_\_\_\_  
DATE

By: \_\_\_\_\_  
LOUIS YSUSI, Mayor

ATTEST:

\_\_\_\_\_  
DAVID W. SCHWENKER, City Clerk

**UNIFIED SCHOOL DISTRICT 446  
INDEPENDENCE, KANSAS**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
William M. (Marty) Reichenberger,  
President Board of Education

ATTEST:

\_\_\_\_\_  
Danielle Bishop, Board Clerk

**ACKNOWLEDGMENTS**

STATE OF KANSAS       )  
  ) SS:  
MONTGOMERY COUNTY )

**Be It Remembered** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came William M. (Marty) Reichenberger, President and Danielle Bishop, Clerk of the Board of Education of **Unified School District 446 Independence, Kansas**, who are personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

**In Witness Whereof**, I have hereunto set my hand and affixed my seal, the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

STATE OF KANSAS       )  
  ) SS:  
MONTGOMERY COUNTY )

**Be It Remembered** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Louis Ysusi, Mayor, and David W. Schwenker, City Clerk of City of Independence, Kansas, who are personally known to me to be the same persons who executed the above and foregoing instrument of writing and such persons acknowledged the execution of the same.

**In Witness Whereof**, I have hereunto set my hand and seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

E. A

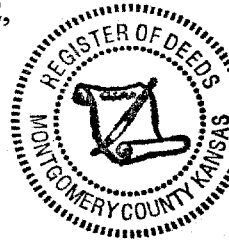
LEGAL DESCRIPTION:

A tract of land located in a portion of the Southwest Quarter of the Northwest Quarter of Section 26, Township 32 South, Range 15 East of the 6th Principal Meridian, Montgomery County, Kansas and being more particularly described as follows:  
COMMENCING at the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 26;  
THENCE S.01°43'07"E. along the East line of said Southwest Quarter of the Northwest Quarter a distance of 300.00 feet to the POINT OF BEGINNING;  
THENCE continuing S.01°43'07"E. along said East line a distance of 600.00 feet;  
THENCE S.88°42'35"W. a distance of 1200.00 feet;  
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THENCE N.88°42'35"E. along said North line a distance of 670.00 feet;  
THENCE S.01°43'07"E. a distance of 300.00 feet;  
THENCE N.88°42'35"E. a distance of 530.00 feet to the POINT OF BEGINNING and containing 920,974 square feet or 21.143 acres, including those portions used for County Road Right of Way purposes.



**AGREEMENT TO EXTEND WATER SERVICES**

THIS AGREEMENT is entered into on the 5th day of July 2001, 517 PAGE 374,  
between the City of Independence, Kansas, hereafter City, and the Independence Recreation  
Commission, hereafter IRC.



WHEREAS, under a separate agreement with USD 446, IRC occupies and has  
constructed a soccer complex upon the following described real estate owned by USD 446,  
hereafter referred to as the soccer complex:

(See attached legal description)

AND WHEREAS, IRC is desirous of obtaining city water service to the above property  
at the present time for irrigation services, and in the future possibly for other purposes.

NOW THEREFORE, in exchange of the mutual covenants and agreements hereinafter  
contained, the parties agree to the following:

1. **Extension of Services:** City shall extend an eight inch water line along Peter Pan  
Road approximately 2,100 feet to the soccer complex. City shall be responsible for construction  
and installation of the water line.
2. **Easements:** IRC shall be responsible for obtaining all easements and rights of  
way necessary for installation and construction of the water line to the soccer complex. The  
easements and rights of way obtained shall be in the name of City and for the benefit of City.
3. **Expenses:** Construction and installation work shall be performed by City crews  
when possible at no charge to IRC. The cost for materials and subcontractors for trenching and  
any other subcontracted work shall be shared equally between City and IRC.
4. **Usage:** Water used and consumed by IRC at the soccer complex shall be used for  
irrigation purposes only unless provisions are made for proper disposal of waste water. If water  
is used for purposes other than irrigation by IRC, IRC shall meet all local, county and state  
requirements for disposal of waste water.
5. **Connection to Sanitary Sewer System:** In the event IRC uses water for  
purposes other than irrigation, City at its sole option, may require IRC to connect to City's  
sanitary sewer system for treatment of the waste water. In the event City requires IRC to  
connect to City's sanitary sewer system, IRC may comply with this requirement by installation of  
a low pressure grinder pump system with the City providing City crews for installation of  
collection lines and IRC funding all equipment and other costs for any subcontractors required.  
In the event IRC connects to City's sanitary sewer system, IRC may request a second City water  
meter at IRC expense for the purpose of measuring water used for irrigation purposes only so  
that such usage will not be billed for sanitary sewer services provided by City.

City of Independence  
Attn: Tony Royse  
120 North 6th St.  
Independence, KS 67301

BOOK 517 PAGE 374

6. **Maximum Water Usage:** Water service to the soccer complex shall be limited to 60 gallons per minute for all purposes. City may reduce the amount of water provided to the soccer complex if it is unable to meet water demands of properties located within city limits, industrial users, or existing customers. In lieu of reducing the amount of water to IRC, City may restrict the hours of usage by IRC to avoid high demand periods.

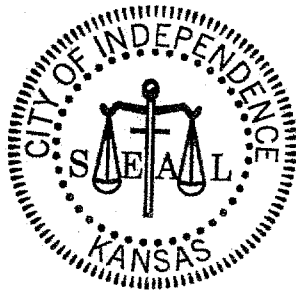
7. **Benefit District:** In the event a benefit district is created for the providing of improvements pursuant to Kansas statutes, both parties agree to participate in the benefit district and shall not protest the construction of benefit district improvements.

8. **Compliance:** IRC shall comply with all current and future City ordinances governing use of the soccer complex.

9. **Nonassignment:** IRC shall not assign any of its interest in this agreement without the prior written consent of City.

10. **Annexation:** IRC shall not contest or object to subsequent annexation of the soccer complex by City.

11. **Contingency:** This agreement is contingent upon the approval of USD 446 as record title owner of the underlying property upon which the soccer complex is located.



CITY OF INDEPENDENCE

By: *Dale Wilkens*  
Dale Wilkens, Mayor

ATTEST:

*Anthony D. Royse*  
Anthony D. Royse, City Clerk

INDEPENDENCE RECREATION COMMISSION

By: *Chris Capps*  
Name: *Chris Capps*  
Title: *Director of Recreation*

**APPROVAL BY USD 446**

As owner of the property upon which the soccer complex constructed by IRC is located, USD 446 agrees to comply with and be bound by all the above and foregoing terms and conditions of the agreement entered into between the City and IRC except for the payment of funds or expenses which shall be the sole obligation of IRC.

USD 446

By: *William T. Newkirk*  
William T. Newkirk, President  
Board of Education

ATTEST:

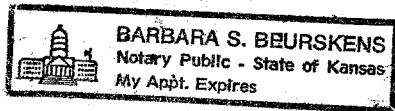
*Rebecca Reynolds*  
Rebecca Reynolds, Board Clerk

**ACKNOWLEDGMENTS**

STATE OF KANSAS                    )  
  )  
COUNTY OF MONTGOMERY        )

BE IT REMEMBERED that on the 21<sup>st</sup> day of March, 2002, before me a Notary Public in and for the County and State aforesaid, came Dale Wilkens, Mayor of the City of Independence, and Anthony D. Royse, City Clerk for the City of Independence, who are personally known to me to be the same persons who executed the above and foregoing instrument of writing and said persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.



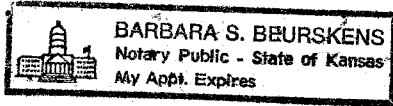
*Barbara S. Beurskens*  
Notary Public

My commission expires: 6/22/05

STATE OF KANSAS )  
 )  
COUNTY OF MONTGOMERY )

BE IT REMEMBERED that on the 29<sup>th</sup> day of March, 2002, before me a Notary Public in and for the County and State aforesaid, came Chris Capps, Director of Independence Recreation Commission, who is personally known to me to be the same person who executed the above and foregoing instrument of writing and said person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.



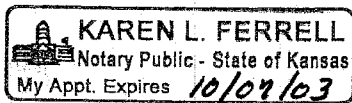
Barbara S. Beurskens  
Notary Public

My commission expires: 6/22/05

STATE OF KANSAS )  
 )  
COUNTY OF MONTGOMERY )

BE IT REMEMBERED that on the 8<sup>th</sup> day of April, 2002, before me a Notary Public in and for the County and State aforesaid, came William T. Newkirk, President of the Board of Education, and Rebecca Reynolds, Board Clerk, who are personally known to me to be the same persons who executed the above and foregoing instrument of writing and said persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.



Karen L. Ferrell  
Notary Public

My commission expires:

LEGAL DESCRIPTION:

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COMMENCING at the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 26;

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THENCE continuing S.01°43'07"E. along said East line a distance of 600.00 feet;

THENCE S.88°42'35"W. a distance of 1200.00 feet;

THENCE N.01°43'07"W. a distance of 900.00 feet to the North line of said Southwest Quarter of the Northwest Quarter;

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THENCE N.88°42'35"E. a distance of 530.00 feet to the POINT OF

BEGINNING and containing 920,974 square feet or 21.143 acres, including those portions used for County Road Right of Way purposes.

Exhibit "A"

**MINUTES OF THE INDEPENDENCE CITY COMMISSION**  
**Thursday, July 5, 2001, Regular Meeting**

Aye: DeFever, Wilkens, Bunn  
Nay: None

Consider request from R. C. Fun Center for water service

On the motion of Mayor Wilkens, seconded by Commissioner DeFever, the Commission, based on this being an exceptional, unique circumstance and that it would be beneficial to the residents of the City, authorized the City Attorney to prepare an agreement to extend City water service to the R. C. Fun Center which will be located on South 10th Street approximately ½ mile from the City limits. The agreement shall include the following conditions:

1. The owners sign a pre-annexation agreement that at any time in the future the owner of the property would agree to the annexation as requested by the City.
2. The R. C. Fun Center would pay the cost to extend the public water system to the property with the installation being performed by City crews.
3. The R. C. Fun Center would pay outside water rates unless annexed into the City.
4. The R. C. Fun Center must connect to a sanitary sewer system or meet the requirements as included in the County Sanitary Sewer Code.
5. That if the property is used for another purpose other than a skating rink then the owner of the property will pay the City an annual service fee equal to an amount of the value of the property if it was located within the City and an estimated amount equal to sales tax they would pay if the property was located in the City limits. This payment would not go into effect unless the property was used for a commercial purpose other than a skating rink.

Aye: DeFever, Wilkens, Bunn  
Nay: None

✓ Consider request from U. S. D. 446 Recreation Commission for water and sanitary sewer service

On the motion of Commissioner Bunn, seconded by Commissioner DeFever, the Commission authorized the City Attorney to prepare an agreement between the City and the U. S. D. 446 Recreation Commission for the extension of water and sanitary sewer service to a proposed soccer complex to be located at Oak Street and Peter Pan Road.

Aye: DeFever, Wilkens, Bunn  
Nay: None

Consider granting a temporary use permit for a sign at 1922 West Main

On the motion of Commissioner Bunn, seconded by Commissioner DeFever, the Commission authorized the Mayor to sign a temporary use permit for a sign at 1922 West Main, subject to any approvals required by KDOT.

Aye: DeFever, Wilkens, Bunn  
Nay: None

Consider bids received for removal of condemned structures

The City received the following bids for the removal of 400 North 19th and 713 West Chestnut:

G & G Dozer		
Caney, Kansas	400 North 19th	\$3,800.00
	713 West Chestnut	<u>\$2,600.00</u>
	TOTAL	\$6,400.00

On the motion of Mayor Wilkens, seconded by Commissioner Bunn, the Commission authorized the Mayor to sign a contract for the removal of the above structures by G & G Dozer, Caney, Kansas, for \$6,400.00, subject to receiving proof that G & G Dozer will be using an approved demolition dump.