

	CHAPTER: Fiscal Management	POLICY: Special Assessment Projects
		PAGES: 9
SUBJECT: Debt		
RELATED POLICIES:	ENABLING RESOLUTION:	#19-1991
	RESOLUTION DATE:	9/25/1991
	REVISED RESOLUTION & DATE:	#98-1994,6/29/94 #150-1995,6/21/1995 #170-98,10/7/1998 #157-2003, 7/16/2003
OFFICE WITH PRIMARY RESPONSIBILITY: Finance		

I. PURPOSE. This policy establishes guidelines for management and control of special assessment projects for Sedgwick County.

II. POLICY.

A. SPECIAL ASSESSMENT DEBT PETITIONED BY DEVELOPERS.

1. The County will facilitate new development by installing capital improvements (e.g., streets as set forth in K.S.A. Chapter 68, Article 7; sewers as set forth in K.S.A. Chapter 19, Article 27a) upon receipt of a valid, legally sufficient petition of the property owners and, ultimately, a financial guarantee from the developer, or similar others, that the special assessments resulting therefrom will be paid when due and that the County's current or future credit will not be adversely affected by installing and financing such improvements.

a. Such guarantee shall be in the form of an irrevocable letter of credit in substantially the same form as Exhibit A attached and drawn on a Sedgwick County financial institution (preferable) or other financial institution outside the County. Such guarantee may alternately be in the form of a surety bond from a surety corporation authorized to do business in Kansas, prepared in substantially the same form as Exhibit C attached. Either the financial institution or the surety must be acceptable to County as determined by the Director of Accounting/Controller in conjunction with the County Counselor. The guarantee is in addition to any guarantee required under the County's current Subdivision Regulations, or amendments thereto. It shall be filed with the County Clerk and copies provided to the County Counselor, the County Engineer, and the Director of Accounting/Controller. If either the financial institution or surety defaults or fails, then the developer will promptly provide the County with a new letter of credit or surety bond.

b. A thirty-five percent (35%) of development rule, both for the amount of the guarantee and the level of development, is required. The guarantee, based on a conservative estimate of the total costs to the County, including but not limited to design and construction engineering, construction, inspection, temporary note interest, administration, and costs of temporary and permanent financing, must be received by the County before the County awards the design and engineering contract. When the final total cost of a project is determined, any financial guarantee over that required herein may be reduced to an amount

based upon actual total project cost. The percent of development for release of the guarantee is to be measured by “certificates of occupancy” issued by the appropriate building code enforcement agency. Further, the developer will be required to have no delinquent special assessments on the project before the guarantee will be released. The County Clerk’s release of the financial guarantee shall be predicated on request of the developer, adequately supported to show that the 35 percent certificate-of-occupancy requirement has been met, and approved by both the County Engineer and the Director of Accounting/Controller.

c. If development of the properties does not occur or if the developer does not pay special assessments and general taxes levied against the benefited properties whenever the same become due and unpaid, then the letter of credit or surety bond shall be applied to the payment of engineering services or special assessments and general taxes, as the case may be. Further, the 35 percent-of-development rule is to apply to later developers, or similar others, totally or proportionately, who, before satisfaction of the development rule, purchase all or part of the affected properties for development/resale purposes as opposed to personal occupancy/usage. If, on transfer of properties, a new developer does not provide Sedgwick County with a letter of credit or surety bond for his/her proportionate share, then the County shall retain the existing Credit or bond as guarantee on the properties.

d. Neither temporary nor long-term debt financing will be sought for a developer or any partnership, corporation, or association of which such developer is a member who has outstanding delinquent general taxes or special assessments. The developer is required to sign a notarized affidavit stating that no party having a beneficial interest in the proposed improvement district described has a beneficial interest in any property having outstanding delinquent general taxes or special assessments. All developers filing an application under this policy will be required to certify that they have read the County’s Special Assessment Policy and agree to comply with its provisions. (See Exhibit B attached).

2. Consistent with the principle of retiring debt on a prompt basis, payments of the County’s special assessment bonds will normally be structured on a level principal basis as opposed to a level debt basis. This preferred level principal method results in bond principal being repaid more quickly (County benefit) and in less total cost to the benefiting taxpayers over the total debt period (homeowner benefit). As an alternative, upon written request by the developer and approval by the Board of County Commissioners, special assessment bonds may be structured on a level debt basis.

3. Petitioners for public improvements shall show on the petition the recommended method of distributing the costs of improvements on property within the proposed special assessment benefit district.

4. Except as otherwise provided by law, the County shall notify all property owners within a proposed benefit district that certain improvements have been requested and the date, time, and place that the Commission will consider authorizing said improvements. The petitioner(s) shall provide the County a current certified list of property owners within the proposed benefit district.

B. SPECIAL ASSESSMENT FINANCING WITHOUT A FINANCIAL GUARANTEE.

Installation of public improvements with special assessment financing may be authorized without a financial guarantee when one or more of the following conditions exist:

1. Improvements are ordered by resolution of the Board of County Commissioners pursuant to Section III herein.

2. The majority of land in the benefit district is in public ownership.

3. The benefit district is in multiple ownership and a majority of the land therein is developed with residences or other principal buildings.

C. PRIVATE/PUBLIC FINANCIAL PARTICIPATION IN INFRASTRUCTURE IMPROVEMENTS.

1. When in the public interest and within the County’s statutory responsibility, the Board may expand planned infrastructure improvements or approve unplanned infrastructure improvements with partial or incremental direct funding or special assessment participation.

a. The Board will construct County infrastructure improvements (roads, bridges, intersections) to appropriate standards as determined by the County Engineer to be in the best interests of County citizens (e.g., up to urban standards, if warranted), considering such concerns affecting the public urban instead of rural standards, accel-/decel- lanes, turn lanes, access drives, traffic controls) requested by benefited commercial firms/other entities may be included to the extent that the benefited firms/entities shall agree to pay the incremental costs resulting from the requested improvements. The Board may agree to finance the incremental costs through special assessments, when appropriate.

b. The Board may approve infrastructure improvement(s) not planned by the County but specially requested by commercial firms/other entities, i.e., new projects not included in the County’s Capital Improvement Program (CIP), based on: (1) specifically justified merits of the request(s), e.g., economic development; (2) evaluation of the requested project’s priority and impact compared to existing CIP projects; (3) consideration of funding participation by the requester(s) of that part of the project that would have been funded by the County had the project been planned in the County’s CIP process; and (4) funding participation of 100 percent of any added improvements or improvements of a higher standard that serve the specific interests of the requester(s). The Board may consider providing special assessment funding, if otherwise within its capability, for the benefited participant’s share.

2. When in the public interest and within the County’s capability but not within the County’s statutorily expressed responsibility, the Board may facilitate infrastructure improvements requested by other entities contingent on up to 100 percent funding participation to the extent determined appropriate by the Board and written agreement between the County and the requesting entity.

3. The Board’s approval of an infrastructure project not earlier included in the approved CIP/Capital Budget shall constitute an amendment to these documents.

D. INDIRECT COSTS: In all petitioned or specially requested (total of incremental) infrastructure improvement projects, the County will add a maximum of 5 percent of the total cost of the requested improvements to reimburse the County for services rendered by the County in the administration and supervision of the improvement. These indirect costs will be charged according to the following schedule.

<u>Total Cost of Requested Improvements</u>			<u>Indirect Costs</u>	
\$	1	-	\$ 100,000	5%
	100,001	-	250,000	4%
	250,001	-	500,000	3%
	500,001	-	1,000,000	2%
	1,000,001	-	2,500,000	1.5%
	2,500,001	+		1%

E. **CALL OF FINANCIAL GUARANTEE.** The Director of Accounting/Controller shall closely monitor the payment status of fees, taxes and special assessments guaranteed by a letter of credit or surety bond and shall promptly call on such financial guarantee when and if an Event of Default shall occur.

III. EXCEPTIONS. The Board of County Commissioners, at a regular or special meeting, may except non-statutory policy herein whenever the Board finds and determines that it is in the public interest and welfare that, due to extraordinary circumstances, the policy should be excepted.

IV. PROCEDURES.

A. **SPECIAL ASSESSMENT FOCAL POINT.** The County's Cash/Debt Management Coordinator is the focal point for historical, current, and projected special assessment data. He/she will:

1. Maintain thorough files and records which document and support the major phases of all special assessment projects. A separate file will be maintained for each special assessment project. Annual road and bridge projects may be maintained as single or multiple projects according to the manner (grouping) of the specific project authorizations.

2. Determine temporary financing requirements and make arrangements therefore.

3. Maintain a record of current letters of credit on file for special assessment projects; verify that no properties guaranteed by a letter of credit have any delinquent special assessments following the tax payment dates of December 20 and June 20; and provide a report to the County Manager regarding letters of credit on file and the status of special assessments payments related thereto.

B. **REQUESTING SPECIAL ASSESSMENT PROJECTS.** The basic process for requested special assessment projects is:

1. The developer's engineer prepares estimates for (a) design and construction engineering costs and (b) construction costs.

2. The Public Works Division prepares an estimate of the total project costs.

3. The Public Works Division and Bond Counsel prepare appropriate petitions and transmit them to the developer.

4. The developer executes the petition and required affidavit and returns them to the Public Works Division along with a certified ownership list for the proposed benefit district.

5. The Public Works Division reviews the documents and files the petition in the County Clerk's Office. A consent agenda item is prepared for action by the Board of County Commissioners which will set up a public hearing and authorize the publication and mailing of hearing notices (if required).

6. The Board of County Commissioners holds a public hearing, if necessary, and approves a resolution creating the benefit district and authorizing the construction of the project.

7. Upon receipt of notice from the developer and a letter of credit guaranteeing payment of engineering fees and special assessments and evidence that all taxes due on all property owned by the developer have been paid, appropriate design and construction engineering contracts are prepared and submitted to the Board for approval.

8. The Public Works Division proceeds to bid the construction contract in accordance with the County Purchasing Policy. Approval by the Board is subject to a verification that all property taxes owed by the developer are paid.

9. The Finance Division obtains temporary financing in accordance with the County Debt Policy.

10. Upon completion of the project:
- a. Final construction cost is determined by the Public Works Division.
 - b. Total final cost estimate is prepared by the Finance Division for certification.
 - c. An assessment plan is prepared by the Public Works Division and the Finance Division, in conjunction with Bond Counsel.
 - d. The cost certification and assessment plan are presented to the Board, a date is set for a public hearing, and staff is authorized to mail and publish notices.
 - e. The public hearing is held, and the Board approves a resolution levying the assessments.
 - f. Assessment notices are prepared and mailed.
 - g. A 30-day pay-in period is held.
 - h. Assessments not paid are included in a bond sale.

C. CALLING THE FINANCIAL GUARANTEE. When an Event of Default occurs in a letter of credit or surety bond, the Director of Accounting/Controller will:

- 1. Coordinate with the County's banking facility to call a letter of credit in the required amount.
- 2. Coordinate with the County Engineer and County Counselor to prepare a certification that the call is due to an Event of Default as listed in the Credit or bond.
- 3. Coordinate with the County Manager and the Board of County Commissioners.
- 4. Obtain the original letter of credit from the County Clerk and attach it with the certification.
- 5. Provide the certification and other appropriate documents to the County's main depository bank and ask that the Bank execute a sight draft drawing on the letter of credit.
- 6. Provide the appropriate certification to the Surety in the case of an Event of Default in a Surety Bond.

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EXHIBIT A

(To be prepared on bank stationary)

IRREVOCABLE LETTER OF CREDIT

Letter of Credit Number _____

Date _____

County of Sedgwick, State of Kansas

We hereby establish our Irrevocable Letter of Credit in favor of Sedgwick County, Kansas (“Beneficiary”), available by your drafts at sight on us for a sum not exceeding \$_____ for the account of _____ (“Customer”) to be accepted by your signed statement that drawing is due to any one or more of the following Events of Default:

- (1) Customer’s failure to pay for all engineering services relating to public improvements in the project, in the event that design or construction is abandoned for any reason; or,
- (2) Customer’s failure to pay any and all special assessments levied by Beneficiary against the Liable Properties, whenever said assessments become due and unpaid; or,
- (3) Customer’s failure to pay any and all general taxes levied by Beneficiary against the Liable Properties, whenever said general taxes become due and unpaid; or,
- (4) Customer’s failure to renew this letter of credit at least sixty days prior to the expiration date herein:

As used herein, the term “Project means:

[insert description of the project]

EXHIBIT A

As used herein, the term "Liable Properties" means:

that real property which is benefited by the Project and which is liable for assessment therefor, described as:
[insert description of lots and blocks]

This credit shall expire upon notice by Beneficiary that certificate-of-occupancy permits have been issued for at least thirty-five percent (35%) of the Liable Properties.

The Beneficiary or its duly appointed official (Director of Accounting/Controller) shall be authorized to notify us of an Event of Default, and no other notification shall be required for us to recognize a default hereunder.

The terms, provisions and conditions of this Credit shall remain in full force and effect, in accordance with the Sedgwick County Debt Management Policy adopted September 25, 1991, notwithstanding any sale, transfer or conveyance of all or any portion of the Liable Properties by Customer.

This credit is drawn subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400.

We hereby agree with the drawers, endorsers, and bonafide holders of drafts under and in compliance with the terms of this Credit that the same shall be duly honored on due presentation and delivery of notification as specified if negotiated on or before _____.

Sincerely,

Name of Bank

EXHIBIT C

BOND TO GUARANTEE PAYMENTS

Bond Number _____

We the undersigned _____, as Principal, and _____, as Surety, are held and firmly bound unto Sedgwick County, Kansas (“Obligee”), in the penal sum of _____ Dollars for the payment of which we bind ourselves, our legal representatives, successors and assigns jointly and severally, by this instrument.

As used herein, the work “Project” means:

[insert description of the project].

As used herein, the term “Liable Properties” means that real property which is benefitted by the Project and which is liable for assessment therefor, described as:

[insert description of lots and blocks].

Whereas, on the _____ day of _____, 20____, the Obligee approved the Principal’s Project and authorized public improvements to be constructed on the Liable Properties.

NOW THEREFORE, if Principal commits any Event of Default, then Surety shall make payment therefor within thirty days of presentation by Obligee of its statements reflecting the amount then due and the date or dates upon which the same became due and payable; provided, however, that the obligation of the Surety hereunder shall in no event exceed the penal sum hereof.

Any one of the following shall constitute an Event of Default:

- (1) Principal’s failure to pay for all engineering services relating to public improvements in the Project, in the event that design or construction is abandoned for any reason; or,
- (2) Principal’s failure to pay any and all special assessments levied by Obligee against the Liable Properties, whenever said assessments become due and unpaid; or,
- (3) Principal’s failure to pay any and all general taxes levied by Obligee against the Liable Properties, whenever said general taxes become due and unpaid.

EXHIBIT C

The obligation of Surety hereunder shall remain in full force and effect until the first to occur of: (1) the terms and conditions of the Sedgwick County Special Assessment Policy and Procedure, as enacted on September 25, 19991, and as thereafter amended, have been complied with by Principal or (2) the entire penal sum hereof has been depleted by payments made hereunder.

The Obligee or its duly appointed official (Director of Accounting/Controller), shall be authorized to notify the Surety of an Event of Default, and no other notification shall be required for the Surety to recognize a default hereunder.

The terms, provisions and conditions of this Bond shall remain in full force and effect, in accordance with the Sedgwick County Debt Management Policy and Procedure notwithstanding any sale, transfer or conveyance of all or any portion of the Liable Properties by Principal.

IN WITNESS WHEREOF we have hereunto set our hands and seals this _____ day of _____, 20_____.

Principal Surety

By: _____
Attorney-in-fact