



**CITY OF DERBY
MEETING OF THE CITY COUNCIL
REGULAR MEETING
JANUARY 10, 2017
6:30 P.M.**

Our mission is to create vibrant neighborhoods, nurture a strong business community, and preserve beautiful green spaces.

1. **CALL MEETING TO ORDER**
2. **FLAG SALUTE**
3. **INVOCATION-- Pastor Tom Johnson, Faith Lutheran Church**
4. **ROLL CALL**
5. **CONSIDERATION OF MINUTES**
 5. A. **Regular Meeting Minutes - December 13, 2016**

Recommend a Motion to:

 - Approve the regular meeting minutes of December 13, 2016, as presented.
 6. **PUBLIC FORUM**
 7. **NEW BUSINESS**
 7. A. **Resolution Authorizing the Marketing of STAR Bonds**

Recommend a Motion to:

 - Approve a resolution authorizing the sale of Sales Tax Special Obligation Revenue Bonds, Series 2017.
 7. B. **Homestead Affordable Housing Request to Waive Building Permit Fee**

Recommend a Motion to:

 - Adopt a resolution approving waiver of the building permit fee for construction of Homestead Senior Residences in the Tall Tree Addition.

7. C. **Design of New Fire Station 81**

Recommend a Motion to:

- Approve the design direction and authorize GLMV to proceed to develop construction documents.

7. D. **2017 Legislative Agenda**

Recommend a Motion to:

- Approve the 2017 legislative agenda, as presented.

8. **CONSENT AGENDA**

Recommend a Motion to:

- Approve the Consent Agenda.

8. A. **Detective Interview Recording Equipment**

8. B. **Farmers Market Agreement**

8. C. **Inspection Agreements for Nelson Dr. Realignment**

8. D. **Inspection Agreements for Madison Ave. Reconstruction**

8. E. **Commitment of Funds for Madison Ave. Reconstruction**

8. F. **Assessment Ordinance for Nuisance Abatement**

9. **EXECUTIVE SESSION**

10. **ADJOURNMENT**

City Council Meeting

5.A.

Meeting Date: 01/10/2017

Submitted By: Karen Friend, City Clerk

Agenda Category: New Business

Subject:

Regular Meeting Minutes - December 13, 2016

Recommend a Motion to:

- Approve the regular meeting minutes of December 13, 2016, as presented.
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Attachments

011017 City Council Minutes



**UNAPPROVED MINUTES
DERBY CITY COUNCIL MEETING
DECEMBER 13, 2016
6:30 P.M.**

1. **CALL MEETING TO ORDER**
2. **FLAG SALUTE**
3. **INVOCATION -- Fr. Tom Wilson, St. Andrew's Episcopal Church**

4. **ROLL CALL COUNCIL MEMBERS PRESENT:**
MAYOR Randy White
WARD I Rocky Cornejo, Tom Keil
WARD II Jack Hezlep, Vaughn Nun
WARD III Cheryl Bannon, Chuck Warren
WARD IV John McIntosh, Mark Staats

5. **CONSIDERATION OF MINUTES**

- A. **Regular Meeting Minutes - November 22, 2016**

Recommend a Motion to:

- Approve the regular meeting minutes of November 22, 2016, as presented.

Mark Staats moved, Vaughn Nun seconded, to approve the regular meeting minutes of November 22, 2016, as presented.

Vote: 7 - 0 - 1

Other: Rocky Cornejo (ABSTAIN)

6. **PUBLIC FORUM**

Council Member Warren said regarding the contract with Sedgwick County for the Senior Center funding wording, I had a chance to look at past contracts, and talked with Commissioner Howell. My fears have been greatly relieved in terms of the possibility of reducing funding for the Senior Center. We wanted to give the county commissioner the benefit of the doubt about doing better on the wording of these contracts. Our staff worked hard on trying to work that out. It will be a good year for our seniors.

Mayor White attended the senior center volunteer banquet and realized it takes a small army to keep things running. There were 125 volunteers recognized. He and his wife had a chance to drive around town looking at Christmas lights and thought the entire city looks great.

Ms. Sexton introduced Kaylin Kinchion as an intern with Wichita State University student in the Masters of Public Administration program. Chief Brad Smith was recognized with a plaque from the Kansas State Fire Chiefs Association for serving as president of 4 years. Ms. Sexton said there were several staff members who participate in leadership of organizations. Chief Smith also serves and represents Derby on the Sedgwick County 911 Advisory Board.

Chief Smith said it was an honor to serve and thanked staff and the Council for the opportunity to participate in these organizations.

Ms. Sexton provided an update on Madison Avenue Central Park and how we experienced an interesting opening. We have begun to advertise our park in several publications. Most every Saturday in 2017 is booked for weddings and activities. You will get a report from the Derby Public Library, and their annual report will include The Venue's activity in 2016. You discussed requesting more signage at the playground area; some are on order and some have already been put up. The Park Board reviewed those requests for signage for skateboarders, and Derby Steel Technologies is modifying railings to prevent skateboarders from destroying equipment. There are kids who are a little rambunctious, and we believe some of the new policies and signs that will be posted notifying people they are under surveillance and being monitored by the Derby Police Department will help. The Park Board agreed to post signs to ban skateboards and scooters from the playground area and on the rubber surface. Wheelchairs and other assisted devices will not be banned.

Council Member Warren asked Ms. Sexton to explain what the Police and Fire departments are doing to help monitor the park.

Ms. Sexton said the Police Department has beat officers that make two walkthroughs in the park. School Resource Officers are also coming out after

school, and they are able to identify the kids and call their parents if they see something illegal. The police have asked fire personnel to drive through the park areas. During the budget last year, you approved two staff members for maintenance, one was hired and one will start in January and will work on Saturdays. The Police Department is going to ask some of their volunteers to serve as playground monitors to assist the police at the park. A lot of people are coming in from out of town and others are coming to the park for the first time, and it will be helpful to have a lot of monitoring there.

Council Member Bannon stated there are outdoor restrooms on the north side of the building that will be open during the winter months. The outdoor chess set has also been put away for the winter months.

Council Member Staats said skateboarding was banned from the playground surfaces and asked if there are any limitations on the concrete surface near the pavilion.

Ms. Sexton said all concrete areas will still allow skateboarders.

Council Member Staats said we have a skate park a block south. He sees it as a bigger issue than destroying property because we are renting it out for \$3,000 to \$4,000 for a weekend. It is sending a wrong message to allow people to breeze through on a skateboard or bicycle. If we rent it out, people should not be obstructed by skateboarders, etc. It is easier to nip it now rather than later on. Around the edge of the park is fine, but skateboards and scooters on the black concrete area around the pavilion and around the venue should be prohibited.

Mayor White said visitors to the park can call 9-1-1 if people see something wrong happening and take a picture to report it.

7. PRESENTATIONS

A. Proclamation of State Football Champion Day

Mayor White presented a proclamation to members of the Derby High School football team proclaiming Thursday, December 14, 2016 as State Football Champion Day in Derby.

Coach Brandon Clark said we always talk about Green is Magic. We are here to serve our school and our town, and we talked a lot about making people proud of us. It was a fun year, and we are happy we could do it.

Council Member Warren said being an alumni of Derby High School, it's

exciting to see this, and it makes me proud to see your champions.

8. NEW BUSINESS

A. Resolutions for Improvements in El Paso Crossing Addition and Phillips Rock Road Addition

Background:

- Public infrastructure improvements are necessary to facilitate development of El Paso Crossing Addition (SE of Patriot & Rock).
 - Recent development has generated the need for some improvements to be installed now, while other improvements will not be needed until additional lots are ready for development.
 - Guarantees for all of the necessary improvements were obtained when El Paso Crossing was platted. The developer now desires to phase the improvements to make development of the properties more economically feasible.
 - Extension of services to El Paso Crossing requires some improvements to extend across other platted and unplatted properties.
 - Guarantees for extension of services across the platted properties were acquired when the properties were platted, as required by the City's subdivision regulations.

Multiple properties are affected by the proposed infrastructure improvements:

- El Paso Crossing Addition:
 - The developer of El Paso Crossing Addition has submitted revised petitions to establish two phases of development for public improvements to serve the addition. Phasing the public improvements will allow the costs to be more effectively spread to the benefiting properties.
 - Revised petitions for water lines, sanitary sewer, Cambridge St., and Amber Ridge St. are proposed to divide the current single phase into two phases.
 - Phase 1 sanitary sewer and water service will be extended north from Tall Tree St. to serve the development. Phase 1 improvements also include construction of a portion of Cambridge St. from Rock Rd. east to serve the recently approved Don Hattan car dealership.
 - Stormwater detention and stormwater sewer improvements to serve the entire development will be constructed with Phase 1 as originally petitioned.
 - Phase 2 will extend Cambridge St. east to Amber Ridge St., construct Amber Ridge St. from Tall Tree Rd. to Patriot Ave.

(63rd St.) and extend water and sanitary sewer to the remaining lots.

- A phasing map showing the proposed improvement phasing is attached.
- The existing resolutions for water lines, sanitary sewer and street improvements in El Paso Crossing Addition will be repealed upon adoption and publication of the new resolutions.
- Phillips Rock Road Addition and Wolfes Rock Road Addition:
 - Sanitary sewer and waterline improvements necessary to serve Phase 1 of El Paso Crossing Addition from existing lines in Tall Tree Addition will cross Phillips Rock Road Addition and Wolfes Rock Road Addition.
 - Additionally, Amber Ridge St., when constructed for Phase 2, will connect Tall Tree Rd. to Patriot Ave., crossing and providing access to Phillips Rock Road and Wolfes Rock Road Additions.
 - Petitions for necessary public improvements to serve these additions were submitted at the time of platting.
 - Resolutions for Wolfes Rock Road Addition were adopted and are sufficient to cover that addition's portion of the improvement costs.
 - Resolutions for Phillips Rock Road Addition were not adopted at the time of platting; however the petitions submitted with the plat remain valid and resolutions should be adopted to facilitate installation of the necessary improvements.
- Traffic signalization at Cambridge St. and Rock Road:
 - The developers of El Paso Crossing Addition and The Oaks and The Oaks Second Additions submitted separate petitions for traffic signal improvements at the intersection of Cambridge St. and Rock Rd.
 - Petitions and resolutions for a traffic signal at this location were required at the time of platting for both developments with the understanding that the signal would be constructed when traffic justified the improvements.
 - Since both developers desire to have the signal constructed before traffic conditions necessitate it, city staff proposed changes to the petitions which varies from the City's policy for financing of public improvements:
 - The cost for installation of the signal will be split evenly between the City and the benefiting properties. Typically, signal improvements at intersections of public streets are paid 80% by the city-at-large.
 - Costs to install GPS clocks on the new signal and the existing signal at Tall Tree Rd. and work to coordinate these signals with signals at Patriot Ave., Independence

Ave. and Freedom St. were added to the revised petition.

- Existing resolutions for traffic signalization at Cambridge St. and Rock Rd. will be repealed and replaced upon adoption of the new resolution.

Financial/Sustainability Considerations:

- The proposed resolutions total \$2,233,000, of which \$167,384 will be paid by the city at large. The city's portion of the costs is as follows:
 - Phillips Rock Road Addition
 - Petitions submitted for Phillips Rock Road Addition include the city participating in paying 50% of the cost of sidewalk improvements along Rock Rd. (\$11,000) and the incremental cost of increasing Amber Ridge St. from a standard 31 ft. residential street to a 41 ft. collector street (\$27,884).
 - El Paso Crossing Addition
 - Some existing resolutions for El Paso Crossing Addition (waterlines, sanitary sewer, Cambridge and Amber Ridge Streets) will be repealed and replaced by new resolutions.
 - The new resolutions for El Paso Crossing Addition do not result in any additional cost to the city at large.
 - Resolutions for other improvements to serve the addition are not affected.
- The proposed resolution for traffic signal improvements at Cambridge St. includes the city paying 50% of the project costs (\$128,500).
 - Existing resolutions for the traffic signal obtained for The Oaks and Oaks Second Additions and El Paso Crossing Addition both involve the city paying 80% of the improvement costs in accordance with the City's policy on municipal financing of public improvements.
 - The new resolution proposes a 50/50 split between the improvement districts and the city (\$128,500 to the city; \$64,250 to El Paso Crossing Addition; and \$64,250 to The Oaks and The Oaks Second Additions).
 - The net change in cost to the city is a reduction of \$33,500 (\$162,000 for 80% of standard signal vs. \$128,500 for 50% of a signal including GPS clocks and coordination).

Legal Considerations:

- Petitions and corresponding resolutions for El Paso Crossing Addition were prepared in accordance with the City's policy on municipal financing of public improvements.
- The owner of Phillips Rock Road Addition submitted petitions for improvements to serve the development in 2010 as required for platting. Bond counsel has confirmed that the submitted petitions remain valid.
- The City's bond counsel, Gilmore & Bell, P.C., prepared the attached

resolutions for El Paso Crossing Addition and Phillip's Rock Road Addition in accordance with Article 12-6a of the Kansas statutes.

Policy Considerations:

- The improvement districts in the proposed resolutions include only undeveloped property.

Recommend a Motion to:

- Adopt resolutions for construction of public improvements to serve properties in El Paso Crossing Addition and Phillips Rock Road Addition.

Cody Bird, City Planner, presented the staff report. He recognized Gary Renberger and Pat Baer, Planning Commission members, for attending the meeting.

Council Member Bannon asked what was the discussion about up-sizing Amber Ridge Street to a collector street because most of the area is commercial.

Mr. Bird said that will take some of the traffic off of Rock Road and will need to be a wider street.

Council Member Bannon asked why the City is paying for the area behind Phillips Rock Road Addition.

Mr. Bird said the existing petition we have on record for Amber Ridge Street was signed in 2009. Rather than changing the original petition, we are honoring the original petition.

Council Member Bannon clarified Amber Ridge Street will be extended south from 63rd Street to Tall Tree Road with the City paying just the portion behind Phillips Rock Road addition.

Mr. Bird stated Wolfes Addition will also be paying for this street and the resolutions are already in place.

Mayor White said when the middle school street signals went in, there was a lot of talk about too many traffic signals going in on Rock Road. What do we say to people when we are called about these concerns?

Mr. Bird said as part of our platting process, we require petitions for improvements. We did a traffic study on that area and we got the guarantees for those signals.

Dan Squires, City Engineer, said we don't just put up signals. We need these

for traffic and safety purposes. When we have a lot of traffic on Rock Road, we need to get right-of-way and we also need signals from a safety standpoint. We try to make modifications when traffic warrants it. We get petitions for turn lanes and traffic signals, and in this case, we are working on a coordination system that will help mitigate the delay that will be caused by a signal. When we develop this much and put more traffic on the road, you do everything you can to accommodate it.

Mayor White asked if the traffic study identified why we need the signals.

Mr. Squires said we did not do a traffic study, because the current traffic would not justify a signal. We predict increased turning traffic after development, and the developers preferred it be installed now.

Mayor White said I understand the 80/20 split going to a 50/50 split. They made the request and put money with it. There is one open parcel in those three developments. Do we have any issues there by having an area within these three areas that isn't being platted or developed?

Mr. Squires said the developer and his agent has been in contact with the property owner, and we anticipate development on that property so we have no concerns.

Council Member Warren asked how difficult is it to retrofit signals to synchronize them.

Mr. Squires said there are different technologies to work together. What we are talking about doing is known as "fixed timing" those signals during peak hours. We add a clock on those signals to facilitate the flow of traffic.

Council Member Warren stated if the traffic on Rock Road gets to a certain point, and people look for alternate ways, people might choose to go along K-15 to get into the north end before they go down Rock Road. Would that be possible if we want to coordinate signalization on K-15?

Mr. Squires said we submitted a proposal to WAMPO (Wichita Area Metropolitan Planning Organization) to do that on K-15. We may be applying it to other locations in the future.

Moved by Mark Staats, seconded by Cheryl Bannon, to adopt resolutions for construction of public improvements to serve properties in El Paso Crossing Addition and Phillips Rock Road Addition.

Vote: 8 - 0 Motion Carried

B. 55th Street and Woodlawn Boulevard Waterline Improvements

Background:

- The Capital Improvement Plan (CIP) includes a waterline project to create a loop in the City's distribution system by constructing a 16" waterline along 55th St. and Woodlawn Blvd. (see attached map)
 - The project will connect the existing 16" line along 55th St. just east of the City's Public Works facility to the existing 16" line along Triple Creek Dr. at Winding Ln.
 - The project will also improve fire protection in the Hillsdale Addition by extending an 8" line approximately 700 ft. along Winding Lane Cir.
- Water distribution systems are looped to provide better pressure distribution in the system and redundant supply in the event of a waterline break.
- The project will also provide connection points for the water supply to Northbrook Addition facilitating the development of 142 residential lots.
- On December 7, the following bids were received for construction:

Mies Construction	\$345,000
Nowak Construction	\$348,424
Duling Construction	\$314,082
McCullough Excavating	\$350,809
Dondlinger & Sons	\$429,482
<i>Engineer's Estimate</i>	<i>\$534,500</i>

Engineer's Estimate prepared by Professional Engineering Consultants (PEC).

Financial/Sustainability Considerations:

- The CIP includes \$475,000 for design and construction. The project design cost was \$23,000 leaving \$452,000 available for construction.

Policy Considerations:

- This new waterline will provide redundancy for the City's water systems and facilitate growth in the area.
- Extension of a line along Winding Lane Cir. will improve the City's ability to provide fire protection in the Hillsdale Addition, which was annexed by the City in 2013.

Recommend a Motion to:

- Authorize execution of a contract with Duling Construction for construction of the 55th St. and Woodlawn Blvd. Waterline Improvements project, in an amount not to exceed \$314,082.

Dan Squires, City Engineer, presented the staff report.

Mayor White asked if we have worked with Duling Construction before.

Mr. Squires replied yes, we have worked with them on several occasions.

Mayor White said we saved \$138,000 which is substantial and good news.

Moved by Mark Staats, seconded by Cheryl Bannon, to authorize execution of a contract with Duling Construction for construction of the 55th St. and Woodlawn Blvd. Waterline Improvements project, in an amount not to exceed \$314,082.

Vote: 8 - 0 Motion Carried

C. **Updates to the City Council's List of Priorities**

Background:

- On August 9, the City Council last updated its list of priorities. Since then, staff have worked on many of the priorities and recommend removal of six items because they have been accomplished, as follows:
 - Madison Avenue Central Park development
 - Develop an ordinance regulating massage therapy businesses
 - Update Zoning Code for cellular tower siting
 - Presentation on Comprehensive Plan & review of certain decisions
 - Adopt FEMA Floodplain Management Code by December
 - Drought Response Plan: Update water contract w/Wichita to coincide w/drought measures
- A review of recent progress and current status of the Council's remaining priorities will be provided at the Council meeting.
 - Two items (Re-invent the K-15 Corridor and Revisit the Red Powell & Nelson Drive Intersection Design) are recommended to be replaced with one item: **Develop a K-15 Area Plan (Patriot to Meadowlark)**, which is shown in bold as #2 on the attached list.
 - This update is consistent with recent direction from the Council to focus on this plan in 2017 and delay updating the Comprehensive Plan until 2018 after this are plan is completed.
- The following are recommended to be added to the list (as shown in bold on the attached list):
 - **Communicate with 87th Street property owners about development**

- options & annexation
- Consider enhancing the City's involvement with the Derby Historical Museum (previously on the Watch List)
- West End Development Plan: Address sign clutter
- One item is recommended to be added to the Watch List: Hire architect & develop plans for Decarsky Park. While the intent is to work on this later in 2017, the higher priority is that we put Warren Riverview Park out to bid and select a contractor as well as continue finishing a few things at Madison Avenue Central Park.

Policy Considerations:

- When a governing body agrees on priorities, staff time is used most productively.
- This list does not represent everything the Council expects staff to accomplish and does not include routine tasks, rather it includes enhancement projects and programs to be worked on as time allows amid other responsibilities.

Recommend a Motion to:

- Approve the Council's updated list of priorities.

Kathy Sexton, City Manager, presented the staff report.

Council Member Keil asked for information on the Derby Historical Museum. We discussed being a partner with them during a workshop last year. Who is leading that?

Ms. Sexton said it was announced at a Rotary Club meeting that the long-term plan for the Historical Museum is for the City to take over ownership of the building. Just a little background on the Historical Museum. The school district deeded the building to the Historical Museum when the old sixth grade center was demolished and the portion remaining was deeded to the Historical Museum. The Historical Museum is a non-profit organization. When we heard they wanted the City to take ownership, it was a little surprising to us. Then the concept was brought up at a Derby Recreation Commission board meeting that the Historical Museum could partner with the Derby Recreation Commission and be the primary tenant and use the buildings for more classes and programs. The recreation commission would pay for the financing of the remodeling over time. The partnership between the Derby Recreation Commission and the Historical Museum is pending and has not been approved. They have hired an architecture firm to create an idea of what a remodel would cost and what needs to be done. The estimate was \$1.5 million. A different board member approached me to find out if we could

partner with the museum, assist with their negotiations with the Recreation Commission, or be an owner of the building. If a non-profit board is connecting with the Derby Recreation Commission for a ten-year remodel project, they would be asking the City to take on ownership of a building that has a tenant and a debt associated with it, it might be time to learn more and talk to the board members directly to find out what is being asked of the City. Putting this item on the priority list doesn't mean the City is opening a checkbook. We all know that most museums cost money, and most museums are subsidized by taxpayers, donors, and fundraisers. This is just the beginning of a long conversation, which must include the city's budget and tax lid.

Council Member Hezlep said he received a lot of questions about Wichita's proposal to increase water rates by 4%. Will that affect our water rates?

Ms. Sexton said it will, but Jean Epperson will present the water rate increase tonight during the water board meeting.

Mayor White said it is a great list and you have done a great job on getting through a lot of things. This has been a challenge for you and your staff, but you keep plugging away. The maintenance of sidewalks is a major issue for him. They are a form of transportation and happy that it is getting some attention.

Ms. Sexton said thank you for the appreciation of the staff. The sidewalk issue is like the gravel roads in town that have not been paved. It is a constant, ongoing difficulty. The Council took that on and figured out a new way of doing it that puts us on a path of resolution.

Moved by Tom Keil, seconded by Jack Hezlep, to approve the Council's updated list of priorities.

Vote: 8 - 0 Motion Carried

D. **Amendment to Employment Agreement**

Background:

- In 2006, the Governing Body entered into an Employment Agreement with Kathy Sexton to serve as city manager until Dec. 31, 2007. Since then, the Governing Body has amended the agreement each year as we now complete the eleventh year of service.
- The Governing Body recently completed the annual performance evaluation, which included a review of accomplishments during 2016. We are pleased with Ms. Sexton's leadership and believe in the management direction she is providing to the City organization. In 2016, she was

instrumental in accomplishing the City Council's priorities, including (among others):

- Opened Madison Avenue Central Park with two new event facilities.
- Began implementing recommendations of the West End Development Plan.
- Guided the city through the process of considering a STAR bond proposal.
- Began analysis of likely effects of the new state tax lid law on Derby's ability to provide quality public services.
- Section 2a, subsection 10 includes a technical amendment to ensure consistency with Charter Ordinance 53 passed in June 2016.
- Sections 4a and 4b include technical amendments to clarify the intent that standard City policies regarding payment of accrued leave and other benefits apply in the event of the City Manager's voluntary resignation.
- Sections 7d, 7e and 9a include removal of unnecessary references to "management" employees.

Financial/Sustainability Considerations:

- The 2017 salary is proposed to be \$150,785, which is a 3% increase based on merit.
- Section 6b includes an option for the retirement contribution to be made to an IRA or other retirement account rather than just the City's 457 deferred compensation program. This amendment has no effect on the City's costs.
- Section 7b is added to authorize a single payment for 100 hours of accrued vacation leave (\$7,086) as the Council's recognition of the difficulty the City Manager has had this past year in using vacation leave due to staff shortages and high workload.
 - This one-time provision includes reduction of the vacation leave balance.
 - Other vacation leave shall be used as time off from work or shall be paid upon separation from the City, as per City policy.

Legal Considerations:

- Proposed amendments were reviewed and approved as to form by the City Attorney.
- Charter Ordinance 52 provides for the Mayor to vote on employment matters concerning the city manager.

Recommend a Motion to:

- Approve the Employment Agreement as presented.

Mark Staats, Council President, presented the staff report.

Mark Staats moved, Jack Hezlep seconded, to approve the Employment Agreement as presented.

Vote: 9 - 0 Motion Carried

9. CONSENT AGENDA

Recommend a Motion to:

- Approve the Consent Agenda.

Moved by Chuck Warren, seconded by Mark Staats, to remove Item 9F from the Consent Agenda.

Vote: 6 - 2 Motion Carried

NAY: John McIntosh
Cheryl Bannon

A. Walmart Community Grant to the Senior Center

Background:

- The Walmart Community Grants Team and the K-15 Walmart Super Center have awarded the Senior Center their maximum grant of \$2,500.
- This donation will be used to provide new programs and equipment for the center.
- Walmart believes in giving back and is proud to support organizations that improve communities where their customers and associates live and work.

Recommend a Motion to:

- Recognize the Community Grant given to the Senior Center and authorize the Mayor to sign a letter of appreciation.

B. Issuance of Cereal Malt Beverage Licenses

Background:

- Vendors of cereal malt beverages in the City are required to be licensed by the City.
- Seventeen applications for cereal malt beverages have been received for calendar year 2017. The names of the businesses and managers are listed in Attachment A.
- All applicants and applications have been reviewed and approved by the Police Chief and Fire Chief, and all comply with city ordinances.

- If a business does not receive a new license on or before January 1, 2017, that business must cease cereal malt beverage sales on December 31.

Legal Considerations:

- Chapter 5.16, Article VII of the Municipal Code establishes qualifications for cereal malt beverage licenses.
- A license may not be issued until all qualifications have been met.
- The Code provides that if the applicant is qualified as provided by law, the governing body shall direct the city clerk to issue the license.

Recommend a Motion to:

- Authorize issuance of cereal malt beverage licenses for 2017 to the applicants listed in Attachment A.

C. Vacate Portion of Utility Easement in Reserve I, Block 2, Courtyards at The Oaks Addition

Background:

- The owner of Reserve I, Block 2, Courtyards at The Oaks Addition has requested vacation of a portion of a platted utility easement.
 - The property is adjacent to Lot 39, Block 2, Courtyards at The Oaks Addition (also owned by the applicant).
 - The applicant desires to vacate a portion of the utility easement in order to deed a portion of the reserve to the adjacent lot to increase the buildable area.
- Similar requests for vacation of utility easements within or adjacent to reserves have been approved when there is sufficient space to dedicate a replacement easement, the vacation does not negatively impact the uses for which the reserve is intended, and utility providers and the public will not suffer any loss or inconvenience if the easement is vacated.
 - The applicant proposes to dedicate a new 10 ft. utility easement further east within Reserve I to replace the existing easement.
 - The proposed replacement easement location will adequately accommodate the utility uses for which the easement was originally required.
 - Dedicating the proposed replacement easement and deeding a portion of Reserve I to the adjacent property will not adversely affect the uses for which the reserve is intended.
 - City staff has reviewed the proposed easement dedication and found it to be acceptable.
- The Planning Commission conducted the required public hearing on November 17, 2016.
 - No public testimony was provided in advance or at the public hearing.

- Following the close of the hearing, the Planning Commission unanimously adopted a resolution (attached) recommending approval of the vacation.
- The City has received no objections to the proposed vacation.
- The portion of Reserve I will be combined with Lot 39 to create a single zoning parcel for tax purposes, reducing the potential for a non-buildable piece of property to be sold into separate ownership. The applicant will coordinate the transfer with Sedgwick County and provide documentation to the City.

Financial/Sustainability Considerations:

- The vacation of the easement has no direct financial impact to the City.
- Combining a portion of the reserve with Lot 39 creates a larger lot, which may allow construction of a larger home resulting in a slightly higher taxable value.

Legal Considerations:

- The petition for vacation was processed pursuant to K.S.A. 12-504 *et seq.* Notice was advertised in accordance with state law.
- No written objections to the proposed vacation have been received.
- In accordance with state statute, the requested vacation should be granted if the Council finds that:
 - Notice was given as required by law;
 - No private rights will be injured or endangered; and
 - The public will suffer no loss or inconvenience.

Recommend a Motion to:

- Adopt an ordinance vacating a portion of the platted utility easement within Reserve I, Courtyards at The Oaks, an addition to Derby, and instruct staff to record the vacation ordinance with the Sedgwick County Register of Deeds.

D. Resolution Establishing the City Boundaries

Background:

- State law requires cities to adopt a resolution declaring the official boundary of the city's incorporated area.
- The city boundary description is updated annually to include lands annexed into the city. The land now platted as Northbrook Addition was annexed into the City on August 23, 2016. No other land was annexed in 2016.
- The attached boundary resolution modifies the City's boundary to include the land annexed in 2016.

Financial/Sustainability Considerations:

- Adoption of the boundary resolution has no financial impact on the city.
- Any financial impacts of annexations were considered at the time the annexations were approved.

Legal Considerations:

- K.S.A. 12-517 requires that a city declare by resolution its entire boundary before the last day of December in any year in which any territory has been added to or excluded from the city.

Recommend a Motion to:

- Adopt a resolution establishing and declaring the official corporate limits of the City of Derby.

E. West End Business Park Sign

Background:

- The City installed a West End Business Park sign at the intersection of Madison Ave. and Water St. in the Fall of 2014.
 - The sign provides a unique identity for the park and the businesses that operate there.
 - The sign has been popular with local businesses and serves as a resource to marketing the remaining lots to businesses interested in expanding in or relocating to Derby.
- Based on the popularity of the first sign and recommendations in the West End Development Plan, a second sign identifying the business park from Market St. was programmed into the Capital Improvement Plan in 2016.
- Nu-Line Signs installed the original sign in 2014. In order to assure consistency, the City called on Nu-Line for installation of the additional sign. Nu-Line provided a proposal for turnkey installation of the sign including electrical service for \$14,560.

Financial/Sustainability Considerations:

- The 2016 Capital Improvement Plan includes \$15,000 for installation of the sign.

Legal Considerations:

- The contract has been reviewed and approved by the City Attorney.

Recommend a Motion to:

- Authorize execution of a contract in the amount of \$14,560 with Nu-Line Signs, LLC for installation of a West End Business Park Sign at the

intersection of Market St. and River St.

Moved by Mark Staats, seconded by Rocky Cornejo, to approve the Consent Agenda, as amended.

Vote: 8 - 0 Motion Carried

10. **Assessment Ordinance for Nuisance Abatement**

Background:

- City ordinance requires debris be removed from properties and lawns be maintained at 10 inches or less to protect the public health and safety.
- The City has incurred costs in abating nuisances found to exist on 2 properties, of which 1 is in foreclosure and 1 is a vacant house. Each owner of record at the time charges were incurred was sent notification that the City Council will consider assessment of the charges by ordinance.
- Because affected lots are often in foreclosure or in process of being sold, timely assessment is important to an equitable recovery of City funds.

Financial/Sustainability Considerations:

- Costs total \$960 which includes the City's mowing and trash removal costs plus administrative fees.

Legal Considerations:

- City ordinance authorizes staff to mow excessively tall vegetation and remove trash when owners fail to do so. Staff seeks to collect reimbursement through informal efforts to avoid the need for formal remedies. Charges not timely paid may be assessed against the properties on which the work was performed.

Recommend a Motion to:

- Adopt an ordinance levying a special assessment upon certain properties the costs incurred by the City of Derby in abating nuisances found to exist thereon.

Kathy Sexton, City Manager, presented the staff report.

Moved by Mark Staats, seconded by Cheryl Bannon, to approve the assessment ordinance for nuisance abatement, as presented.

Vote: 7 - 1 Motion Carried

NAY: Chuck Warren

11. ADJOURNMENT

Moved by Mark Staats, seconded by John McIntosh, to adjourn the meeting at 7:35 p.m.

Vote: 8 - 0 Motion Carried

Randy White, Mayor

Karen Friend, City Clerk

City Council Meeting

7.A.

Meeting Date: 01/10/2017

Submitted By: Kathy Sexton, City Manager

Agenda Category: New Business

Subject:

Resolution Authorizing the Marketing of STAR Bonds

Guests:

- Joe L. Norton, Esq., Gilmore & Bell, P.C.

Background:

- The proposed action is to authorize marketing of STAR bonds, which is the final step before the City Council is asked to approve the sale of the bonds (scheduled for the Jan. 24 meeting of the City Council).
- These bonds will provide \$18.9 million to be used to construct infrastructure and provide for a portion of the costs of the project, as noted in the STAR Bond Project Plan and as approved by the City Council on July 26, 2016 and by the Kansas Secretary of Commerce on October 19, 2016.
- The City engaged Stifel, Nicolaus & Company to serve as underwriter of these bonds and continues to benefit from the services of Greg Vahrenberg with Piper Jaffray & Co., who serves as our Financial Advisor on all bond matters.

Financial/Sustainability Considerations:

- Section 1 of the resolution notes the aggregate principal amount shall not exceed \$23 million.
 - This includes the \$18.9 million needed for project costs plus a reserve fund amount, capitalized interest, and costs of issuance.
 - The current estimate for a total amount is \$21,850,000, but \$23 million is used in the resolution to provide some room to adjust the final sizing of the bond issue as needed.
- The same is true with the interest rate. Section 1 of the resolution notes the true interest cost shall not exceed 6.25%.
 - This rate is used to provide room to adjust as needed.
 - The interest rate likely will be somewhere between 4.0% and 5.5%.

Legal Considerations:

- Gilmore & Bell serves as the City's bond counsel and has verified this issue is in full compliance with state laws and local resolutions and ordinances.

Recommend a Motion to:

- Approve a resolution authorizing the sale of Sales Tax Special Obligation Revenue Bonds, Series 2017.

Attachments

011017 STAR Bond Resolution

RESOLUTION NO. 1-2017

A RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF THE CITY OF DERBY, KANSAS, SALES TAX SPECIAL OBLIGATION REVENUE BONDS (DERBY STAR BOND PROJECT AREA), SERIES 2017.

WHEREAS, the City of Derby, Kansas (the “City”), is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “State”) as a city of the second class; and

WHEREAS, pursuant to the provisions of K.S.A. 12-17,160, *et seq.*, as amended (the “Act”), the City Council of the City (the “Governing Body”), adopted on July 16, 2015, Resolution No. 19-2015 establishing its intent to create a STAR bond project district within the City (the “STAR Bond District”) and setting a date for a public hearing with respect thereto; and

WHEREAS, on July 30, 2015, the Secretary of Commerce of the State of Kansas (the “Secretary”) determined that the STAR Bond District is an “eligible area” under provisions of the Act; and

WHEREAS, pursuant to the provisions of the Act, and following a public hearing, the Governing Body passed Ordinance No. 2242 on September 8, 2015, which created the STAR Bond District; and

WHEREAS, the City prepared the STAR Bond Project Plan for the STAR Bond District (the “Project Plan”) in consultation with the City’s Planning Commission, which Project Plan provides for the redevelopment of real property within the STAR Bond District as described therein (the “Project”); and

WHEREAS, on June 6, 2016, the Governing Body adopted Resolution No. 25-2016 setting a date for a public hearing with respect the Project Plan; and

WHEREAS, pursuant to the provisions of the Act, and following a public hearing, the City passed Ordinance No. 2279 on July 26, 2016, adopting the Project Plan; and

WHEREAS, on October 19, 2016, the Secretary: (a) determined that the STAR Bond District is an “eligible area” under the Act, (b) approved the Project as a “STAR bond project” within the meaning of the Act and (c) approved the issuance of up to \$18,900,000 (exclusive of approved financing costs) of STAR Bonds to be issued to finance the Project;

WHEREAS, the City is authorized under the Act to issue special obligation bonds for the purpose of implementing the Project Plan; and

WHEREAS, the Governing Body has heretofore selected the firm of Piper Jaffray & Co. (the “Financial Advisor”), as financial advisor and the firm of Stifel, Nicolaus & Company, Incorporated, (the “Underwriter”), as underwriter for one or more series of special obligation bonds for the purpose of implementing the Project Plan; and

WHEREAS, the City desires to authorize the Underwriter, in consultation with City Administration and the Financial Advisor, to proceed with the offering for sale of such special obligation bonds; and

WHEREAS, one of the duties and responsibilities of the City is to prepare and distribute a preliminary official statement relating to such special obligation bonds; and

WHEREAS, the City desires to authorize the Financial Advisor and Gilmore & Bell, P.C., Wichita, Kansas, the City’s bond counsel (“Bond Counsel”), in conjunction with the Director of Finance and the Underwriter,

and its legal counsel, to proceed with the preparation and distribution of a preliminary official statement and related sale materials and to authorize the distribution thereof and all other preliminary action necessary to sell such special obligation bonds; and

WHEREAS, due to the volatile nature of the municipal bond market and the desire of the City to achieve maximum benefit of timing of the sale of such special obligation bonds, the Governing Body desires to authorize the Mayor to confirm the sale of such special obligation bonds, if necessary, prior to the next meeting of the Governing Body to adopt the necessary ordinance providing for the issuance thereof.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DERBY, KANSAS, AS FOLLOWS:

Section 1. The Underwriter, in conjunction with the City Manager, the Director of Finance and the Financial Advisor, is hereby authorized to proceed with the offering for sale of the City's Sales Tax Special Obligation Revenue Bonds (Derby STAR Bond Project) Series 2017 (the "Series 2017 Bonds") for the purpose of implementing the Project Plan by providing funds to finance a portion of the costs of the Project and related reserves and costs of issuance, as more fully described in the hereinafter defined Preliminary Official Statement. The Series 2017 Bonds shall be sold, subject to the approving opinion of Bond Counsel. The timing of offering for sale, the pricing, the determination of the structuring and repayment terms of the Series 2017 Bonds and the selection of various other necessary professionals necessary to complete the issuance of the Series 2017 Bonds, shall be determined by the City Manager, in consultation with the Director of Finance, the Financial Advisor, Bond Counsel, the Underwriter and the Secretary. The confirmation of the sale of the Series 2017 Bonds shall be subject to the execution of a bond purchase agreement between the Underwriter and the City (the "Purchase Agreement") in a form approved by Bond Counsel and the City Attorney, the passage of an ordinance by the Governing Body authorizing the issuance of the Series 2017 Bonds and the execution of various documents necessary to deliver the Series 2017 Bonds. The Mayor is hereby authorized to execute the Purchase Agreement for the Series 2017 Bonds, subject to the following parameters: (a) the aggregate principal amount shall not exceed \$[_____], (b) the true interest cost shall not exceed [___]%; and (c) the approval of the Secretary.

Section 2. The Preliminary Official Statement relating to the Series 2017 Bonds (the "Preliminary Official Statement") is hereby approved in substantially the form presented to the Governing Body this date, with such changes or additions as the Mayor, City Manager and Director of Finance shall deem necessary and appropriate. The Underwriter is hereby authorized to use such document, as approved by such City officials, in connection with the sale of the Series 2017 Bonds.

Section 3. For the purpose of enabling the Underwriter to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"), the Mayor and Director of Finance are hereby authorized: (a) to approve the form of the Preliminary Official Statement and to execute the "Certificate Deeming Preliminary Official Statement Final" in substantially the form attached hereto as *Exhibit A* as approval of the Preliminary Official Statement, such official's signature thereon being conclusive evidence of such official's and the City's approval thereof; (b) covenant to provide continuous secondary market disclosure by transmitting certain financial information and operating data and other information necessary to comply with the Rule to the Municipal Securities Rulemaking Board; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Underwriter to comply with the requirement of the Rule.

Section 4. The City agrees to provide to the Underwriter within seven business days of the date of the sale of Securities or within sufficient time to accompany any confirmation that requests payment from any customer of the Underwriter, whichever is earlier, sufficient copies of the final Official Statement to enable the Underwriter to comply with the requirements of the Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 5. The Mayor, City Manager, Director of Finance, Clerk, and the other officers and representatives of the City, the Financial Advisor and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to carry out the sale of the Series 2017 Bonds.

Section 6. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

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ADOPTED by the City Council of the City of Derby, Kansas, on January 10, 2017.

(SEAL)

Mayor

ATTEST:

Clerk

EXHIBIT A

RULE 15c2-12 CERTIFICATE OF THE CITY

**CITY OF DERBY, KANSAS
SALES TAX SPECIAL OBLIGATION REVENUE BONDS
(DERBY STAR BOND PROJECT AREA)
SERIES 2017**

The undersigneds are the duly acting Mayor and Director of Finance of the City of Derby, Kansas (the "City"), and are authorized to deliver this Certificate to Stifel, Nicolaus & Company, Incorporated, as the underwriter (the "Underwriter") of the above-referenced bonds (the "Series 2017 Bonds") on behalf of the City. In accordance therewith, the undersigneds hereby certify as follows:

1. This certificate is delivered to enable the Underwriter to comply with Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") in connection with the offering and sale by the City of the Series 2017 Bonds.

2. In connection with the offering and sale of the Series 2017 Bonds, there has been prepared a Preliminary Official Statement, dated [POS Date], 2017, setting forth information concerning the Series 2017 Bonds and the City (the "Preliminary Official Statement").

3. As used herein, the term "Permitted Omissions" shall mean the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Series 2017 Bonds depending on such matters, all with respect to the Series 2017 Bonds.

4. The section of the Preliminary Official Statement entitled "CONTINUING DISCLOSURE" describes the agreements the City and Derby Destination Development, LLC, a Kansas limited liability company (the "Developer") expect to make, for the benefit of the beneficial owners of the Series 2017 Bonds, by which the City and Developer, as applicable, will undertake to provide ongoing disclosure in accordance with paragraph (b)(5)(i) of the Rule.

5. The City hereby deems, within the meaning of the Rule, the information regarding the City contained in the Preliminary Official Statement to be final as of its date, except for the Permitted Omissions.

CITY OF DERBY, KANSAS

By: _____
Title: Mayor

By: _____
Title: Director of Finance

City Council Meeting

7.B.

Meeting Date: 01/10/2017

Submitted By: Marcia Hartman, Development Manager

Agenda Category: New Business

Subject:

Homestead Affordable Housing Request to Waive Building Permit Fee

Guests:

- Tom Bishop, President/CEO, Homestead Affordable Housing, Inc.

Background:

- Homestead Affordable Housing, Inc. is a non-profit organization that manages and develops quality affordable housing communities for income-restricted seniors.
- At the August 8, 2015 City Council meeting, a proposal for Homestead Senior Residency was presented.
- On September 8, 2015, the Council adopted a resolution of intent to issue taxable industrial revenue bonds and a resolution in support of Homestead Affordable Housing, Inc.'s request for industrial revenue bond financing and tax abatement.
 - The project would provide 64 rental units for seniors (55 years-of-age and up) below certain income thresholds.
 - Homestead Affordable Housing submitted an application to the Kansas Housing Resources Corporation (KHRC) in 2016 but was not approved for funding.
- Homestead Affordable Housing plans to re-apply to KHRC in February 2017. An announcement about whether it is approved is expected in May.
 - The scoring system used in selecting projects for KHRC approval considers the value of donated services including waiving of building permit fees.
 - To enhance the likelihood of KHRC approval, Homestead has requested the City waive the building permit fee for the project.

Financial/Sustainability Considerations:

- Building permit fees are based on the value of the proposed project. With an estimated value of \$8 million, the fee requested for waiver is approximately \$35,000.
- The City is being asked to forego \$35,000 in revenue. Permit fees are charged to offset the cost to review plans and provide necessary inspections. Without this fee revenue, other City general revenues would essentially be used to cover the costs incurred to conduct inspections, similar to the St. Jude Dream Home.
- Sewer and water connection fees estimated at approximately \$80,000 were not requested to be waived and would continue to be charged to offset the City's costs.

Policy Considerations:

- The City's incentives policy emphasizes the need to encourage development of housing for residents of all ages, abilities and incomes, which is also in keeping with the Comprehensive Plan and the City Council's List of Priorities.
- Facilitating development of low-cost housing for seniors allows long-time Derby seniors who may otherwise be forced to leave, to remain in their community.

Recommend a Motion to:

- Adopt a resolution approving waiver of the building permit fee for construction of Homestead Senior Residences in the Tall Tree Addition.

Attachments

Site Map
Resolution



Proposed Site

Rock Rd

Tall Tree Rd

Tall Tree Rd

Tall Tree Cir

Walnut Creek Dr

Birchwood Rd

Birchwood Ct

Reserve A

Reserve B

Reserve C

Reserve D

Reserve B

Reserve C

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Resolution No. ____-2017
Of The City of Derby, Kansas

WHEREAS, the City of Derby (City) is a city of 23,047 population, located in the County of Sedgwick in South Central Kansas;

WHEREAS, the City provides services, programs and businesses that preserve, enhance and expand the opportunity and quality of life for all residents;

WHEREAS, development of quality housing options for senior citizens is a priority to ensure senior households can continue to call Derby their home;

WHEREAS, the Kansas Housing Resource Corporation (KHRC) has a variety of federal housing programs that can leverage local resources through strategic partnerships;

WHEREAS, Homestead Affordable Housing, Inc. (HAH), is a certified Kansas Community Housing Development Organization (CHDO) and will partner and serve as the developer and managing member of the owner entity formed for this new senior development;

WHEREAS, the City of Derby has been informed by HAH that it wishes to file a housing tax credit application with the KHRC for development of affordable senior rental housing on a parcel of land with a legal description as follows:

Lot 1, Block 2, Tall Tree Addition, Derby, Sedgwick County, Kansas.

WHEREAS, the development will be in 64 units and serve the elderly, 55 years of age and older;

WHEREAS, the development will be new construction in four-plex buildings meeting LEED and Energy Star 3 certifications;

WHEREAS, the property will have the following amenities;

- Community building; with library, computer with internet access, activity and craft areas, community room for meals and events, office for health care service providers
- Fitness area with equipment such as treadmill and recumbent bike
- Concrete reinforced safe rooms in each apartment
- Washer and dryer supplied in each apartment
- Raised bed gardens and other garden areas
- Gazebo and outside seating, with Bar-B-Q grill and picnic tables
- Horseshoe court, shuffleboard court

- Large screen TV with Blue Ray and game console for movie nights and video games
- Sidewalks and walking paths marked for distance for exercise
- A variety of services provided by HAH and other service providers

WHEREAS, HAH has asked for partnership assistance from the City, and the City has agreed to the following to enable the funding applications to the various grant and loan programs to be successful:

- Waiver of the building permit fee, exclusive of utility connection fees, in an estimated amount of \$35,000.

NOW, THEREFORE, BE IT RESOLVED, by the City of Derby that we support and approve the development of the aforesaid housing subject to the building permit process. This Resolution is effective until December 31, 2018.

In the event that any of the characteristics mentioned above should change prior to the building permit and therefore be unacceptable to the City of Derby, this resolution shall be null and void.

PASSED by the City Council this _____ day of January, 2017, and **SIGNED** by the Mayor.

Randy White, Mayor

ATTEST:

City Clerk

City Council Meeting

7.C.

Meeting Date: 01/10/2017

Submitted By: Kathy Sexton, City Manager

Agenda Category: New Business

Subject:

Design of New Fire Station 81

Guests:

- Matt Cortez, AIA, Vice President, GLMV Architecture
- Stacy Christie, AIA, Project Architect, GLMV Architecture
- Mark Dayton, RLA, ASLA, Landscape Architect, GLMV Architecture

Background:

- On September 13, 2016, the City Council authorized selection of GLMV Architecture to design a new fire station to be constructed in 2018 at the SW corner of Madison Avenue and Woodlawn. Design was to achieve several goals:
 - Include office space for the Fire Chief, Deputy Chief, shift supervisor, medical and training officers, workstations for firefighters, and an ability to accommodate future growth.
 - Enhance the visual appeal of the corner property and streetscape, including public art.
 - Respect the functions of the neighbors (Derby Middle School, maintenance building for Derby Public Schools, Derby Historical Museum, Bulldog football field, and residences).
- On September 20, the City's design committee held a kick-off meeting with GLMV. Committee members included Council Members Rocky Cornejo and John McIntosh; Fire & Rescue Chief, Deputy Chief and selected Lieutenants & Firefighter IIs; Director of Operations Ted Austin; and City Manager Kathy Sexton.
 - The committee has met five times to review drafts, discuss issues, determine preferences from among options for not only the functional layout of the facility but also the look and feel of the site and how it will relate to the larger community.
 - At this City Council meeting, the GLMV team will present the attached renderings of the project and discuss design considerations. They and the City members of the design committee will be available to respond to your questions.

Financial/Sustainability Considerations:

- In 2016, land was purchased (\$255,000) and architects were engaged (\$240,000).
- The design work has resulted in a draft project cost estimate of \$6,536,364, which includes the above land acquisition and design fees as well as construction, furniture and contingency. Not included at this point are estimates to bury the overhead power lines (estimate from Westar is pending) or acquire appropriate art.
- Now that design is wrapping up, the next steps are for GLMV to develop detailed construction drawings including engineering of mechanical systems and to spend some time with artists to determine artwork options.

Policy Considerations:

- The proposed design is for 20,842 square feet, which provides not only for the primary station (including Fire Administration) but also for room for departmental growth as the City continues to grow.
- Throughout design, the committee focused on durable building materials that would result in efficient building maintenance and upkeep as well as energy efficiency.
- The committee recommends working with Westar to bury the overhead utility lines as part of the City's overall goal to beautify the community.
- The committee selected brick, landscaping, rock and other elements to ensure some consistency with design elements at Madison Avenue Central Park and with the surrounding neighborhood.
- Park Superintendent Mike Day and Public Works Director Robert Mendoza were consulted to meet the City's goals of improving the visual landscape, enhancing the diversity of the tree canopy, promoting water conservation, and ensuring efficient landscape management.
- The committee also gave consideration to enhancing the safety and convenience of pedestrian routes through and around the fire station lot.

Recommend a Motion to:

- Approve the design direction and authorize GLMV to proceed to develop construction documents.

Attachments

Site Plan

Site Circulation

Views1

Views2

Floor Plan

Cost Estimate



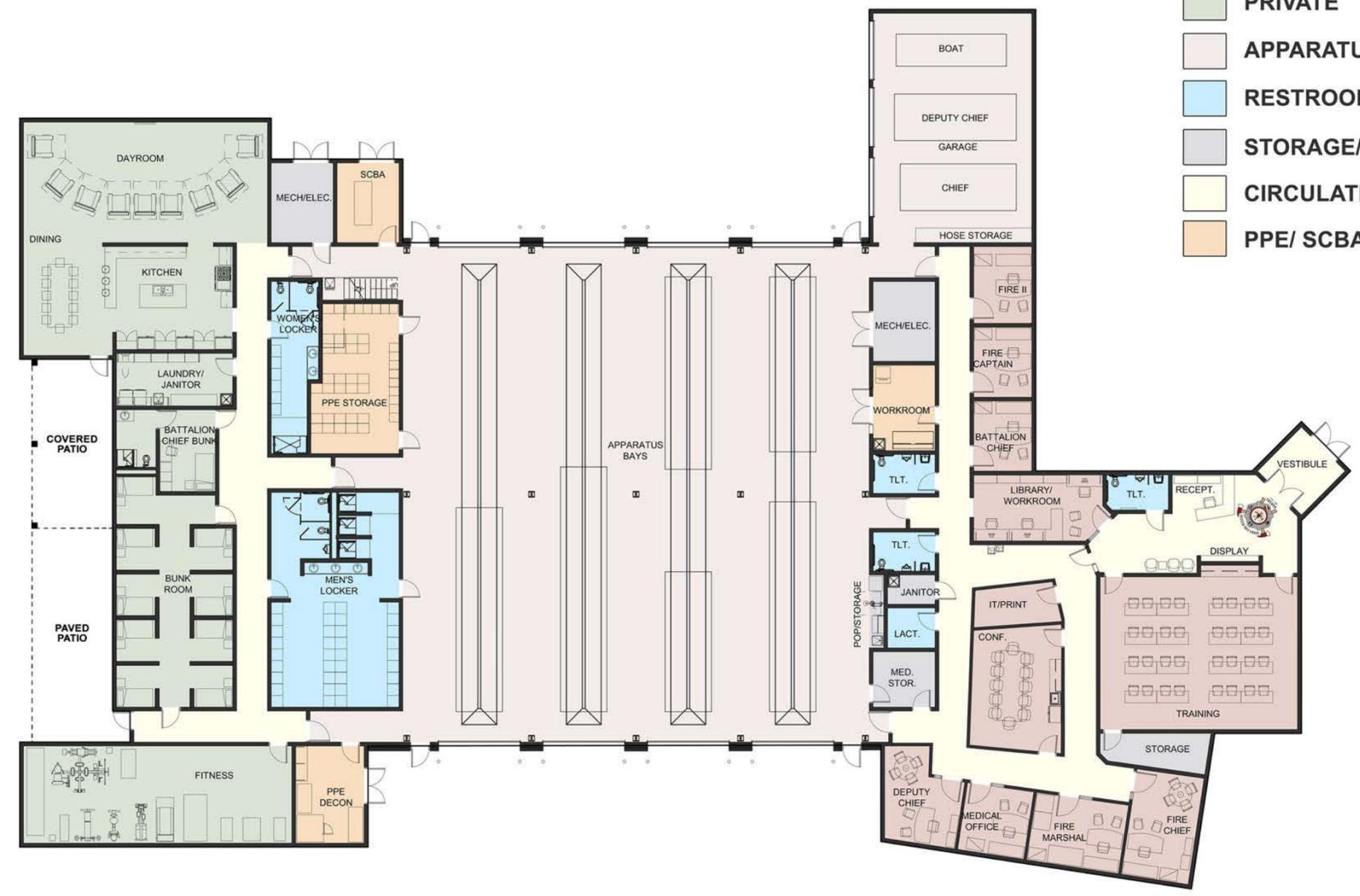
GLMV Architecture
 1525 East Douglas, Wichita, KS 67211
 Tel: (316) 265-9367
 www.glmv.com



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 GLMV Architecture, Inc.

CITY OF DERBY
FIRE STATION
 715 E. MADISON AVENUE
 DERBY, KANSAS

- PUBLIC
- PRIVATE
- APPARATUS BAYS
- RESTROOMS/ LOCKERS
- STORAGE/ ELEC.
- CIRCULATION
- PPE/ SCBA



A CONCEPT D4
 0' 3' 6' 12' 16' 3/32"=1'-0" 20,842 SF



MARK	DATE	DESCRIPTION

FLOOR PLAN - CONCEPT D4 DAYROOM 1

JOB NO.	16038.000	D4
DATE	12-12-16	
DRAWN	XXX	
CHECKED	XXX	
DWG. # OF #		

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Derby Fire Station

Derby, Kansas

1/4/2017

OPINIONS OF PROBABLE CONSTRUCTION COSTS**Fire Station**

Assumptions: The preliminary cost estimate is based on the following assumptions and facts.
 * The costs are adjusted for the economic conditions of Wichita and Derby, Kansas
 * Budget is prepared using 2017 Dollars.

Item	Area	Cost/SF	Cost
A. Building Cost			
Fire Station	20842	\$267.76	\$5,580,714
B. Subtotal Building Cost:			\$5,580,714
C. Total Construction (A+B)		\$267.76	\$5,580,714
D. Site Acquisition		\$ 255,000	\$255,000
E. Furniture		\$ 70,000	\$70,000
F. Installation/Moving Costs (X% of Building Cost)		0%	\$0
G. Professional Fees (X% of C&D)			\$240,000
H. Contingency (X% of D)		7%	\$390,650
I. Administrative Costs (X% of D)		0%	\$0
J. Total Budget Required (C & D through I)		\$313.62	\$6,536,364

Disclaimer: In providing opinions of probable construction costs, the Client understands that the Architect has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Architect's opinions of probable construction costs are made on the basis of the Architect's professional judgment and experience. The Architect makes no warranty, express or implied, that the final bids or the negotiated cost of the Work will not vary from the Architect's opinion of probable construction cost.

City Council Meeting

7.D.

Meeting Date: 01/10/2017

Submitted By: Kathy Sexton, City Manager

Agenda Category: New Business

Subject:

2017 Legislative Agenda

Background:

- Communicating with legislators and tracking legislative issues ensure City officials are aware of and involved in state and federal legislative activities that affect the organization and the community.
- The City of Derby's legislative agenda usually reflects the legislative priorities of REAP (Regional Economic Area Partnership) and the League of Kansas Municipalities. Derby city staff participated in developing both the League's and REAP's legislative priorities.
 - The REAP agenda (see attached) includes support for:
 - Revising the tax/spending lid
 - Merger of Wichita Area Technical College and WSU
 - Expansion of Kansas Medicaid to get healthcare coverage to at-risk Kansans
 - Funding for transportation and passenger rail
 - Protection of water resources
 - Collaborative efforts in regional economic development
 - The League's action agenda includes support for:
 - City home rule and non-partisan city elections
 - Replacing the costly election process in the tax lid law with a protest petition
 - Expediting the process to deal with blighted and abandoned housing
 - Collection of sales and use taxes on internet purchases
 - Current law on municipal utility service territory and annexation
 - Providing cities with immunity from actions of employees who choose to carry a concealed weapon
 - Expansion of Kansas Medicaid to enable community hospitals access to federal funding
- City staff will stay informed of bills introduced during the upcoming legislative session that may affect Derby through Gavin Kreidler, REAP, and the League.
 - Derby's position on such bills will generally be in keeping with the REAP or League positions. We will pay particular attention to bills affecting city finances, annexation, and city operations.
 - When bills arise for which the City's position is not clear, the City Council will

be consulted for direction going forward.

Financial/Sustainability Considerations:

- Since balancing the state's budget will be of primary concern this session, Derby officials will monitor any actions to reduce the state's commitment to funding street maintenance, parks or drug/alcohol education, intervention and treatment.
- The City of Derby's annual operating budget includes approximately \$1.0 million from the state (gas tax, liquor tax, and sales tax) to support these public services.
- In 2015, the Kansas Legislature placed a new tax lid on cities and counties. The law was amended in 2016 and is effective as we begin developing our 2018 budget. The League is considering whether to request legislation in this session to amend the law further to smooth out some of the implementation concerns of the current law. We will monitor and participate in these discussions, should they materialize.

Policy Considerations:

- This year, staff reviewed the legislative agendas of several other organizations and call to the Council's attention the following issues:
 - The City of Wichita shared its draft including 19 issues, some of which overlap with REAP and the League and others of which don't really apply to Derby.
 - At the top of Sedgwick County's legislative priorities is elimination of the ability of cities to perform unilateral annexations according to state law. Such action would hamper Derby's continued orderly growth and its ability to ensure area residents equitably share the costs of public services. Both the League and the City of Wichita support no changes to current annexation law.
 - The City of Manhattan asked Derby to join it and other cities and counties in the Ft. Riley region in support of a school finance formula that includes a military second count date and allows school districts eligible for federal impact aid for military installations to keep that aid.
 - The intent of federal impact aid to schools is to assist schools that have fluctuations and burdens in enrollment due to federal properties such as military bases.
 - Currently, Kansas is one of three states that seizes federal impact aid intended for certain affected districts and redistributes it to other school districts around the state that are not affected by military deployments and staffing changes. Currently, only 30% of the aid remains with affected districts.
 - This is a minor issue in the overall scheme of school finance, but it seems prudent to join with other communities affected by a nearby military base in advocating for fairness in how this federal money gets distributed by the state to those it was intended to help.

Recommend a Motion to:

- Approve the 2017 legislative agenda, as presented.

Attachments

REAP Legislative Agenda

REAP | Regional Economic Area Partnership

The members of REAP focus on issues of common concern that drive the regional economy including transportation, water, energy and workforce development

KEY ECONOMIC DRIVERS

WORKFORCE IN THE REGION

 **48%**
of manufacturing
employment in Kansas
employing
52,000

 **75,648**
Directly/Indirectly
employed in
health care
\$2.9 billion in
payroll stimulus

2,600 
Indirect Jobs Created by
McConnell Air Force Base
(\$115.9 million value)
economic impact of
\$754.2 million

TRANSPORTATION

REAP supports transportation strategies to enhance the economy in South Central Kansas including comprehensive planning and expanded rail service

EXPORTS

10 County
South Central Kansas Region
showed a total of **\$6.87 billion** in Exports
\$23.7 million new Exports in 2016

EDUCATION

Six State-supported post-secondary institutions serving **54,120** students as of Fall 2016

Research and development at the National Institute for Aviation Research (NIAR) at Wichita State University

Medical education and training programs at the Kansas University School of Medicine-Wichita

WATER

 **2** Ground Management Districts (GMD's)

Equus Beds Aquifer Storage and Recovery (ASR) supplying water for **20%** of the Kansas population

ENERGY



The REAP region hosts **2** of the **3** Kansas oil refineries, a large wind generator assembly plant, and **4** REAP counties contain wind farms

2017 Legislative and Policy Priorities

Tax / Spending Lid

REAP supports correcting the unworkable procedures in the 2016 tax lid legislation on local governments as it will have a stifling effect on the ability to support infrastructure necessary for high quality of life and strong economic growth.

WATC/WSU Merger

REAP supports legislation to merge Wichita Area Technical College and Wichita State University. This will increase educational opportunities, help fulfill the workforce needs of south central Kansas and create a stronger partnership between higher education and industry.

Medicaid Expansion

REAP supports expansion of the Kansas Medicaid program to extend healthcare coverage for at-risk Kansans (over 150,000) and to complement the efforts in public health, providing vital revenues to local hospitals and stimulate the economy by creating thousands of jobs.

Funding for Transportation Infrastructure

REAP supports dedicated and secure state revenue that cannot be used for other purposes and opposes any further use of transportation dollars to balance the State's general fund; and emphasizes the need for adequate funding to build and preserve the transportation infrastructure in Kansas.

Passenger Rail Service

REAP supports state funding for expansion of passenger rail in Kansas, specifically passenger rail connecting Dallas/Fort Worth and Oklahoma City through Wichita to the Southwest Chief in Newton.

Water and Energy Resources

REAP supports policies and strategies to recognize the protection of water resources critical to the economy of South Central Kansas, including of the protection of the Equus Beds Aquifer that supplies water for 20% of the Kansas population.

REAP recognizes the importance of energy to the regional economy and supports access to, and production of, a variety of energy sources from oil and natural gas to renewable resources, such as wind and solar power.

Regional Economic Development Strategies

REAP supports regional collaborative sector strategies to create jobs and grow business in the region.

• Blueprint for Regional Economic Growth (BREG)

REAP supports BREG, the sector based, regional economic development strategy designed to grow business and create jobs by focusing resources for eight wealth generating industries in South Central Kansas.

• South Central Kansas Regional Export Plan

The economic wellbeing of the REAP area and the State of Kansas is dependent on the ability to participate in the international marketplace. State policy should recognize that exports are a major component of the state and regional economies, and expanded exports are essential to economic growth.

• Innovation Campus

REAP supports legislation that helps grow the Kansas economy and provides additional educational opportunities to students at WSU through development of the Innovation Campus.

City Council Meeting

8.A.

Meeting Date: 01/10/2017

Submitted By: Robert Lee, Police Chief

Agenda Category: Consent

Subject:

Detective Interview Recording Equipment

Background:

- For many years we have recorded both audio and visual interviews conducted by detectives with victims, witnesses and suspects in crimes.
 - These recordings are valuable evidence and relied on heavily by criminal prosecutors.
 - The recordings allow prosecutors the opportunity to show powerful video of interrogations directly to jurors.
- Recording interviews also promotes transparency and accountability in law enforcement. Recordings allow for a complete review regarding voluntariness of confessions, Miranda rights issues, etc.
 - Prosecutors and courts have an expectation of quality recordings of police interviews especially in high profile cases.
 - We also record internal interviews with employees on significant complaints of misconduct.
- The current recording system has considerable issues with the quality of audio recordings and reliability and is in need of replacement.
- In 2016, representatives of the police department viewed the proposed recording system, which is currently in use at the Sedgwick County Sheriff's Office and were impressed with the sound and video quality as well as ease of use.
- The proposed system to be purchased will allow for cameras and recording equipment to be placed in two interview rooms at the police department.
 - The system comes complete with cameras, microphones, 22" monitor, computer speakers, licenses and includes installation and training. The total purchase price of \$17,399 includes a 3-year maintenance agreement.
 - Interview rooms equipped with recording equipment is now the standard in law enforcement.

Financial/Sustainability Considerations:

- Replacement of the current recording equipment is budgeted for \$25,000 in the 2017 Equipment Replacement Plan. The price of the proposed system at \$17,399 is considerably under budget.
- The Bid Board reviewed the proposed purchase on December 6 and concurred that we should proceed with Voice Products as they are the GSA contract holder for the

"IRecord Universe Recording System."

Recommend a Motion to:

- Approve the purchase of the IRecord Universe Recording System for \$17,399 from Voice Products, Inc.
-

City Council Meeting

8.B.

Meeting Date: 01/10/2017

Submitted By: Zahra Ehtisham, Assistant to the City Manager

Agenda Category: Consent

Subject:

Farmers Market Agreement

Background:

- This agreement provides for the City of Derby to host the Kansas Grown Farmers Market this summer on Saturday mornings in the parking lot of Madison Avenue Central Park. The market would be open to the public from 7:00 a.m. to noon beginning Saturday, May 6, 2017.
- This would be the third year for the Farmers Market to be hosted on City property and its first year at Madison Avenue Central Park.
- Other than location, the terms of this agreement have not changed from 2015.

Financial/Sustainability Considerations:

- The attached agreement requires Kansas Grown to get a city permit (\$25 fee), provide proof of insurance and provide its own traffic cones and flags to separate pedestrians from vehicular traffic.

Recommend a Motion to:

- Authorize execution of the agreement.
-

Attachments

2017 Farmers Market Agreement
map

Agreement for Farmers Market

THIS AGREEMENT, is made this ___ day of February, 2017, between the City of Derby, Kansas (hereinafter "City"), and Kansas Grown!, Inc. (hereinafter "Kansas Grown"), a Kansas not-for-profit corporation, to provide for and memorialize the understanding between the parties with regard to temporary use of ~~City's Madison Avenue Central Park's~~ parking lot for a seasonal Farmers Market.

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WHEREAS, Kansas Grown is a not-for-profit organization designed to bring South Central Kansans together in a cooperative manner to develop markets for their products; and

WHEREAS, Kansas Grown operates a seasonal Farmers Market within the City of Derby in furtherance of its stated purpose; and

WHEREAS, Kansas Grown wishes to locate its Farmers Market on City property in the parking lot adjacent to ~~City Hall Madison Avenue Central Park~~; and

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WHEREAS, City recognizes that cooperative events such as Farmers Markets are beneficial activities within a community and contribute to a City's quality of life; and

WHEREAS, City wishes to allow Kansas Grown to use City property for its Farmers Market.

NOW THEREFORE, in consideration of the mutual covenants and agreements, City hereby grants permission to Kansas Grown to use City property to hold its Farmers Market subject to the following terms and conditions:

1. Kansas Grown shall be limited to use of space as depicted on the attached drawing (the "designated space").
2. Kansas Grown shall apply for and pay the fee required to obtain a seasonal permit from the City of Derby, but no additional rent shall be required for use of the designated space.
3. Kansas Grown is authorized to use the designated space only on Saturdays during the period from May 6, 2017 through September 24, 2017. Vendor use of the designated space is authorized between 4:30 a.m. and 1:00 p.m., with public market hours limited to 7 am to noon.
4. Kansas Grown will provide traffic cones and flags to separate pedestrian traffic from vehicular traffic.
5. Kansas Grown agrees to be responsible for set-up, take-down, and clean-up of the designated space. Kansas Grown agrees to be responsible for the costs of repair or replacement of any City property damaged or destroyed as a result of Kansas Grown's use of and/or operation of the Farmers Market within the designated space.
6. At all times during the term of this Agreement, Kansas Grown shall maintain and provide sufficient evidence to the City of Comprehensive General Liability insurance naming the

City as an additional insured on said policy. Said Comprehensive General Liability insurance shall contain minimum limits of coverage as follows:

- \$1,000,000 Each Occurrence
 - \$1,000,000 Personal & Adv Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products - Completed/Operation Aggregate
7. Kansas Grown agrees to indemnify and hold harmless, protect, and defend the City, its agents, representatives, employees, and governing body members against any and all loss, damages, liabilities, claims, costs or expenses, including reasonable attorneys' fees and defense costs, to the extent caused by Kansas Grown's use of, or operation of the Farmers Market within the designated space.
 8. Kansas Grown further agrees it will not represent that the Farmers Market is endorsed by or affiliated with the City.
 9. Either party may terminate this Agreement at any time by providing written notice of said termination to the other party at the addresses below:

To City: ~~Mr. Greg Vectors~~ Zahra Ehtisham, Assistant to
the City Manager 611 N. Mulberry Street,
Suite 300
Derby, KS 67037-3533

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To Kansas Grown: Mr. Jim Beyers, President
Kansas Grown!, Inc.
P.O. Box 771245
Wichita, KS 67277-1245

10. This Agreement sets forth the entire agreement between the parties and may not be amended except by written agreement signed by the parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as of the date above-referenced.

City of Derby, Kansas

Kansas Grown!, Inc.

Kathleen B. Sexton, City Manager

Jim Beyers, President

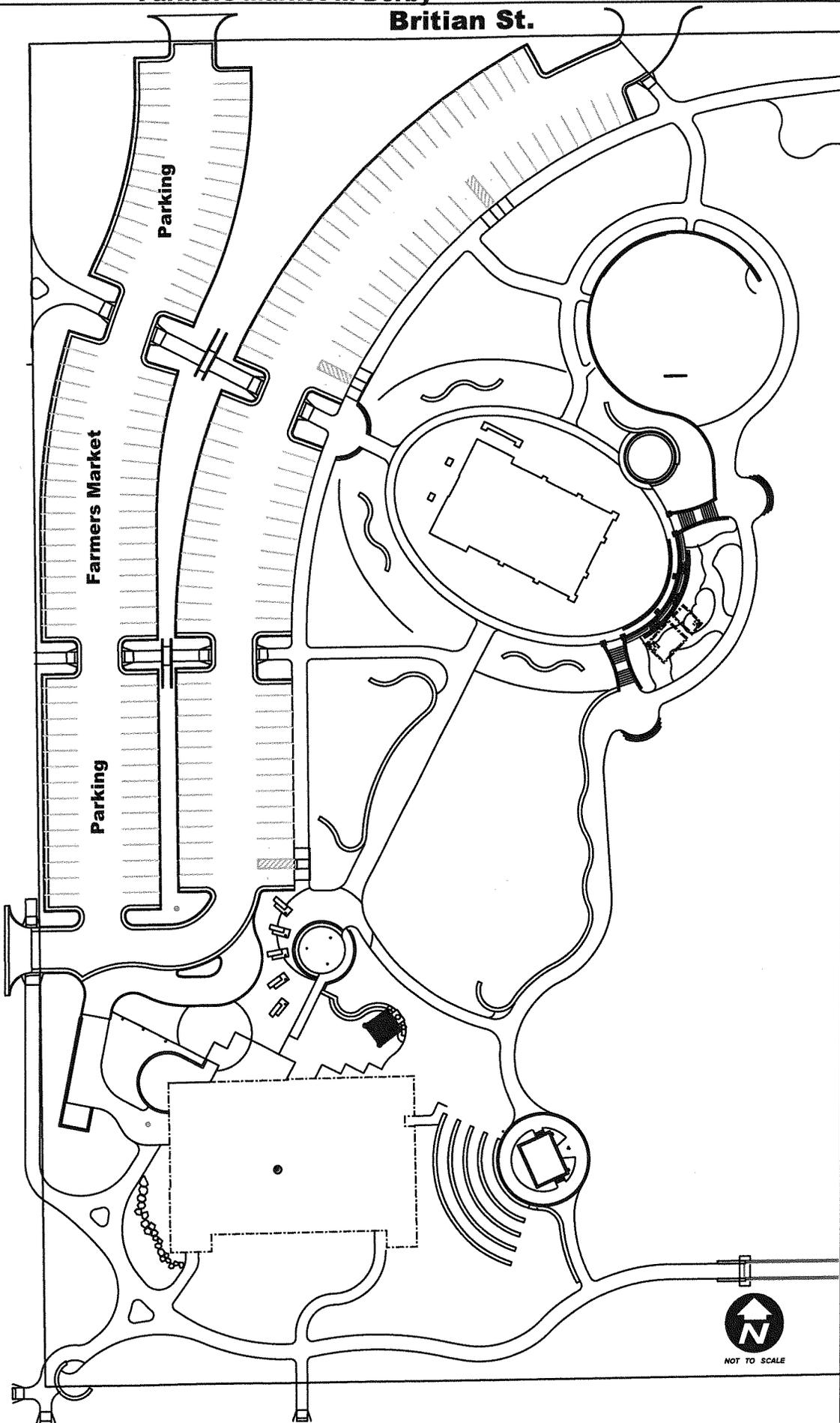
Farmers Market in Derby

Britian St.

Walnut St.

Derby St.

Madison Ave.



City Council Meeting

8.C.

Meeting Date: 01/10/2017

Submitted By: Dan Squires, City Engineer

Agenda Category: Consent

Subject:

Inspection Agreements for Nelson Dr. Realignment

Background:

- The Capital Improvement Plan (CIP) includes a project to re-align Nelson Dr. at Meadowlark Blvd.
 - A traffic engineering study found the accident rate at the intersection to be more than triple the average rate for intersections along the state highway system.
 - The study recommended re-alignment of the intersection to improve safety.
- The City secured federal and state safety funding administered by the Kansas Department of Transportation (KDOT) to help re-align the intersection.
- Due to the inclusion of state and federal funding, the project must be designed, constructed and inspected in accordance with KDOT requirements.

KDOT Force Account Agreement

- In conjunction with receiving grant funding, local jurisdictions are required to enter into an agreement with KDOT for the local jurisdiction to provide KDOT certified inspection during construction of the project. KDOT has transmitted a force account agreement for construction engineering services to the City for execution.
- The force account agreement totals \$59,589.59, which includes both City staff time and payment to Sedgwick County for certified inspection services.

Sedgwick County Intergovernmental Services Agreement

- Due to the limited number of KDOT-funded projects constructed by the City, our inspection staff is not KDOT-certified.
- On past projects requiring KDOT-certified inspection, the City has partnered with Sedgwick County to provide the required services. Both parties have been pleased with this arrangement.
- A proposal for the County to perform construction engineering services has been received by the City and approved by KDOT. The proposed agreement provides for reimbursement to the County for inspection services based on their actual staff hours and expenses used on the project, in an amount not to exceed \$49,558.08.
- In accordance with the project agreement, the City will be reimbursed for 90% of the inspection cost.

Financial/Sustainability Considerations:

- The estimated cost to the City for project inspection is \$5,958.96 (10% of \$59,589.59 = \$5,958.96).
- Recent award of the project resulted in approximately \$370,000 remaining available for inspection and other project costs.

Legal Considerations:

- The KDOT agreement for construction engineering services outlines the City's responsibilities for construction engineering on the Project.
- The Sedgwick County Intergovernmental Services Agreement details the respective responsibilities of the City and Sedgwick County for construction engineering on the Project.
- The City is authorized to enter into agreements necessary to obtain federal financial aid for construction of public improvements.
- K.S.A. 12-2908 authorizes municipalities to enter into contracts with one another for the performance of governmental services.

Recommend a Motion to:

- Approve and authorize execution of the proposed Force Account Construction Engineering Inspection Services Agreement with KDOT and the Intergovernmental Services Agreement with Sedgwick County for Construction Engineering Services.

Attachments

KDOT FA Agreement

SGCounty Inspection Agreement

**STATE'S
ORIGINAL**

Agreement No. 367-16

**CONTRACT FOR
FEDERAL-AID CONSTRUCTION ENGINEERING BY
CITY OF DERBY
(FORCE ACCOUNT AGREEMENT)**

CMS Contract No. _____

**PROJECT NO. 87 U-0164-01
CITY OF DERBY, KANSAS**

Parties to this Agreement for Federal-Aid Construction Engineering are the **City of Derby, Kansas**, (the "Local Public Authority" or "LPA") and the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary"), collectively referred to as the "Parties."

I. PURPOSE OF AGREEMENT

A. Pursuant to authority vested in K.S.A. 68-402b and K.S.A. 68-401 et seq. the Secretary authorizes the LPA to perform certain engineering and technical services for the above noted Project requiring inspection, sampling and testing of materials and workmanship as well as other technical services (Services); however, the Secretary's engineering and technical forces will be unable to perform all of the Services within the desired completion dates. The best alternative is to use a qualified firm to perform the Services needed through this Agreement.

B. The LPA represents that it has now available sufficient equipment of suitable type and the necessary employees with the education, training, and experience necessary to perform the Services this Agreement requires in an accurate and timely manner. The LPA's individual employees are licensed by the Kansas Board of Technical Professions as required by Kansas law. The LPA represents that all personnel utilized in performance of Services have appropriate training, qualifications and certifications to perform Services. The LPA further represents the use of the forces and equipment required for the performance of the Services will not interfere with other work which is necessary to be performed by such forces and equipment on other roads in the LPA.

II. DEFINITIONS

A. Construction Contract. A written agreement between the LPA and a Contractor, requiring the Contractor to construct or reconstruct a portion of the LPA's roadway system for the Project for which the LPA is providing Services. The Construction Contract includes the following Contract Documents, all of which constitute one instrument and are incorporated by reference into this Agreement: proposal, Exploratory Work Documents, addenda, amendments, contract form, contract bond, Standard Specifications, Special Provisions, Project Special Provisions, general plans, detailed plans, drawings, the notice to proceed, material test methods, material test reports, material certifications, Part V of the KDOT Construction Manual, change orders, payment vouchers, guarantees, warranties, and other agreements, if any, that become required for construction and completion of a Project.

B. Construction Project. The specified location where a Contractor shall perform construction together with all improvements the Contractor shall be constructing under a Construction Contract.

C. Contractor. The individual, partnership, corporation, joint venture, or other legal entity performing the Construction Contract.

- D. Documents. Written, printed papers and electronic files.
- E. Exploratory Work Documents. Documents developed by KDOT, local governments, or consultants to determine a Project's subsurface conditions, engineering requirements, or both. These may include geotechnical foundation investigation reports; soils reports; geology reports; hydraulic investigations; hydrological investigations; bridge reports; earth work computations; boring logs; surveys; rock investigations; soils investigations; environmental investigations; building investigations; bridge investigations; and other geological, geotechnical, or design information for a Project.
- F. FHWA. The Federal Highway Administration.
- G. KDOT. The Kansas Department of Transportation and its authorized employees.
- H. KDOT Area Engineer. For administrative control of this Agreement, Area Engineer means the KDOT Area Engineer, the KDOT Field Engineering Administrator, or Construction Manager, or other designee of the KDOT District Engineer.
- I. KDOT District Engineer. The KDOT District Engineer or designee who will perform KDOT's administrative functions for the Project
- J. LPA. The Local Public Authority (LPA) is City of Derby and its authorized employees.
- K. Manuals. The current version of the KDOT Documentation Manual, Construction Manual, Form Manual, CMS Procedures Manual, the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by the Secretary and all other current relevant documents adopted by KDOT.
- L. Notice to Proceed. A written notice from KDOT authorizing the LPA to begin performance of Services.
- M. Plans. Unless noted as "preliminary," the plan profiles, typical cross sections, and other detail sheets showing the location, character, dimensions, and details of a Contractor's work on a Project.
- N. Project. A portion of the LPA's roadway system to be constructed or reconstructed under a Construction Contract and for which the LPA will perform Services.
- O. Project Special Provisions. Documents that modify the Standard Specifications for a particular Project.
- P. Reports. Formal documents that detail or summarize information analyzed, generated or gathered for the Project or for a Construction Contract. Any document or information which is or should be produced by the exercise or practice of a technical profession, as defined in K.S.A. (2012 Supp.) 74-7003(a), is considered a Report. Any record of inspection, sampling or testing of materials or workmanship is a Report.
- Q. Services. The engineering and associated technical services necessary or required for the LPA's performance of this Agreement.

R. Special Provisions. Documents that modify the Standard Specifications, such as details not covered by KDOT's Standard Specifications, special fabrication or construction features.

S. Standard Specifications. The Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction (2007 Edition).

III. SECRETARY'S GENERAL RESPONSIBILITIES.

A. For the Services which the LPA performs under this Agreement, the Secretary will do the following.

1. Issue a written Notice to Proceed to LPA. The Secretary assumes no obligation to pay for Services the LPA performs prior to KDOT's issuance of a Notice to Proceed for such Services.
2. Furnish or make available to the LPA a sufficient supply of blank field diaries, logs, recordkeeping books, reporting forms and other documents KDOT requires the LPA to utilize in the performance of Services.
3. Furnish or make available all Manuals requested by the LPA if unavailable online.
4. Assign such KDOT personnel to the Project as the Secretary determines are needed.
5. Perform, or provide KDOT-furnished laboratory for, testing of materials when a laboratory is required.
6. Pay the LPA according to Article VI.

B. The Secretary has the authority to review, approve, reject, eliminate, or modify some or all of the Services. When reviewing the Services, issuing approvals/rejections, or taking any other action, the Secretary and the Secretary's representatives are not undertaking the LPA's responsibility for its Services. When reviewing the Services, issuing approvals/rejections, or taking any other action, the Secretary and the Secretary's representatives make no representations, no express warranties, and no implied warranties to any persons or entities regarding the Services.

IV. THE LPA'S GENERAL RESPONSIBILITIES.

A. For all Services performed under this Agreement, the LPA shall be responsible for the following obligations.

1. Furnish all labor materials, equipment, supplies, transportation, and incidentals necessary to perform the Services necessary and incidental to the accomplishment of the Project to the satisfaction of the Secretary, and as more detailed in Special Attachment – Specific Construction Provisions. The LPA represents that it is adequately staffed, properly qualified and suitably equipped to perform the Services in a timely manner. The LPA shall perform all Services: (a) in conformance with the terms of this Agreement; (b) in compliance with applicable laws, rules and regulations; and (c) with the degree of care, skill and diligence ordinarily exercised by professional engineering firms performing services of a similar nature.

2. Follow Quality Assurance Procedures in checking or testing equipment the LPA will use to perform its Services. The LPA shall conduct this checking or testing before use of the equipment on the Project.

3. Documentation and Deliverables.

a. Reports and other technical data collected, recorded or prepared by the LPA shall be maintained in form and substance, as well as in formats (electronic or otherwise), approved by KDOT.

b. LPA personnel shall perform Services and maintain Reports, records and other Documents in an accurate and timely fashion. LPA personnel shall record, submit and process such Reports, records and Documents on a current basis.

c. LPA personnel shall neither allow nor accept any inspection, sampling or testing of materials from any individual without first confirming such individual is currently qualified by KDOT to perform such inspection, sampling or testing. No inspection, sampling or testing will be attributed to any individual unless such individual actually performed such inspection, sampling or testing. No test results shall be accepted unless the test results are submitted in writing with the name of the technician and the technician ID number along with the expiration date of the technician's certification.

B. The LPA shall perform its inspection Services in conformity with all the terms, conditions, plans and specifications of the applicable Construction Contract.

C. The LPA shall have sole responsibility for the adequacy and accuracy of Reports, technical data and all other Services. The Secretary's performance under this Agreement is not intended to fulfill the LPA's obligations under this Agreement.

V. CONTRACT ADMINISTRATION AND AUTHORITY

A. GENERAL

1. The KDOT Area Engineer will designate a KDOT representative to monitor, oversee, and coordinate the LPA's Services. The LPA shall communicate and coordinate its Services with the KDOT representative. KDOT's monitoring, oversight, and coordination of the LPA's Services is not an undertaking of the LPA's duty to provide adequate and accurate Services but rather to fulfill the Secretary's obligations.

2. The LPA will provide progress reports to the KDOT representative.

3. The KDOT representative will make decisions regarding changes in the work, unacceptable work, unauthorized work, defective work, and the LPA's compliance with all federal, state, and local laws, regulations, and ordinances.

4. The KDOT District Engineer or KDOT Area Engineer may order the LPA to remove from the Project any personnel of the LPA who are unable to perform Services in a competent or timely manner.

5. LPA personnel shall communicate and coordinate the Services with the KDOT representative. Consultant personnel shall transmit all Reports, documentation and paperwork to the KDOT representative.

6. If the LPA furnishes all inspection, sampling and testing for a Project, the LPA shall furnish and designate a Project Manager or Project Engineer as well as other inspection personnel or technicians to inspect, sample and test materials and workmanship under the Construction Contract. The Project Manager/Project Engineer shall not act as the Contractor's superintendent or foreman. The Project Manager/Project Engineer shall not issue the instructions contrary to the Construction Contract. For such Project, the Project Manager/Project Engineer shall:

a. Supervise all LPA personnel and Services and shall act as a liaison among the Contractor, the LPA, and KDOT.

b. Have the responsibility and authority to reject unacceptable work, including unacceptable materials, until the KDOT representative resolves any questions or disputes.

c. Have the responsibility and authority to suspend all or part of the Contractor's work on a Project because of unsafe site conditions or unsafe work practices.

d. Provide guidance in interpreting Contract Documents and refer issues of interpretation to the KDOT representative.

e. The Project Manager/Project Engineer shall not alter or waive Construction Contract provisions. If a controversy arises, the Project Manager shall notify the KDOT representative without delay.

f. The Project Manager/Project Engineer shall transmit to the Contractor the orders and instructions of the KDOT representative. If the Project Manager/Project Engineer is unavailable and the matter needs prompt attention, the KDOT representative will transmit to the Contractor such orders or instructions and then notify the Project Manager/Project Engineer of the situation.

B. THIRD PARTIES

1. If the Project work requires contact or coordination with third parties, then KDOT will contact and, if necessary, coordinate activities with third parties, such as affected local, state and federal agencies, the general public, utilities, railroad companies, private consultants, businesses, and contractors.

2. The LPA shall cooperate fully with KDOT, the LPA, local agencies, state agencies, federal agencies, including the FHWA, the general public, utilities, railroad companies, private consultants, businesses, and contractors. The LPA recognizes that its actions or inactions may adversely impact or affect KDOT as well as other third parties, including but not limited to other consultants in plan development, any Contractor on the Construction Project, public utilities, private utilities, public landowners, private landowners, or others. The LPA shall do, or require to be done, all things reasonably necessary to: (a) avoid or mitigate unavoidable delays, costs, losses or damages which may arise out of, be caused by or attributed to the LPA's actions or inactions in performance of Services under this Agreement and (b) effectively coordinate with KDOT and third parties so as to enable KDOT to implement the Project in a timely and cost-effective manner.

C. CONSTRUCTION CONTRACT PERFORMANCE

1. At the Secretary's request, the LPA shall attend conferences or meetings that occur during performance of a Construction Contract, including but not limited to, pre-construction conferences held with potential bidders and other third parties interested in or involved in the Project. The Secretary may hold such conferences/meetings to discuss the LPA's Services, the Contractor's operations, third parties' concerns, or other relevant Project or Construction Contract issues. KDOT may hold a close-out conference with the LPA to evaluate the LPA's performance.
2. The LPA shall require its personnel that are KDOT-certified inspectors and technicians to be present on the Project any time the Contractor performs work requiring inspection, sampling or testing under the Construction Contract.

D. TERM AND TERMINATION OF AGREEMENT

1. Unless terminated sooner under Article V.D.2. or V.D.3., the term of this Agreement will commence upon the effective date described in Article VII.H.1 and expire upon notice of written release from the Secretary.
2. The Secretary may terminate this Agreement, in whole or in part, upon ten (10) days advance written notice delivered to the LPA.
 - a. If the Secretary terminates this Agreement in whole or in part, for the Secretary's own convenience, then the Secretary will pay the LPA the LPA's costs incurred before the termination date as Article VI provides.
 - b. If the Secretary terminates this Agreement, in whole or in part, because of the LPA's failure to comply with its contract obligations or because of the LPA's negligent acts, errors, or omissions, then the Secretary will pay the LPA the reasonable value of Services performed before the termination date.
3. The LPA may terminate this Agreement upon ten (10) days advance written notice to the Secretary and delivered to KDOT's Bureau of Local Projects.
4. The Secretary or the LPA may or may not claim the other Party breached the contract when exercising their right to terminate this Agreement. Termination, in any case, does not prevent the Secretary from recovering damages for the LPA's failure to comply with its obligations under this Agreement or for the LPA's negligent acts, errors, or omissions (see Article VII.F.) or prevent the LPA from seeking payment for additional Services under Article VI.B.
5. Regardless of which Party terminates this Agreement, the Secretary may require the LPA to complete some of the remaining Services. The LPA's obligations to perform shall not end until such Services are completed.

VI. PAYMENT

A. GENERAL

1. Subject to the upper limit of compensation (Article VI.A.3.), disallowed costs (Article VI.A.6.) applicable to the Project, and sums withheld for liquidated damages (Article VI.A.12.), the Secretary will pay the LPA the supported actual costs for the performed Services. Additionally, the Secretary will pay the LPA its other direct costs expended on the Project, such as contract labor, approved subcontractor/subconsultant costs as necessary, equipment costs, transportation costs, lodging costs, and meal expenses.

2. Subject to the upper limit of compensation (Article VI.A.3), the Secretary will pay for additional Services according to Article VI.B. The Secretary will not pay the LPA for any costs the LPA incurred because of the LPA's negligent acts, errors, or omissions or because of the LPA's failure to comply with its obligations under this Agreement.

3. Initially, the Parties shall identify the upper limit of compensation on the Special Attachment-Special Construction Provisions. The Parties may thereafter adjust the upper limit of compensation through a revised Special Attachment- Special Construction Provisions, CMS Change Order or Supplemental Agreement. The LPA shall notify the KDOT District Engineer before the LPA's Services exceed the upper limit of compensation so the Parties may consider an adjustment. The Secretary has no obligation to pay costs that exceed the upper limit of compensation unless and until any adjustment thereof is agreed in writing between the Parties.

4. To initiate payment for Services, the LPA shall submit to the KDOT District Engineer an itemized billing in the form approved by the KDOT District Engineer. The LPA shall not submit a billing more frequently than once a month or for less than \$500.00 during the progress of the work, for partial payment on account for the approved work completed by the LPA to date. For each billing cycle the LPA shall:

- a. Submit payroll documentation identifying all tasks and employees that worked on such tasks for the Project during that billing period, all hours each of these employees worked, the rate of pay for each of these employees, and all monies paid to each of these employees; and
- b. Itemize the direct expenses and provide adequate supporting documentation therefor.

In cases where the LPA submits billings which include costs incurred by a subconsultant, the same requirements of subparagraphs a. through b. above will apply.

5. The Secretary will pay for the Services within 30 days after receiving, reviewing, and generally approving the LPA's itemized billing and accompanying documentation. This approval does not prevent the Secretary from adjusting a previous payment(s) for disallowed costs (Article VI.A.6.) discovered after the Secretary has made that payment.

6. The LPA shall incur and invoice its costs in conformity with generally accepted accounting principles and the cost principles established in the Federal-Aid Policy Guide and the Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). The Secretary will not pay for disallowed costs. Disallowed costs include costs the Secretary determines are

unreasonable, not actually incurred, caused by the LPA's failure to comply with its obligations under this Agreement, caused by the LPA's negligent acts, errors, or omissions, or otherwise unallowable. The LPA shall reimburse the Secretary if the Secretary previously paid any disallowed costs.

7. For Services performed, accumulated partial payments shall not exceed ninety-five percent (95%) of the federal-aid share of the upper limit of compensation.

8. The LPA shall submit its final invoice (clearly marked and designated as "final") for final payment following completion of Services, but no later than one hundred eighty (180) days from completion of such Services. The LPA shall clearly designate and label such invoice as "final" so as to enable KDOT to proceed to close out the Project in accordance with its own internal procedures.

9. All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as the "Supercircular") Further, the City agrees to the following provisions:

a. Audit. It is the policy of the Secretary to make any final payments to the City for services related to the Project in a timely manner. The Audit Standards set forth in 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," and specifically the requirements in Subpart F, 2 C.F.R. §200.500 *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. §200.500 *et seq.*

b. Audit Report. The Secretary may pay any final amount due for the authorized work performed based upon the City's most recent Single or Program Specific Audit Report "(Audit Report)" available and a desk review of the claim by the Contract Audit Section of KDOT's Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single or program specific audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree as the Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Audit Report for items which are declared as not eligible for reimbursement. The City agrees to refund payment made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit.

c. Agency Audit. If the City is not subject to the Audit Standards set forth in 2 C.F.R. Part 200, the Secretary and/or the FHWA may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the FHWA for an audit, the City will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement. If any such audit reveals payments have been made with federal funds by the City for items considered Non-Participating Costs, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

10. If it has not already done so, the LPA shall obtain a Data Universal Numbering System (DUNS) number, which may be obtained from Dun and Bradstreet, Inc. (D & B) by telephone (currently 866-705-5711) or the Internet (currently <http://fedgov.dnb.com/webform>).

11. The LPA agrees it shall maintain current registrations in the System for Award Management (<http://www.sam.gov>) at all times during which it has active federal awards.

12. Upon receiving the final invoice and verifying the LPA completed its Services, the Secretary will pay the LPA the next-to final payment for that portion of the eligible remaining five percent (5%) of the upper limit (up to the maximum of the federal-aid share and as allowed by provision of state law), withholding the retainage specified in Article VI.A.13. The LPA will not have completed its Services until the LPA has completed and returned all records, Reports, and other such documents this Agreement requires. If the LPA fails to complete and return all such documents to the KDOT District Engineer, then the LPA shall owe the Secretary liquidated damages of five hundred dollars (\$500.00) which shall be withheld from final payment.

13. Once the LPA has earned ninety-five percent (95%) of the federal-aid share of the upper limit of compensation, the Secretary will withhold as retainage one percent (1%) of the upper limit or \$500.00, whichever is greater. If partial payments never reach ninety-five percent (95%) of the federal-aid share of the upper limit, the LPA may request payment one hundred percent (100%) of the federal-aid share minus a retainage equal to one percent (1%) of the upper limit or \$500, whichever is greater. The Secretary will hold the retainage until the Secretary or the Secretary's authorized representative has performed a final audit of the LPA's Services. The Secretary will make final payment, if any, within ninety (90) days after KDOT completes the final audit. If the LPA owes the Secretary no money after audit, the final payment will equal the retainage. However, if the final audit reveals the LPA owes the Secretary money, the Secretary will apply the retainage to the amount owed before paying the LPA any remaining funds. The amount owed to the Secretary may include liquidated damages under Article VI.A.12, overpayments, or other sums. If the retainage is insufficient to pay the amount owed, then the Secretary will issue a notice of deficiency, demanding that the LPA pay the balance owed. The LPA then shall pay the balance owed promptly after receiving notice of the deficiency. The Secretary will consider no claim for additional compensation submitted after KDOT has completed the final audit.

B. CHANGE IN SERVICES

1. The KDOT Area Engineer may change the LPA's Services by increasing, decreasing, or otherwise modifying the Services this Agreement requires.

2. The LPA may request payment for increased or modified Services as "extra Services" by written request to the KDOT Area Engineer. No additional payment will be made to the extent "extra services" were caused by the LPA's breach of its contract obligations or the LPA's negligent acts, errors, or omissions. If the Secretary determines the "extra Services" are reasonable and necessary, then the Secretary may authorize payment for these "extra Services" and increase the upper limit of compensation if necessary to compensate for the "extra Services." Such increases may include adding structures, increasing the Construction Contract scope, increasing Project termini, or changing the duration of Services, among others.

3. If the KDOT Area Engineer decreases the Services or decreases the expected duration of Services, then the LPA shall have no claim for additional compensation. Such decreases may include eliminating structures, decreasing the Construction Project scope, decreasing Construction Project termini, or changing the duration of Services, among others.

4. For changes in Services, the LPA will submit in writing its opinion and justification for extra Services and the estimated amount of additional compensation and submit to the KDOT representative.
5. If the KDOT Area Engineer denies additional compensation for “extra services”, in whole or in part, the LPA may appeal this denial to the Deputy Secretary of Transportation/State Transportation Engineer. The State Transportation Engineer’s decision represents KDOT final agency action under the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.*

VII. MISCELLANEOUS PROVISIONS

A. OWNERSHIP OF DOCUMENTS

1. Upon completion or termination of Services, the LPA shall furnish to the KDOT Area Engineer all Documents KDOT provided to the LPA for such Services.
2. Upon completion or termination of Services, the LPA shall furnish to the KDOT Area Engineer all original Documents and Reports the LPA compiled and prepared in performing such Services.
3. Any Documents, procedures, specifications, engineering calculations, information, Reports or any other work products developed by the LPA as deliverables to KDOT as part of the Services performed and paid for under this Agreement shall become the property of KDOT, but the LPA shall have the right to retain copies thereof for its own internal recordkeeping and for the purposes of performing Services for a Project.
4. Upon completion or termination of Services and at the Secretary’s request, the LPA shall furnish to the KDOT Area Engineer copies of all correspondence, memoranda, instructions, receipts, invoices, e-mails, and any other Documents pertaining to such Services and the Project. These Documents are KDOT’s property.
5. Any or all Services performed under this Agreement may result in the LPA using Documents (such as reports, surveys, schedules, lists, or data) the Secretary’s authorized representatives prepared, compiled, or collected that are use restricted pursuant to 23 U.S.C. § 409. Such Documents are watermarked “Use Restricted 23 U.S.C. § 409,” providing the Secretary with an evidentiary privilege that only counsel for KDOT may assert in litigation against KDOT. The LPA shall use these watermarked Documents only to perform Services on the Project. The LPA shall not remove or otherwise damage the 23 U.S.C. § 409 watermark. The requirements of this paragraph shall be included by the LPA in its subcontract agreements, if any, for the performance of any Services.
6. Documents collected or prepared by the LPA in the performance of this Agreement may be used without restriction by the Secretary for any public purpose. Any such use shall be without compensation to the LPA.

B. ACCESS TO RECORDS; AUDITS

1. The LPA shall keep all Project Documents arising out of or related to performance of Services for a five-year retention period beginning with the LPA’s final payment date. The final payment date is the voucher date on the Secretary’s last payment to the LPA. This final payment occurs after the LPA

submits its request for final payment and KDOT has completed the final audit. The LPA shall make all Documents available at the LPA's principal office.

2. The Secretary, FHWA, or both, may inspect and review all Documents pertaining to the LPA's Services during the LPA's performance and the five-year retention period.

3. The LPA shall maintain all cost documentation according to generally accepted accounting principles and the cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*).

4. Within five (5) years after the LPA has submitted its invoice for final payment on Work Estimate for a Project, having completed its Services, the Secretary or the Secretary's authorized representatives may perform a final audit of the LPA's costs conducted according to generally accepted governmental auditing standards and in compliance with cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). Without limitation, the auditors may determine whether costs incurred were actual and necessary, reasonable, allowable, and in compliance with regulations and whether the compensation did not exceed the applicable upper limit of compensation. The auditors may review all subconsultant records and costs, if any, as well. The LPA shall reimburse the Secretary for overpayments.

5. The LPA shall include the provisions of Articles VII.B.1—B.4. above in all subconsultant agreements, if any.

C. AGREEMENT ITEMS

1. This Agreement includes the items referenced in Article II.A.

2. The Exhibits and Attachments identified below are essential parts of and incorporated into this Agreement. The LPA shall complete and sign where indicated on the forms contained therein. The Exhibits and Attachments are:

Special Attachment No. 1, Specific Construction Provisions

Special Attachment No. 2, The Civil Rights Act of 1964

Special Attachment No. 3, Contractual Provisions Attachment (Form DA-146a)

Special Attachment No. 4, Listing of KDOT Certified Inspectors

(Updated upon request or at least annually)

Special Attachment No. 5, Estimate of Engineering Fee

Special Attachment No. 6, Certification -- Federal Funds -- Lobbying

3. No Party may alter or amend this Agreement except by a revised Work Estimate, CMS Change Order or Supplemental Agreement evidencing written agreement between the Parties for such alteration or amendment.

D. LEGAL RELATIONS

1. The LPA shall observe and comply with all applicable federal, state, and local laws, ordinances and regulations.

2. This Agreement binds the Parties and the Parties' successors and assigns. The LPA shall not assign this Agreement without the prior written permission of the Secretary. Notwithstanding any other provision of this Agreement, the LPA shall not subcontract any part of the Services without prior written approval by the Secretary.

3. This Agreement creates no third party beneficiaries.

4. In the event any disagreement, dispute or claim of the LPA arising out of or in connection with the LPA's performance of this Agreement, the LPA shall make written request to the KDOT District Engineer to review the matter. If dissatisfied with the review and decision of the KDOT District Engineer, then the LPA may appeal, in writing, to the Deputy Secretary of Transportation/State Transportation Engineer within fifteen (15) calendar days of receipt of the decision of the KDOT District Engineer. The State Transportation Engineer's decision represents KDOT final agency action under the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.*

5. Kansas law governs this Agreement.

E. WORKERS' COMPENSATION

The LPA will elect to come within the provisions of the Workers' Compensation Act (K.S.A. 44-505) for all Services performed for the Project and will provide such workers' compensation insurance as is required by the Commissioner of Workers' Compensation..

F. ERRORS AND OMISSIONS; INDEMNIFICATION; INSURANCE

1. The LPA shall promptly correct, without additional compensation, the LPA's failure to perform its obligations under this Agreement. The LPA shall promptly correct its negligent acts, errors, or omissions without additional compensation. If the Services affect a third party, then the LPA shall perform corrections in a manner that minimizes delay to the third party and other damages.

2. The LPA shall pay for or reimburse the Secretary for damages and costs the Secretary has incurred or will incur, because the LPA failed to comply with its obligations under this Agreement and LPA's negligent acts, errors, or omissions arising out of or in connection with the LPA's performance of this Agreement. These damages include personal injury to KDOT employees, damage to KDOT property, and economic loss whether the economic loss arises in contract, tort, or equity. Economic loss encompasses direct and consequential damages Kansas law permits the Secretary to recover, including monies the Secretary pays or owes to construction contractors, monies the Secretary pays or owes to consulting firms, delay damages, or other damages arising from the LPA's failure to comply with its obligations. This Agreement does not authorize third parties to seek recovery as third party beneficiaries of this Agreement or in any other capacity.

3. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the LPA will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all claims, suits, damages (whether property damages, personal injury damages, or economic damages), and costs (reasonable attorney's fees and defense costs) resulting from the LPA's failure to comply with its obligations under this Agreement, resulting from the LPA's negligent acts, errors, or omissions in performing its Services, or all of the above. The

LPA shall have no obligation to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

G. CONFLICT OF INTEREST

- 1. The LPA warrants it has no public or private interest, and shall not acquire (directly or indirectly) any such interest, which would conflict with the Services performed under this Agreement.
- 2. The LPA shall not hire persons in KDOT's employment to provide Services under this Agreement without the Secretary's prior written permission.

H. EFFECTIVE DATE; REPRESENTATION OF AUTHORITY

- 1. This Agreement will become effective on the date when both Parties have signed the Agreement. It is intended that the LPA will sign first, and the Secretary (or the Secretary's designated representative) will sign last; therefore the effective date of the Agreement will be the latter date.
- 2. In signing this Agreement, the Parties and the individual person signing on behalf of such Party represent that the person signing is duly authorized, having the authority and capacity to execute and legally bind the respective entity to this Agreement.

NOW THEREFORE, the Parties cause their duly authorized representatives to enter into this Agreement.

RECOMMEND FOR APPROVAL:

CITY OF DERBY, KANSAS

DERBY CITY ENGINEER

ATTEST:

MAYOR

DERBY CITY CLERK (Date)

(SEAL)

MEMBER

Kansas Department of Transportation
Secretary of Transportation

By: _____
Catherine M. Patrick, P.E. (Date)
State Transportation Engineer

INDEX OF ATTACHMENTS

Special Attachment No. 1	Specific Construction Provisions
Special Attachment No. 2	Civil Rights Act of 1964 Rehabilitation Act of 1973 Americans With Disabilities Act of 1990 Age Discrimination Act of 1975 Executive Order 12898 of 1994
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Special Attachment No. 5	Listing of KDOT Certified Inspectors

SPECIFIC CONSTRUCTION PROVISIONS

I. SCOPE OF SERVICES

A. SERVICES TO BE PERFORMED BY THE CONSULTANT

The LPA agrees to:

- (1) Attend all conferences designated by KDOT, or required under the terms of the Agreement.
- (2) Designate a Project Engineer/Project Manager who shall report and transmit Project activity and documents to KDOT's Construction Office.
- (3) Assign a sufficient number of KDOT Certified Inspector(s) of the appropriate classifications to the Project to perform the services required under the Agreement in a timely manner to avoid delay to the Contractor.
- (4) Become familiar with the standard practices of KDOT, the Contract Documents (Specifications, Construction Contract Proposal, Special Provisions and Plans), and the Contractor's proposed schedule of operations prior to beginning field work under the Agreement.
- (5) Perform the LPA's field operations in accordance with accepted safety practices.
- (6) Furnish all equipment required to accomplish the LPA's work and to check or test it prior to use on the Project.
- (7) Provide for LPA personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under the Agreement.
- (8) Undertake the following:

Transmit orders from KDOT to the Contractor and provide guidance in the proper interpretation of the Specifications and Plans.

Perform or provide construction surveys, staking, and measurements needed by the Contractor (unless contractor construction staking is to be performed as a bid item by the Contractor) and perform measurements and surveys that are involved in the determination of final pay quantities.

Inspect all phases of construction operations to determine the Contractor's compliance with Contract Documents and to reject such work and materials which do not comply with Contract Documents until any

questions at issue can be referred to and be decided by the KDOT Field Engineer.

Take field samples and/or test materials to be incorporated in the work, and reject those not meeting the provisions of the Contract Documents until any questions at issue can be referred to and be decided by the Field Engineer.

Make certain that test report records or certificates of compliance for materials tested off the Project site and required, prior to the incorporation in the work, have been received.

Keep such daily diaries, logs and records as are needed for a complete record of the Contractor's progress.

Measure and compute all materials incorporated in the work and items of work completed, and maintain an item account record.

Provide measurement and computation of pay items.

Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required by KDOT and as are applicable to the Project, which may include:

- a. Progress Reports
- b. Weekly statement of working days
- c. Notice of change in construction status
- d. Report of field inspection of material
- e. Test report record
- f. Contractor pay estimates
- g. Pile driving data
- h. Piling record
- i. Final certification of materials
- j. Explanation of quantity variation
- k. State of contract time
- l. Other records and reports as required by the Project

Review, or assist in reviewing and preparing of documents, all Contractor submittals of records and reports required by KDOT and as are applicable to the Project to assure the Project is constructed in accordance with Federal and State requirements and which may include:

- a. Requests for partial and final payment
- b. Other reports and records as required by the individual Project

- (9) Prepare and submit, if desired by the LPA, partial payment invoices for services rendered by the LPA, but not to exceed one submittal per month.
- (10) Collect, properly label or identify, and deliver to KDOT all original diaries, logs, notebooks, accounts, records, reports and other documents prepared by the LPA in the performance of the Agreement, upon completion or termination of the Agreement.
- (11) Return, upon completion or termination of the Agreement, all Manuals, Contract Documents, guides, written instructions, unused forms and record keeping books, and other documents and materials furnished by KDOT. The LPA shall be responsible for replacing lost documents or materials at the price determined by KDOT.
- (12) Prepare and submit a certification of Project completion.
- (13) Prepare and submit a final payment voucher for services rendered by the LPA.
- (14) Prepare and deliver (when Project is completed) one copy of major changes to the plans (by letter) to KDOT. The letter should contain such items as the following:
 - a. Earthwork and Culverts
 1. A revised list of benchmarks
 2. Location of government benchmarks
 3. Major changes in alignment
 4. Major changes in grade line
 5. Established references on cornerstones
 6. Major changes in location of drainage structures
 7. Major changes in flow-line of drainage structures
 8. Drainage structures added or deleted
 9. Any change of access control
 - b. Bridges
 1. Changes in stationing
 2. Changes in type, size or elevation of footings
 3. Changes in grade line

B. SERVICES TO BE PROVIDED BY THE SECRETARY

- (1) The Secretary agrees to:
 - a. Make available to the LPA sufficient copies of the Contract Documents, shop drawings, plan revisions, written instructions and other information and data considered by KDOT to be necessary to

enable the LPA to perform the work under this Agreement, for the Project to the same standards required of KDOT's personnel.

- b. Provide for the use of the LPA a sufficient supply of the blank diaries, logs, record keeping books and reporting forms considered by KDOT to be necessary for the LPA to perform the services under this Agreement to the same standards required of KDOT'S personnel.
 - c. Provide space in the field office and field laboratory furnished by the Contractor under the terms of the Construction Contract Proposal, for the occupancy and use of the LPA until completion of the construction work.
 - d. Perform or provide for laboratory testing of materials requiring off-site testing facilities, and obtain test reports or certificates of compliance hereof.
 - e. Perform all necessary weld inspection when there is welding for bridge beam connections and splices, and for sign supports. This includes all cross frames, diaphragm connections, and stud welding.
 - f. Designate a Construction Engineer/Construction Coordinator in the Construction Office with the duties and responsibilities set forth in Section IC of the General Construction Provisions of the Agreement.
 - g. Provide, through the Field Engineer and the District Staff, such assistance and guidance to the LPA as may be reasonably necessary to perform and complete the Agreement in conformance with standard construction engineering practices of KDOT.
- (2) KDOT reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

II. PROSECUTION AND PROGRESS

- A. It is anticipated work under the construction contract will start in 2016, and be completed by 2017.
- B. The LPA shall complete all services to be rendered under this Agreement no later than two months after completion of Project construction. Failure to comply may result in disqualification of the LPA's Project Engineer/Project Manager or Chief Inspector until proper documentation is submitted and accepted.

III. BASIS OF PAYMENT

- A. Compensation of services provided by the LPA under the terms of the Agreement shall be the incurred and reimbursable actual costs to the LPA not to exceed the Agreement Estimate and as allowed by State Law and the Federal Share which will be limited to the applicable Federal-aid cost sharing formulae and availability of Federal-aid funds for engineering services. Federal-aid participation for this project is 90%.
- B. Reimbursement for costs will be limited to those which are allowable under the Code of Federal Regulations (CFR) Title 23 and Title 48, Chapter 1 and the Federal-aid Highway Policy Guide, Volume 1, Chapter 7, Section 2, except to the extent the provisions of that subpart are clearly inappropriate to the Agreement.
- C. The estimated hourly equipment and labor costs and Project estimates are included as special attachments.
- (1) Labor and fringe benefits will be charged at the LPA's actual cost. If an employee is paid monthly, his hourly rate will be computed by dividing his salary by the hours per month that he works.
 - (2) Equipment rental rates shall be KDOT's actual operating costs (excluding depreciation) of equipment used for the Project.
 - (3) Materials will be estimated at the price of the low quotes (when necessary) and paid for at invoice prices. (Copy of invoices to be furnished to the Secretary's Construction Engineer/Construction Coordinator).
- D. After completion of the Project, the LPA will furnish the Construction Engineer/Construction Coordinator with seven (7) certified itemized statements of the actual cost of construction engineering force account work detailed as follows:
- Labor: The total hours, rates and extension for each classification.
Equipment: The total hours, KDOT's rates and extension for each unit of machinery and equipment.
Materials: The quantities of materials, prices and extensions.
Transportation: Cost of delivery of materials, if any.
Miscellaneous: Cost of property damage, liability and worker's compensation insurance premiums; unemployment insurance contributions, social security, health and retirement payments, and/or other eligible Project related costs. Administrative costs are not eligible for reimbursement.

The statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used for this Project are not specifically purchased for such work, but are taken from the LPA's stock,

inventory records must support quantities and process for materials from stock used for this Project.

The Secretary shall reserve the right to approve or disapprove the LPA's submitted claims for equipment actual operating cost.

- E. The Agreement Estimate of **\$59,589.59** has been agreed upon as the upper limit for compensation. It is intended as nearly as can be estimated to cover only actual costs and was agreed upon in order that the Secretary, as agent for said LPA, might permit the LPA to do such work as set forth in the Contract Documents, provided, however that if extra work has been authorized it will be reimbursed as per terms of the supplemental agreement(s).

IV. MISCELLANEOUS PROVISIONS

A. AUTHORIZED REPRESENTATIVES

- (1) The Field Engineer for KDOT will be Mr. Hideki Fields, P.E., whose work address is 3200 East 45th Street, N, Wichita, Kansas 67220 and work telephone is 316-744-1271.
- (2) The Project Engineer/Project Manager for the LPA will be Mr. Ky Louanghaksaphone, P.E., Certification Number N/A (expiration date is N/A), whose work address is 611 North Mulberry, Suite 300, Derby, Kansas 67037 and work telephone is 316-788-6632.
- (3) The Chief Inspector for the LPA will be Mr. Randy Downs, Certification Number 5 (expiration date is 1/1/2017), whose work address is 1144 South Seneca, Wichita, Kansas 67213 and work telephone is 316-210-4756.

B. ACCESS TO RECORDS

- (1) All documents and evidence pertaining to costs incurred under this Agreement will be available for inspection during normal business hours in the LPA's office, for a period of three (3) years following final Agreement payment.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) **Information and Reports:** The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) **Employment:** The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) **Disadvantaged Business Obligation**
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) **Executive Order 12898**
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Project No. 87 U-0164-01
City of Derby
Sedgwick County

Supporting Data Sheet
for
ESTIMATE OF ENGINEERING FEE

A. Direct Payroll

Contract Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est. Hrs.</u>	<u>Rate</u>	<u>Extension</u>
1. City Inspection and Management	City Engineer	<u>15 @</u>	<u>\$49.54 =</u>	\$743.10
	Proj. Engineer	<u>75 @</u>	<u>\$31.52</u>	\$2,364.00
	Inspector	<u>215 @</u>	<u>\$20.11 =</u>	\$4,323.65
Subtotal				<u>\$7,430.75</u>
2. On-site Testing	Chief Inspector	<u>0 @</u>	<u>=</u>	\$0.00
	Inspector	<u>0 @</u>	<u>=</u>	\$0.00
Subtotal				<u>\$0.00</u>
3. Surveying	Surveyor	<u>0 @</u>	<u>=</u>	\$0.00
	Techn(s)	<u>0 @</u>	<u>=</u>	\$0.00
Subtotal				<u>\$0.00</u>
4. Cleanup	Inspector	<u>@</u>	<u>=</u>	\$0.00
Subtotal				<u>\$0.00</u>
5. Final Paper Preparation	Constr. Engineer	<u>@</u>	<u>=</u>	\$0.00
	Chief Inspector	<u>@</u>	<u>=</u>	\$0.00
	Inspector	<u>@</u>	<u>=</u>	\$0.00
Subtotal				<u>\$0.00</u>
Total Direct Payroll Costs				\$7,430.75

Project No. 87 U-0164-01
 City of Derby
Sedgwick County

Summary Total Direct Payroll Costs

	Hours	Rate	Extension
City Engineer	<u>15 @</u>	<u>\$49.54 =</u>	\$743.10
City Proj. Engineer	<u>75 @</u>	<u>\$31.52 =</u>	\$2,364.00
City Inspector	<u>215 @</u>	<u>\$20.11 =</u>	\$4,323.65
Constr. Engineer	<u>0 @</u>	<u>\$0.00 =</u>	\$0.00
Chief Inspector	<u>0 @</u>	<u>\$0.00 =</u>	\$0.00
Inspector	<u>0 @</u>	<u>\$0.00 =</u>	\$0.00
Surveyor	<u>0 @</u>	<u>\$0.00 =</u>	\$0.00
Techn(s)	<u>0 @</u>	<u>\$0.00 =</u>	\$0.00
 Total Direct Payroll Costs			 \$7,430.75
 B. Salary Related Overhead <u>35 %</u>			 \$2,600.76
 C. Total Payroll plus Overhead			 \$10,031.51
 D. Direct Expenses (Travel, Postage, Misc.)			
Mileage	miles		
Full Size SUV	<u>0 @</u>	<u> </u>	\$0.00
Pickup	<u>0 @</u>	<u> </u>	\$0.00
Postage & Telephone	<u> </u> @ <u> </u>		\$0.00
Testing Laboratory or Consulting Firm to Assist Sedgwick County Public Works (See Attached Breakdown)	<u>1 @</u>	<u>\$49,558.08 =</u>	\$49,558.08
Equipment Rental	<u> </u> @ <u> </u>		\$0.00
 Total Other Direct Expenses			 <u>\$49,558.08</u>
 TOTAL FORCE ACCOUNT ESTIMATE			 <u>\$59,589.59</u>

Project No. 87 U-0164-01
 City of Derby
Sedgwick County

Supporting Data Sheet
 for
 ESTIMATE OF ENGINEERING FEE

A. Direct Payroll

Contract Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est. Hrs.</u>	<u>Rate</u>	<u>Extension</u>
1. Field Inspection daily contract documents	Constr. Engineer	<u>15 @</u>	<u>\$35.50 =</u>	\$532.50
	Chief Inspector	<u>38</u>	<u>\$31.00</u>	\$1,178.00
	Inspector	<u>750 @</u>	<u>\$28.00 =</u>	\$21,000.00
	Subtotal			<u>\$22,710.50</u>
2. On-site Testing	Chief Inspector	<u>8 @</u>	<u>\$31.00 =</u>	\$248.00
	Inspector	<u>150 @</u>	<u>\$28.00 =</u>	\$4,200.00
	Subtotal			<u>\$4,448.00</u>
3. Surveying	Surveyor	<u>8 @</u>	<u>\$28.00 =</u>	\$224.00
	Techn(s)	<u>8 @</u>	<u>\$18.50 =</u>	\$148.00
	Subtotal			<u>\$372.00</u>
4. Cleanup	Inspector	<u>200 @</u>	<u>\$28.00 =</u>	<u>\$5,600.00</u>
5. Final Paper Preparation	Constr. Engineer	<u>2 @</u>	<u>\$35.50 =</u>	\$71.00
	Chief Inspector	<u>8</u>	<u>\$31.00</u>	\$248.00
	Inspector	<u>75 @</u>	<u>\$28.00 =</u>	\$2,100.00
	Subtotal			<u>\$2,419.00</u>
Total Direct Payroll Costs				\$35,549.50

Project No. 87 U-0164-01
City of Derby
Sedgwick County

Summary Total Direct Payroll Costs

	Hours	Rate	Extension
Constr. Engineer	<u>17 @</u>	<u>\$35.50 =</u>	\$603.50
Chief Inspector	<u>54</u>	<u>\$31.00</u>	\$1,674.00
Inspector	<u>1175</u>	<u>\$28.00</u>	\$32,900.00
Surveyor	<u>8</u>	<u>\$28.00</u>	\$224.00
Techn(s)	<u>8 @</u>	<u>\$18.50 =</u>	\$148.00
 Total Direct Payroll Costs			 \$35,549.50
 B. Salary Related Overhead <u>35 %</u>			 \$12,442.33
 C. Total Payroll plus Overhead			 \$47,991.83
 D. Direct Expenses (Travel, Postage, Misc.)			
Mileage	miles	\$0.100/mile	
Full Size SUV	<u>175 @</u>	<u>\$0.47</u>	\$82.25
Pickup	<u>2800 @</u>	<u>\$0.53</u>	\$1,484.00
Postage & Telephone	<u> @</u>	<u> </u>	\$0.00
Testing Laboratory or Consulting Firm to Assist (Name of Lab or Firm)	<u> @</u>	<u> </u>	\$0.00
Equipment Rental	<u> @</u>	<u> </u>	\$0.00
 Total Other Direct Expenses			 <u>\$1,566.25</u>
 TOTAL FORCE ACCOUNT ESTIMATE			 <u>\$49,558.08</u>

INTERGOVERNMENTAL SERVICES AGREEMENT

THIS INTERGOVERNMENTAL SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2017, by and between the Board of County Commissioners of Sedgwick County, Kansas, hereinafter referred to as “County” and the City of Derby, Kansas, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, County and City are authorized to enter into an agreement for governmental services pursuant to K.S.A. 12-2908, as amended; and

WHEREAS, City desires to construct improvements to enhance safety by re-aligning Nelson Dr. at the intersection with Meadowlark Blvd. in the City of Derby; hereinafter referred to as “Nelson Dr. and Meadowlark Blvd. Intersection Improvements”; and

WHEREAS, City has entered into an agreement with the Kansas Department of Transportation titled “CONTRACT FOR FEDERAL-AID ROAD CONSTRUCTION ENGINEERING BY CITY OF DERBY (FORCE ACCOUNT AGREEMENT)” hereinafter referred to as “Force Account Agreement”; and

WHEREAS, City desires that County perform construction engineering services during the construction of the said improvements; and

NOW, THEREFORE, for and in consideration of the parties’ mutual promises and covenants, it is agreed as follows:

1. The purpose of this Agreement is for the County to provide construction engineering services to the City within the corporate limits of the City.
2. The City agrees to reimburse County for all costs of construction engineering for, as outlined in Attachment No. 4 of the Force Account Agreement and at the rates indicated within Attachment No. 4 of the Force Account Agreement. The parties agree that the total compensation that the City provides to the County under this Agreement shall not exceed \$49,558.08.
3. The City and County agree that performance of this work shall be in accordance with the terms of the Force Account Agreement, including Special Attachments 1 thru 5, which is incorporated herein as Attachment A.
4. The scope of services to be performed by the County is described in Special Attachment No. 1 to the Force Account Agreement.
5. County shall bill City monthly for the costs incurred, including salary and overhead, as further described by the budget set out in Special Attachment No. 4 of the Force Account Agreement.

6. To the extent permitted by law, City does hereby release, discharge, indemnify and hold harmless the County, its agents, servants and employees from any and all liability and damages of whatsoever nature and arising from whatsoever cause, relating to or arising from errors and omissions resulting from the design of the project or from errors and omissions resulting from construction means and methods used in the construction of the project; provided, that such release shall not extend to acts or omissions of the County or its agents, servants or employees in the performance of duties pursuant to this Agreement. This release and indemnity shall survive termination of this Agreement.
7. This Agreement shall terminate upon the later of completion and final acceptance of the Improvements and completion of all tasks described in Section 4 hereof.

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

**BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS**

THE CITY OF DERBY, KANSAS

JAMES M. HOWELL
Chairman, Fifth District

RANDY WHITE
Mayor

ATTEST:

ATTEST:

KELLY B. ARNOLD
County Clerk

KAREN FRIEND
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM

JUSTIN M. WAGGONER,
Assistant County Counselor

JACQUELINE R. BUTLER
City Attorney

ATTACHMENT A

CONTRACT FOR FEDERAL-AID ROAD CONSTRUCTION ENGINEERING
BY CITY OF DERBY (FORCE ACCOUNT AGREEMENT)

City Council Meeting

8.D.

Meeting Date: 01/10/2017

Submitted By: Dan Squires, City Engineer

Agenda Category: Consent

Subject:

Inspection Agreements for Madison Ave. Reconstruction

Background:

- The Capital Improvement Plan (CIP) includes a project to reconstruct Madison Ave. from Derby High School to High Park.
- The City was awarded federal funding through the Wichita Area Metropolitan Planning Organization (WAMPO) to pay 80% of the cost of construction and construction engineering (inspection).
- Due to the inclusion of federal funding, the project must be designed, constructed and inspected in accordance with Kansas Department of Transportation (KDOT) requirements.

KDOT Force Account Agreement

- In conjunction with receiving grant funding, local jurisdictions are required to enter into an agreement with KDOT for the local jurisdiction to provide KDOT-certified inspection during construction. KDOT has transmitted a force account agreement for construction engineering services to the City for execution.
- The KDOT force account agreement totals \$134,606.48, which includes both City staff time and payment to Sedgwick County for certified inspection services.

Sedgwick County Intergovernmental Services Agreement

- Due to the limited number of KDOT-funded projects constructed by the City, our inspection staff is not KDOT certified.
- On past projects requiring KDOT-certified inspection, the City has partnered with Sedgwick County to provide the required services. Both parties have been pleased with this arrangement.
- A proposal for the County to perform inspection (construction engineering) services has been received by the City and approved by KDOT. The proposed agreement provides for reimbursement to the County for inspection services based on their actual staff hours and expenses used on the project, in an amount not to exceed \$108,894.19.
- In accordance with the project agreement, the City will be reimbursed for 80% of the inspection cost.

Financial/Sustainability Considerations:

- The estimated cost to the City for project inspection is \$26,921.30 (20% of \$134,606.48 = \$26,921.30).
- Recent award of the project resulted in \$125,000 remaining available in the budget for inspection and other project costs.

Legal Considerations:

- The KDOT agreement for construction engineering services outlines the City's responsibilities for inspection during the Project.
- The Sedgwick County Intergovernmental Services Agreement details the respective responsibilities of the City and Sedgwick County.
- The City is authorized to enter into agreements necessary to obtain federal financial aid for construction of public improvements.
- K.S.A. 12-2908 authorizes municipalities to enter into contracts with one another for the performance of governmental services.

Recommend a Motion to:

- Approve and authorize execution of the proposed Force Account Construction Engineering Inspection Services Agreement with KDOT and the Intergovernmental Services Agreement with Sedgwick County for Construction Engineering Services.

Attachments

KDOT FA Agreement

SGCounty Inspection Agreement

**CITY'S
ORIGINAL**

Agreement No. 390-16

CONTRACT FOR
FEDERAL-AID CONSTRUCTION ENGINEERING BY
CITY OF DERBY
(FORCE ACCOUNT AGREEMENT)

CMS Contract No. _____

PROJECT NO. 87 N-0564-01
CITY OF DERBY, KANSAS

Parties to this Agreement for Federal-Aid Construction Engineering are **City of Derby, Kansas**, (the "Local Public Authority" or "LPA") and the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary"), collectively referred to as the "Parties."

I. PURPOSE OF AGREEMENT

A. Pursuant to authority vested in K.S.A. 68-402b and K.S.A. 68-401 et seq. the Secretary authorizes the LPA to perform certain engineering and technical services for the above noted Project requiring inspection, sampling and testing of materials and workmanship as well as other technical services (Services); however, the Secretary's engineering and technical forces will be unable to perform all of the Services within the desired completion dates. The best alternative is to use a qualified firm to perform the Services needed through this Agreement.

B. The LPA represents that it has now available sufficient equipment of suitable type and the necessary employees with the education, training, and experience necessary to perform the Services this Agreement requires in an accurate and timely manner. The LPA's individual employees are licensed by the Kansas Board of Technical Professions as required by Kansas law. The LPA represents that all personnel utilized in performance of Services have appropriate training, qualifications and certifications to perform Services. The LPA further represents the use of the forces and equipment required for the performance of the Services will not interfere with other work which is necessary to be performed by such forces and equipment on other roads in the LPA.

II. DEFINITIONS

A. Construction Contract. A written agreement between the LPA and a Contractor, requiring the Contractor to construct or reconstruct a portion of the LPA's roadway system for the Project for which the LPA is providing Services. The Construction Contract includes the following Contract Documents, all of which constitute one instrument and are incorporated by reference into this Agreement: proposal, Exploratory Work Documents, addenda, amendments, contract form, contract bond, Standard Specifications, Special Provisions, Project Special Provisions, general plans, detailed plans, drawings, the notice to proceed, material test methods, material test reports, material certifications, Part V of the KDOT Construction Manual, change orders, payment vouchers, guarantees, warranties, and other agreements, if any, that become required for construction and completion of a Project.

B. Construction Project. The specified location where a Contractor shall perform construction together with all improvements the Contractor shall be constructing under a Construction Contract.

C. Contractor. The individual, partnership, corporation, joint venture, or other legal entity performing the Construction Contract.

- D. Documents. Written, printed papers and electronic files.
- E. Exploratory Work Documents. Documents developed by KDOT, local governments, or consultants to determine a Project's subsurface conditions, engineering requirements, or both. These may include geotechnical foundation investigation reports; soils reports; geology reports; hydraulic investigations; hydrological investigations; bridge reports; earth work computations; boring logs; surveys; rock investigations; soils investigations; environmental investigations; building investigations; bridge investigations; and other geological, geotechnical, or design information for a Project.
- F. FHWA. The Federal Highway Administration.
- G. KDOT. The Kansas Department of Transportation and its authorized employees.
- H. KDOT Area Engineer. For administrative control of this Agreement, Area Engineer means the KDOT Area Engineer, the KDOT Field Engineering Administrator, or Construction Manager, or other designee of the KDOT District Engineer.
- I. KDOT District Engineer. The KDOT District Engineer or designee who will perform KDOT's administrative functions for the Project
- J. LPA. The Local Public Authority (LPA) is City of Derby and its authorized employees.
- K. Manuals. The current version of the KDOT Documentation Manual, Construction Manual, Form Manual, CMS Procedures Manual, the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by the Secretary and all other current relevant documents adopted by KDOT.
- L. Notice to Proceed. A written notice from KDOT authorizing the LPA to begin performance of Services.
- M. Plans. Unless noted as "preliminary," the plan profiles, typical cross sections, and other detail sheets showing the location, character, dimensions, and details of a Contractor's work on a Project.
- N. Project. A portion of the LPA's roadway system to be constructed or reconstructed under a Construction Contract and for which the LPA will perform Services.
- O. Project Special Provisions. Documents that modify the Standard Specifications for a particular Project.
- P. Reports. Formal documents that detail or summarize information analyzed, generated or gathered for the Project or for a Construction Contract. Any document or information which is or should be produced by the exercise or practice of a technical profession, as defined in K.S.A. (2012 Supp.) 74-7003(a), is considered a Report. Any record of inspection, sampling or testing of materials or workmanship is a Report.
- Q. Services. The engineering and associated technical services necessary or required for the LPA's performance of this Agreement.

R. Special Provisions. Documents that modify the Standard Specifications, such as details not covered by KDOT's Standard Specifications, special fabrication or construction features.

S. Standard Specifications. The Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction (2007 Edition).

III. SECRETARY'S GENERAL RESPONSIBILITIES.

A. For the Services which the LPA performs under this Agreement, the Secretary will do the following.

1. Issue a written Notice to Proceed to LPA. The Secretary assumes no obligation to pay for Services the LPA performs prior to KDOT's issuance of a Notice to Proceed for such Services.
2. Furnish or make available to the LPA a sufficient supply of blank field diaries, logs, recordkeeping books, reporting forms and other documents KDOT requires the LPA to utilize in the performance of Services.
3. Furnish or make available all Manuals requested by the LPA if unavailable online.
4. Assign such KDOT personnel to the Project as the Secretary determines are needed.
5. Perform, or provide KDOT-furnished laboratory for, testing of materials when a laboratory is required.
6. Pay the LPA according to Article VI.

B. The Secretary has the authority to review, approve, reject, eliminate, or modify some or all of the Services. When reviewing the Services, issuing approvals/rejections, or taking any other action, the Secretary and the Secretary's representatives are not undertaking the LPA's responsibility for its Services. When reviewing the Services, issuing approvals/rejections, or taking any other action, the Secretary and the Secretary's representatives make no representations, no express warranties, and no implied warranties to any persons or entities regarding the Services.

IV. THE LPA'S GENERAL RESPONSIBILITIES.

A. For all Services performed under this Agreement, the LPA shall be responsible for the following obligations.

1. Furnish all labor materials, equipment, supplies, transportation, and incidentals necessary to perform the Services necessary and incidental to the accomplishment of the Project to the satisfaction of the Secretary, and as more detailed in Special Attachment – Specific Construction Provisions. The LPA represents that it is adequately staffed, properly qualified and suitably equipped to perform the Services in a timely manner. The LPA shall perform all Services: (a) in conformance with the terms of this Agreement; (b) in compliance with applicable laws, rules and regulations; and (c) with the degree of care, skill and diligence ordinarily exercised by professional engineering firms performing services of a similar nature.

2. Follow Quality Assurance Procedures in checking or testing equipment the LPA will use to perform its Services. The LPA shall conduct this checking or testing before use of the equipment on the Project.
3. Documentation and Deliverables.
 - a. Reports and other technical data collected, recorded or prepared by the LPA shall be maintained in form and substance, as well as in formats (electronic or otherwise), approved by KDOT.
 - b. LPA personnel shall perform Services and maintain Reports, records and other Documents in an accurate and timely fashion. LPA personnel shall record, submit and process such Reports, records and Documents on a current basis.
 - c. LPA personnel shall neither allow nor accept any inspection, sampling or testing of materials from any individual without first confirming such individual is currently qualified by KDOT to perform such inspection, sampling or testing. No inspection, sampling or testing will be attributed to any individual unless such individual actually performed such inspection, sampling or testing. No test results shall be accepted unless the test results are submitted in writing with the name of the technician and the technician ID number along with the expiration date of the technician's certification.
- B. The LPA shall perform its inspection Services in conformity with all the terms, conditions, plans and specifications of the applicable Construction Contract.
- C. The LPA shall have sole responsibility for the adequacy and accuracy of Reports, technical data and all other Services. The Secretary's performance under this Agreement is not intended to fulfill the LPA's obligations under this Agreement.

V. CONTRACT ADMINISTRATION AND AUTHORITY

A. GENERAL

1. The KDOT Area Engineer will designate a KDOT representative to monitor, oversee, and coordinate the LPA's Services. The LPA shall communicate and coordinate its Services with the KDOT representative. KDOT's monitoring, oversight, and coordination of the LPA's Services is not an undertaking of the LPA's duty to provide adequate and accurate Services but rather to fulfill the Secretary's obligations.
2. The LPA will provide progress reports to the KDOT representative.
3. The KDOT representative will make decisions regarding changes in the work, unacceptable work, unauthorized work, defective work, and the LPA's compliance with all federal, state, and local laws, regulations, and ordinances.
4. The KDOT District Engineer or KDOT Area Engineer may order the LPA to remove from the Project any personnel of the LPA who are unable to perform Services in a competent or timely manner.

5. LPA personnel shall communicate and coordinate the Services with the KDOT representative. Consultant personnel shall transmit all Reports, documentation and paperwork to the KDOT representative.
6. If the LPA furnishes all inspection, sampling and testing for a Project, the LPA shall furnish and designate a Project Manager or Project Engineer as well as other inspection personnel or technicians to inspect, sample and test materials and workmanship under the Construction Contract. The Project Manager/Project Engineer shall not act as the Contractor's superintendent or foreman. The Project Manager/Project Engineer shall not issue the instructions contrary to the Construction Contract. For such Project, the Project Manager/Project Engineer shall:
 - a. Supervise all LPA personnel and Services and shall act as a liaison among the Contractor, the LPA, and KDOT.
 - b. Have the responsibility and authority to reject unacceptable work, including unacceptable materials, until the KDOT representative resolves any questions or disputes.
 - c. Have the responsibility and authority to suspend all or part of the Contractor's work on a Project because of unsafe site conditions or unsafe work practices.
 - d. Provide guidance in interpreting Contract Documents and refer issues of interpretation to the KDOT representative.
 - e. The Project Manager/Project Engineer shall not alter or waive Construction Contract provisions. If a controversy arises, the Project Manager shall notify the KDOT representative without delay.
 - f. The Project Manager/Project Engineer shall transmit to the Contractor the orders and instructions of the KDOT representative. If the Project Manager/Project Engineer is unavailable and the matter needs prompt attention, the KDOT representative will transmit to the Contractor such orders or instructions and then notify the Project Manager/Project Engineer of the situation.

B. THIRD PARTIES

1. If the Project work requires contact or coordination with third parties, then KDOT will contact and, if necessary, coordinate activities with third parties, such as affected local, state and federal agencies, the general public, utilities, railroad companies, private consultants, businesses, and contractors.
2. The LPA shall cooperate fully with KDOT, the LPA, local agencies, state agencies, federal agencies, including the FHWA, the general public, utilities, railroad companies, private consultants, businesses, and contractors. The LPA recognizes that its actions or inactions may adversely impact or affect KDOT as well as other third parties, including but not limited to other consultants in plan development, any Contractor on the Construction Project, public utilities, private utilities, public landowners, private landowners, or others. The LPA shall do, or require to be done, all things reasonably necessary to: (a) avoid or mitigate unavoidable delays, costs, losses or damages which may arise out of, be caused by or attributed to the LPA's actions or inactions in performance of Services under this Agreement and (b) effectively coordinate with KDOT and third parties so as to enable KDOT to implement the Project in a timely and cost-effective manner.

C. CONSTRUCTION CONTRACT PERFORMANCE

1. At the Secretary's request, the LPA shall attend conferences or meetings that occur during performance of a Construction Contract, including but not limited to, pre-construction conferences held with potential bidders and other third parties interested in or involved in the Project. The Secretary may hold such conferences/meetings to discuss the LPA's Services, the Contractor's operations, third parties' concerns, or other relevant Project or Construction Contract issues. KDOT may hold a close-out conference with the LPA to evaluate the LPA's performance.
2. The LPA shall require its personnel that are KDOT-certified inspectors and technicians to be present on the Project any time the Contractor performs work requiring inspection, sampling or testing under the Construction Contract.

D. TERM AND TERMINATION OF AGREEMENT

1. Unless terminated sooner under Article V.D.2. or V.D.3., the term of this Agreement will commence upon the effective date described in Article VII.H.1 and expire upon notice of written release from the Secretary.
2. The Secretary may terminate this Agreement, in whole or in part, upon ten (10) days advance written notice delivered to the LPA.
 - a. If the Secretary terminates this Agreement in whole or in part, for the Secretary's own convenience, then the Secretary will pay the LPA the LPA's costs incurred before the termination date as Article VI provides.
 - b. If the Secretary terminates this Agreement, in whole or in part, because of the LPA's failure to comply with its contract obligations or because of the LPA's negligent acts, errors, or omissions, then the Secretary will pay the LPA the reasonable value of Services performed before the termination date.
3. The LPA may terminate this Agreement upon ten (10) days advance written notice to the Secretary and delivered to KDOT's Bureau of Local Projects.
4. The Secretary or the LPA may or may not claim the other Party breached the contract when exercising their right to terminate this Agreement. Termination, in any case, does not prevent the Secretary from recovering damages for the LPA's failure to comply with its obligations under this Agreement or for the LPA's negligent acts, errors, or omissions (see Article VII.F.) or prevent the LPA from seeking payment for additional Services under Article VI.B.
5. Regardless of which Party terminates this Agreement, the Secretary may require the LPA to complete some of the remaining Services. The LPA's obligations to perform shall not end until such Services are completed.

VI. PAYMENT

A. GENERAL

1. Subject to the upper limit of compensation (Article VI.A.3.), disallowed costs (Article VI.A.6.) applicable to the Project, and sums withheld for liquidated damages (Article VI.A.12.), the Secretary will pay the LPA the supported actual costs for the performed Services. Additionally, the Secretary will pay the LPA its other direct costs expended on the Project, such as contract labor, approved subcontractor/subconsultant costs as necessary, equipment costs, transportation costs, lodging costs, and meal expenses.
2. Subject to the upper limit of compensation (Article VI.A.3), the Secretary will pay for additional Services according to Article VI.B. The Secretary will not pay the LPA for any costs the LPA incurred because of the LPA's negligent acts, errors, or omissions or because of the LPA's failure to comply with its obligations under this Agreement.
3. Initially, the Parties shall identify the upper limit of compensation on the Special Attachment-Special Construction Provisions. The Parties may thereafter adjust the upper limit of compensation through a revised Special Attachment- Special Construction Provisions, CMS Change Order or Supplemental Agreement. The LPA shall notify the KDOT District Engineer before the LPA's Services exceed the upper limit of compensation so the Parties may consider an adjustment. The Secretary has no obligation to pay costs that exceed the upper limit of compensation unless and until any adjustment thereof is agreed in writing between the Parties.
4. To initiate payment for Services, the LPA shall submit to the KDOT District Engineer an itemized billing in the form approved by the KDOT District Engineer. The LPA shall not submit a billing more frequently than once a month or for less than \$500.00 during the progress of the work, for partial payment on account for the approved work completed by the LPA to date. For each billing cycle the LPA shall:
 - a. Submit payroll documentation identifying all tasks and employees that worked on such tasks for the Project during that billing period, all hours each of these employees worked, the rate of pay for each of these employees, and all monies paid to each of these employees; and
 - b. Itemize the direct expenses and provide adequate supporting documentation therefor.

In cases where the LPA submits billings which include costs incurred by a subconsultant, the same requirements of subparagraphs a. through b. above will apply.

5. The Secretary will pay for the Services within 30 days after receiving, reviewing, and generally approving the LPA's itemized billing and accompanying documentation. This approval does not prevent the Secretary from adjusting a previous payment(s) for disallowed costs (Article VI.A.6.) discovered after the Secretary has made that payment.
6. The LPA shall incur and invoice its costs in conformity with generally accepted accounting principles and the cost principles established in the Federal-Aid Policy Guide and the Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). The Secretary will not pay for disallowed costs. Disallowed costs include costs the Secretary determines are

unreasonable, not actually incurred, caused by the LPA's failure to comply with its obligations under this Agreement, caused by the LPA's negligent acts, errors, or omissions, or otherwise unallowable. The LPA shall reimburse the Secretary if the Secretary previously paid any disallowed costs.

7. For Services performed, accumulated partial payments shall not exceed ninety-five percent (95%) of the federal-aid share of the upper limit of compensation.

8. The LPA shall submit its final invoice (clearly marked and designated as "final") for final payment following completion of Services, but no later than one hundred eighty (180) days from completion of such Services. The LPA shall clearly designate and label such invoice as "final" so as to enable KDOT to proceed to close out the Project in accordance with its own internal procedures.

9. All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as the "Supercircular") Further, the City agrees to the following provisions:

a. Audit. It is the policy of the Secretary to make any final payments to the City for services related to the Project in a timely manner. The Audit Standards set forth in 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," and specifically the requirements in Subpart F, 2 C.F.R. §200.500 *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. §200.500 *et seq.*

b. Audit Report. The Secretary may pay any final amount due for the authorized work performed based upon the City's most recent Single or Program Specific Audit Report "(Audit Report)" available and a desk review of the claim by the Contract Audit Section of KDOT's Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single or program specific audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree as the Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Audit Report for items which are declared as not eligible for reimbursement. The City agrees to refund payment made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit.

c. Agency Audit. If the City is not subject to the Audit Standards set forth in 2 C.F.R. Part 200, the Secretary and/or the FHWA may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the FHWA for an audit, the City will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement. If any such audit reveals payments have been made with federal funds by the City for items considered Non-Participating Costs, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

10. If it has not already done so, the LPA shall obtain a Data Universal Numbering System (DUNS) number, which may be obtained from Dun and Bradstreet, Inc. (D & B) by telephone (currently 866-705-5711) or the Internet (currently <http://fedgov.dnb.com/webform>).

11. The LPA agrees it shall maintain current registrations in the System for Award Management (<http://www.sam.gov>) at all times during which it has active federal awards.

12. Upon receiving the final invoice and verifying the LPA completed its Services, the Secretary will pay the LPA the next-to final payment for that portion of the eligible remaining five percent (5%) of the upper limit (up to the maximum of the federal-aid share and as allowed by provision of state law), withholding the retainage specified in Article VI.A.13. The LPA will not have completed its Services until the LPA has completed and returned all records, Reports, and other such documents this Agreement requires. If the LPA fails to complete and return all such documents to the KDOT District Engineer, then the LPA shall owe the Secretary liquidated damages of five hundred dollars (\$500.00) which shall be withheld from final payment.

13. Once the LPA has earned ninety-five percent (95%) of the federal-aid share of the upper limit of compensation, the Secretary will withhold as retainage one percent (1%) of the upper limit or \$500.00, whichever is greater. If partial payments never reach ninety-five percent (95%) of the federal-aid share of the upper limit, the LPA may request payment one hundred percent (100%) of the federal-aid share minus a retainage equal to one percent (1%) of the upper limit or \$500, whichever is greater. The Secretary will hold the retainage until the Secretary or the Secretary's authorized representative has performed a final audit of the LPA's Services. The Secretary will make final payment, if any, within ninety (90) days after KDOT completes the final audit. If the LPA owes the Secretary no money after audit, the final payment will equal the retainage. However, if the final audit reveals the LPA owes the Secretary money, the Secretary will apply the retainage to the amount owed before paying the LPA any remaining funds. The amount owed to the Secretary may include liquidated damages under Article VI.A.12, overpayments, or other sums. If the retainage is insufficient to pay the amount owed, then the Secretary will issue a notice of deficiency, demanding that the LPA pay the balance owed. The LPA then shall pay the balance owed promptly after receiving notice of the deficiency. The Secretary will consider no claim for additional compensation submitted after KDOT has completed the final audit.

B. CHANGE IN SERVICES

1. The KDOT Area Engineer may change the LPA's Services by increasing, decreasing, or otherwise modifying the Services this Agreement requires.

2. The LPA may request payment for increased or modified Services as "extra Services" by written request to the KDOT Area Engineer. No additional payment will be made to the extent "extra services" were caused by the LPA's breach of its contract obligations or the LPA's negligent acts, errors, or omissions. If the Secretary determines the "extra Services" are reasonable and necessary, then the Secretary may authorize payment for these "extra Services" and increase the upper limit of compensation if necessary to compensate for the "extra Services." Such increases may include adding structures, increasing the Construction Contract scope, increasing Project termini, or changing the duration of Services, among others.

3. If the KDOT Area Engineer decreases the Services or decreases the expected duration of Services, then the LPA shall have no claim for additional compensation. Such decreases may include eliminating structures, decreasing the Construction Project scope, decreasing Construction Project termini, or changing the duration of Services, among others.

4. For changes in Services, the LPA will submit in writing its opinion and justification for extra Services and the estimated amount of additional compensation and submit to the KDOT representative.
5. If the KDOT Area Engineer denies additional compensation for "extra services", in whole or in part, the LPA may appeal this denial to the Deputy Secretary of Transportation/State Transportation Engineer. The State Transportation Engineer's decision represents KDOT final agency action under the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.*

VII. MISCELLANEOUS PROVISIONS

A. OWNERSHIP OF DOCUMENTS

1. Upon completion or termination of Services, the LPA shall furnish to the KDOT Area Engineer all Documents KDOT provided to the LPA for such Services.
2. Upon completion or termination of Services, the LPA shall furnish to the KDOT Area Engineer all original Documents and Reports the LPA compiled and prepared in performing such Services.
3. Any Documents, procedures, specifications, engineering calculations, information, Reports or any other work products developed by the LPA as deliverables to KDOT as part of the Services performed and paid for under this Agreement shall become the property of KDOT, but the LPA shall have the right to retain copies thereof for its own internal recordkeeping and for the purposes of performing Services for a Project.
4. Upon completion or termination of Services and at the Secretary's request, the LPA shall furnish to the KDOT Area Engineer copies of all correspondence, memoranda, instructions, receipts, invoices, e-mails, and any other Documents pertaining to such Services and the Project. These Documents are KDOT's property.
5. Any or all Services performed under this Agreement may result in the LPA using Documents (such as reports, surveys, schedules, lists, or data) the Secretary's authorized representatives prepared, compiled, or collected that are use restricted pursuant to 23 U.S.C. § 409. Such Documents are watermarked "Use Restricted 23 U.S.C. § 409," providing the Secretary with an evidentiary privilege that only counsel for KDOT may assert in litigation against KDOT. The LPA shall use these watermarked Documents only to perform Services on the Project. The LPA shall not remove or otherwise damage the 23 U.S.C. § 409 watermark. The requirements of this paragraph shall be included by the LPA in its subcontract agreements, if any, for the performance of any Services.
6. Documents collected or prepared by the LPA in the performance of this Agreement may be used without restriction by the Secretary for any public purpose. Any such use shall be without compensation to the LPA.

B. ACCESS TO RECORDS; AUDITS

1. The LPA shall keep all Project Documents arising out of or related to performance of Services for a five-year retention period beginning with the LPA's final payment date. The final payment date is the voucher date on the Secretary's last payment to the LPA. This final payment occurs after the LPA

submits its request for final payment and KDOT has completed the final audit. The LPA shall make all Documents available at the LPA's principal office.

2. The Secretary, FHWA, or both, may inspect and review all Documents pertaining to the LPA's Services during the LPA's performance and the five-year retention period.

3. The LPA shall maintain all cost documentation according to generally accepted accounting principles and the cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*).

4. Within five (5) years after the LPA has submitted its invoice for final payment on Work Estimate for a Project, having completed its Services, the Secretary or the Secretary's authorized representatives may perform a final audit of the LPA's costs conducted according to generally accepted governmental auditing standards and in compliance with cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). Without limitation, the auditors may determine whether costs incurred were actual and necessary, reasonable, allowable, and in compliance with regulations and whether the compensation did not exceed the applicable upper limit of compensation. The auditors may review all subconsultant records and costs, if any, as well. The LPA shall reimburse the Secretary for overpayments.

5. The LPA shall include the provisions of Articles VII.B.1—B.4. above in all subconsultant agreements, if any.

C. AGREEMENT ITEMS

1. This Agreement includes the items referenced in Article II.A.

2. The Exhibits and Attachments identified below are essential parts of and incorporated into this Agreement. The LPA shall complete and sign where indicated on the forms contained therein. The Exhibits and Attachments are:

Special Attachment No. 1, Specific Construction Provisions

Special Attachment No. 2, The Civil Rights Act of 1964

Special Attachment No. 3, Contractual Provisions Attachment (Form DA-146a)

Special Attachment No. 4, Listing of KDOT Certified Inspectors

(Updated upon request or at least annually)

Special Attachment No. 5, Estimate of Engineering Fee

Special Attachment No. 6, Certification -- Federal Funds -- Lobbying

3. No Party may alter or amend this Agreement except by a revised Work Estimate, CMS Change Order or Supplemental Agreement evidencing written agreement between the Parties for such alteration or amendment.

D. LEGAL RELATIONS

1. The LPA shall observe and comply with all applicable federal, state, and local laws, ordinances and regulations.

2. This Agreement binds the Parties and the Parties' successors and assigns. The LPA shall not assign this Agreement without the prior written permission of the Secretary. Notwithstanding any other provision of this Agreement, the LPA shall not subcontract any part of the Services without prior written approval by the Secretary.

3. This Agreement creates no third party beneficiaries.

4. In the event any disagreement, dispute or claim of the LPA arising out of or in connection with the LPA's performance of this Agreement, the LPA shall make written request to the KDOT District Engineer to review the matter. If dissatisfied with the review and decision of the KDOT District Engineer, then the LPA may appeal, in writing, to the Deputy Secretary of Transportation/State Transportation Engineer within fifteen (15) calendar days of receipt of the decision of the KDOT District Engineer. The State Transportation Engineer's decision represents KDOT final agency action under the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.*

5. Kansas law governs this Agreement.

E. WORKERS' COMPENSATION

The LPA will elect to come within the provisions of the Workers' Compensation Act (K.S.A. 44-505) for all Services performed for the Project and will provide such workers' compensation insurance as is required by the Commissioner of Workers' Compensation..

F. ERRORS AND OMISSIONS; INDEMNIFICATION; INSURANCE

1. The LPA shall promptly correct, without additional compensation, the LPA's failure to perform its obligations under this Agreement. The LPA shall promptly correct its negligent acts, errors, or omissions without additional compensation. If the Services affect a third party, then the LPA shall perform corrections in a manner that minimizes delay to the third party and other damages.

2. The LPA shall pay for or reimburse the Secretary for damages and costs the Secretary has incurred or will incur, because the LPA failed to comply with its obligations under this Agreement and LPA's negligent acts, errors, or omissions arising out of or in connection with the LPA's performance of this Agreement. These damages include personal injury to KDOT employees, damage to KDOT property, and economic loss whether the economic loss arises in contract, tort, or equity. Economic loss encompasses direct and consequential damages Kansas law permits the Secretary to recover, including monies the Secretary pays or owes to construction contractors, monies the Secretary pays or owes to consulting firms, delay damages, or other damages arising from the LPA's failure to comply with its obligations. This Agreement does not authorize third parties to seek recovery as third party beneficiaries of this Agreement or in any other capacity.

3. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the LPA will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all claims, suits, damages (whether property damages, personal injury damages, or economic damages), and costs (reasonable attorney's fees and defense costs) resulting from the LPA's failure to comply with its obligations under this Agreement, resulting from the LPA's negligent acts, errors, or omissions in performing its Services, or all of the above. The

LPA shall have no obligation to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

G. CONFLICT OF INTEREST

- 1. The LPA warrants it has no public or private interest, and shall not acquire (directly or indirectly) any such interest, which would conflict with the Services performed under this Agreement.
- 2. The LPA shall not hire persons in KDOT's employment to provide Services under this Agreement without the Secretary's prior written permission.

H. EFFECTIVE DATE; REPRESENTATION OF AUTHORITY

- 1. This Agreement will become effective on the date when both Parties have signed the Agreement. It is intended that the LPA will sign first, and the Secretary (or the Secretary's designated representative) will sign last; therefore the effective date of the Agreement will be the latter date.
- 2. In signing this Agreement, the Parties and the individual person signing on behalf of such Party represent that the person signing is duly authorized, having the authority and capacity to execute and legally bind the respective entity to this Agreement.

NOW THEREFORE, the Parties cause their duly authorized representatives to enter into this Agreement.

RECOMMEND FOR APPROVAL:

CITY OF DERBY, KANSAS

DERBY CITY ENGINEER

ATTEST:

MAYOR OF DERBY

DERBY CITY CLERK (Date)

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

By: _____
Catherine M. Patrick, P.E. (Date)
State Transportation Engineer

INDEX OF ATTACHMENTS

Special Attachment No. 1	Specific Construction Provisions
Special Attachment No. 2	Civil Rights Act of 1964 Rehabilitation Act of 1973 Americans With Disabilities Act of 1990 Age Discrimination Act of 1975 Executive Order 12898 of 1994
Special Attachment No. 3	Contractual Provisions Attachment
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Special Attachment No. 6	Required Contract Provision Certification - Federal Funds - Lobbying

SPECIFIC CONSTRUCTION PROVISIONS

I. SCOPE OF SERVICES

A. SERVICES TO BE PERFORMED BY THE CONSULTANT

The LPA agrees to:

- (1) Attend all conferences designated by KDOT, or required under the terms of the Agreement.
- (2) Designate a Project Engineer/Project Manager who shall report and transmit Project activity and documents to KDOT's Construction Office.
- (3) Assign a sufficient number of KDOT Certified Inspector(s) of the appropriate classifications to the Project to perform the services required under the Agreement in a timely manner to avoid delay to the Contractor.
- (4) Become familiar with the standard practices of KDOT, the Contract Documents (Specifications, Construction Contract Proposal, Special Provisions and Plans), and the Contractor's proposed schedule of operations prior to beginning field work under the Agreement.
- (5) Perform the LPA's field operations in accordance with accepted safety practices.
- (6) Furnish all equipment required to accomplish the LPA's work and to check or test it prior to use on the Project.
- (7) Provide for LPA personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under the Agreement.
- (8) Undertake the following:

Transmit orders from KDOT to the Contractor and provide guidance in the proper interpretation of the Specifications and Plans.

Perform or provide construction surveys, staking, and measurements needed by the Contractor (unless contractor construction staking is to be performed as a bid item by the Contractor) and perform measurements and surveys that are involved in the determination of final pay quantities.

Inspect all phases of construction operations to determine the Contractor's compliance with Contract Documents and to reject such work and materials which do not comply with Contract Documents until any

questions at issue can be referred to and be decided by the KDOT Field Engineer.

Take field samples and/or test materials to be incorporated in the work, and reject those not meeting the provisions of the Contract Documents until any questions at issue can be referred to and be decided by the Field Engineer.

Make certain that test report records or certificates of compliance for materials tested off the Project site and required, prior to the incorporation in the work, have been received.

Keep such daily diaries, logs and records as are needed for a complete record of the Contractor's progress.

Measure and compute all materials incorporated in the work and items of work completed, and maintain an item account record.

Provide measurement and computation of pay items.

Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required by KDOT and as are applicable to the Project, which may include:

- a. Progress Reports
- b. Weekly statement of working days
- c. Notice of change in construction status
- d. Report of field inspection of material
- e. Test report record
- f. Contractor pay estimates
- g. Pile driving data
- h. Piling record
- i. Final certification of materials
- j. Explanation of quantity variation
- k. State of contract time
- l. Other records and reports as required by the Project

Review, or assist in reviewing and preparing of documents, all Contractor submittals of records and reports required by KDOT and as are applicable to the Project to assure the Project is constructed in accordance with Federal and State requirements and which may include:

- a. Requests for partial and final payment
- b. Other reports and records as required by the individual Project

- (9) Prepare and submit, if desired by the LPA, partial payment invoices for services rendered by the LPA, but not to exceed one submittal per month.
- (10) Collect, properly label or identify, and deliver to KDOT all original diaries, logs, notebooks, accounts, records, reports and other documents prepared by the LPA in the performance of the Agreement, upon completion or termination of the Agreement.
- (11) Return, upon completion or termination of the Agreement, all Manuals, Contract Documents, guides, written instructions, unused forms and record keeping books, and other documents and materials furnished by KDOT. The LPA shall be responsible for replacing lost documents or materials at the price determined by KDOT.
- (12) Prepare and submit a certification of Project completion.
- (13) Prepare and submit a final payment voucher for services rendered by the LPA.
- (14) Prepare and deliver (when Project is completed) one copy of major changes to the plans (by letter) to KDOT. The letter should contain such items as the following:
 - a. Earthwork and Culverts
 1. A revised list of benchmarks
 2. Location of government benchmarks
 3. Major changes in alignment
 4. Major changes in grade line
 5. Established references on cornerstones
 6. Major changes in location of drainage structures
 7. Major changes in flow-line of drainage structures
 8. Drainage structures added or deleted
 9. Any change of access control
 - b. Bridges
 1. Changes in stationing
 2. Changes in type, size or elevation of footings
 3. Changes in grade line

B. SERVICES TO BE PROVIDED BY THE SECRETARY

- (1) The Secretary agrees to:
 - a. Make available to the LPA sufficient copies of the Contract Documents, shop drawings, plan revisions, written instructions and other information and data considered by KDOT to be necessary to

enable the LPA to perform the work under this Agreement, for the Project to the same standards required of KDOT's personnel.

- b. Provide for the use of the LPA a sufficient supply of the blank diaries, logs, record keeping books and reporting forms considered by KDOT to be necessary for the LPA to perform the services under this Agreement to the same standards required of KDOT'S personnel.
 - c. Provide space in the field office and field laboratory furnished by the Contractor under the terms of the Construction Contract Proposal, for the occupancy and use of the LPA until completion of the construction work.
 - d. Perform or provide for laboratory testing of materials requiring off-site testing facilities, and obtain test reports or certificates of compliance hereof.
 - e. Perform all necessary weld inspection when there is welding for bridge beam connections and splices, and for sign supports. This includes all cross frames, diaphragm connections, and stud welding.
 - f. Designate a Construction Engineer/Construction Coordinator in the Construction Office with the duties and responsibilities set forth in Section IC of the General Construction Provisions of the Agreement.
 - g. Provide, through the Field Engineer and the District Staff, such assistance and guidance to the LPA as may be reasonably necessary to perform and complete the Agreement in conformance with standard construction engineering practices of KDOT.
- (2) KDOT reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

II. PROSECUTION AND PROGRESS

- A. It is anticipated work under the construction contract will start in 2016, and be completed by 2017.
- B. The LPA shall complete all services to be rendered under this Agreement no later than two months after completion of Project construction. Failure to comply may result in disqualification of the LPA's Project Engineer/Project Manager or Chief Inspector until proper documentation is submitted and accepted.

III. BASIS OF PAYMENT

- A. Compensation of services provided by the LPA under the terms of the Agreement shall be the incurred and reimbursable actual costs to the LPA not to exceed the Agreement Estimate and as allowed by State Law and the Federal Share which will be limited to the applicable Federal-aid cost sharing formulae and availability of Federal-aid funds for engineering services. Federal-aid participation for this project is 80%.
- B. Reimbursement for costs will be limited to those which are allowable under the Code of Federal Regulations (CFR) Title 23 and Title 48, Chapter 1 and the Federal-aid Highway Policy Guide, Volume 1, Chapter 7, Section 2, except to the extent the provisions of that subpart are clearly inappropriate to the Agreement.
- C. The estimated hourly equipment and labor costs and Project estimates are included as special attachments.
- (1) Labor and fringe benefits will be charged at the LPA's actual cost. If an employee is paid monthly, his hourly rate will be computed by dividing his salary by the hours per month that he works.
 - (2) Equipment rental rates shall be KDOT's actual operating costs (excluding depreciation) of equipment used for the Project.
 - (3) Materials will be estimated at the price of the low quotes (when necessary) and paid for at invoice prices. (Copy of invoices to be furnished to the Secretary's Construction Engineer/Construction Coordinator).
- D. After completion of the Project, the LPA will furnish the Construction Engineer/Construction Coordinator with seven (7) certified itemized statements of the actual cost of construction engineering force account work detailed as follows:
- Labor: The total hours, rates and extension for each classification.
Equipment: The total hours, KDOT's rates and extension for each unit of machinery and equipment.
Materials: The quantities of materials, prices and extensions.
Transportation: Cost of delivery of materials, if any.
Miscellaneous: Cost of property damage, liability and worker's compensation insurance premiums; unemployment insurance contributions, social security, health and retirement payments, and/or other eligible Project related costs. Administrative costs are not eligible for reimbursement.

The statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used for this Project are not specifically purchased for such work, but are taken from the LPA's stock,

inventory records must support quantities and process for materials from stock used for this Project.

The Secretary shall reserve the right to approve or disapprove the LPA's submitted claims for equipment actual operating cost.

- E. The Agreement Estimate of **\$134,606.48** has been agreed upon as the upper limit for compensation. It is intended as nearly as can be estimated to cover only actual costs and was agreed upon in order that the Secretary, as agent for said LPA, might permit the LPA to do such work as set forth in the Contract Documents, provided, however that if extra work has been authorized it will be reimbursed as per terms of the supplemental agreement(s).

IV. MISCELLANEOUS PROVISIONS

A. AUTHORIZED REPRESENTATIVES

- (1) The Field Engineer for KDOT will be Mr. Hideki Fields, P.E., whose work address is 3200 East 45th Street North, Wichita, Kansas 67220 and work telephone is 316-744-1271.
- (2) The Project Engineer/Project Manager for the LPA will be Mr. Dan Squires, P.E., Certification Number N/A (expiration date is N/A), whose work address is 611 Mulberry, Kansas 67037 and work telephone is 316-788-6632.
- (3) The Chief Inspector for the LPA will be Mr. Linn Copeland, Certification Number 955 (expiration date is 1/9/2017), whose work address is 1144 South Seneca, Wichita, Kansas 67213 and work telephone is 316-207-0999.

B. ACCESS TO RECORDS

- (1) All documents and evidence pertaining to costs incurred under this Agreement will be available for inspection during normal business hours in the LPA's office, for a period of three (3) years following final Agreement payment.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

State of Kansas
 Department of Administration
 DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Attachment 10 - Construction Engineering Worksheet (Inspection)

Note: This spreadsheet is available to assist you with your inspection estimate to be forward to KDOT's approval. You may manipulate this form to your satisfaction.

Project No. 87 N-0564-01
 City of Derby
Sedgwick County

Supporting Data Sheet
 for
 ESTIMATE OF ENGINEERING FEE

A. Direct Payroll

Contract Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est. Hrs.</u>	<u>Rate</u>	<u>Extension</u>
1. City Inspection and Management	City Engineer	60 @	\$49.54 =	\$2,972.40
	Proj. Engineer	175 @	\$31.52	\$5,516.00
	Inspector	525 @	\$20.11 =	\$10,557.75
Subtotal				\$19,046.15
2. On-site Testing	Chief Inspector	0 @	=	\$0.00
	Inspector	0 @	=	\$0.00
Subtotal				\$0.00
3. Surveying	Surveyor	0 @	=	\$0.00
	Techn(s)	0 @	=	\$0.00
Subtotal				\$0.00
4. Cleanup	Inspector	@	=	\$0.00
Subtotal				\$0.00
5. Final Paper Preparation	Constr. Engineer	@	=	\$0.00
	Chief Inspector	@	=	\$0.00
	Inspector	@	=	\$0.00
Subtotal				\$0.00
Total Direct Payroll Costs				\$19,046.15

Project No. 87 N-0564-01
 City of Derby
Sedgwick County

Summary Total Direct Payroll Costs

	Hours	Rate	Extension
City Engineer	60 @	\$49.54 =	\$2,972.40
City Proj. Engineer	175 @	\$31.52 =	\$5,516.00
City Inspector	525 @	\$20.11 =	\$10,557.75
Constr. Engineer	0 @	\$0.00 =	\$0.00
Chief Inspector	0 @	\$0.00 =	\$0.00
Inspector	0 @	\$0.00 =	\$0.00
Surveyor	0 @	\$0.00 =	\$0.00
Techn(s)	0 @	\$0.00 =	\$0.00
Total Direct Payroll Costs			\$19,046.15
B. Salary Related Overhead <u>35 %</u>			\$6,666.15
C. Total Payroll plus Overhead			\$25,712.30
D. Direct Expenses (Travel, Postage, Misc.)			
Mileage	miles		
Full Size SUV	0 @		\$0.00
Pickup	0 @		\$0.00
Postage & Telephone	Hours @	Rate	\$0.00
Testing Laboratory or Consulting Firm to Assist Sedgwick County Public Works (See Attached Breakdown)	1 @	\$108,894.18 =	\$108,894.18
Equipment Rental	@		\$0.00
Total Other Direct Expenses			\$108,894.18
TOTAL FORCE ACCOUNT ESTIMATE			\$134,606.48

Attachment 10 - Construction Engineering Worksheet (Inspection)

Note: This spreadsheet is available to assist you with your inspection estimate to be forward to KDOT's approval. You may manipulate this form to your satisfaction.

Project No. 87 U-0564-01
 City of Derby
Sedgwick County

Supporting Data Sheet
 for
 ESTIMATE OF ENGINEERING FEE

A. Direct Payroll

Contract Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est. Hrs.</u>	<u>Rate</u>	<u>Extension</u>
1. Field Inspection daily contract documents	Constr. Engineer	35 @	\$35.50 =	\$1,242.50
	Chief Inspector	89 @	\$31.00 =	\$2,759.00
	Inspector	1750 @	\$28.00 =	\$49,000.00
	Subtotal			\$53,001.50
2. On-site Testing	Chief Inspector	18 @	\$31.00 =	\$558.00
	Inspector	350 @	\$28.00 =	\$9,800.00
Subtotal				\$10,358.00
3. Surveying	Surveyor	14 @	\$28.00 =	\$392.00
	Techn(s)	14 @	\$18.50 =	\$259.00
Subtotal				\$651.00
4. Cleanup	Inspector	300 @	\$28.00 =	\$8,400.00
5. Final Paper Preparation	Constr. Engineer	4 @	\$35.50 =	\$142.00
	Chief Inspector	18 @	\$31.00 =	\$558.00
	Inspector	175 @	\$28.00 =	\$4,900.00
Subtotal				\$5,600.00
Total Direct Payroll Costs				\$78,010.50

Project No. 87 U-0164-01
 City of Derby
Sedgwick County

Summary Total Direct Payroll Costs

	Hours	Rate	Extension
Constr. Engineer	39 @	\$35.50 =	\$1,384.50
Chief Inspector	125 @	\$31.00 =	\$3,875.00
Inspector	2575 @	\$28.00 =	\$72,100.00
Surveyor	14 @	\$28.00 =	\$392.00
Techn(s)	14 @	\$18.50 =	\$259.00
Total Direct Payroll Costs			\$78,010.50
B. Salary Related Overhead <u>35 %</u>			\$27,303.68
C. Total Payroll plus Overhead			\$105,314.18
D. Direct Expenses (Travel, Postage, Misc.)			
Mileage	miles	\$0.100/mile	
Full Size SUV	400 @	\$0.47 =	\$188.00
Pickup	6400 @	\$0.53 =	\$3,392.00
Postage & Telephone	_____ @	_____	\$0.00
Testing Laboratory or Consulting Firm to Assist (Name of Lab or Firm)	_____ @	_____	\$0.00
Equipment Rental	_____ @	_____	\$0.00
Total Other Direct Expenses			\$3,580.00
TOTAL FORCE ACCOUNT ESTIMATE			\$108,894.18

REQUIRED CONTRACT PROVISION
CERTIFICATION - FEDERAL FUNDS - LOBBYING

Definitions

1. Designated Entity: An officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.
2. Federal Grant: An award of financial assistance by the federal government (Federal Aid Highway Program is considered a grant program).
3. Influencing (or attempt): Making, with the intent to influence, any communication to or appearance before any designated entity in connection with the making of any Federal grant.
4. Person: An individual, corporation, company, association, authority, firm, partnership, society, State or local government.
5. Recipient: All contractors, subcontractors or subgrantees, at any tier, of the recipient of funds received in connection with a Federal grant.

Explanation

As of December 23, 1989, Title 31 U.S.C. (new) Section 1352 limits the use of appropriated federal funds to influence federal contracting. Under this new section no appropriated funds may be used by the recipient of a federal grant to pay any person to influence or attempt to influence a designated entity in connection with the naming of a federal grant or the extension, renewal, amendment or modification of any grant. These restrictions apply to grants in excess of \$100,000.00. Submission of this certification is required for participation in this project by federal law. For each failure to file a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 may be imposed.

Note: If funds other than appropriated federal funds have or will be paid to influence or attempt to influence a designated entity it must be reported. If required, the reporting shall be made on KDOT Form No. 401 "DISCLOSURE OF LOBBYING ACTIVITIES", in accordance with its instructions. KDOT Form No. 401 is available through the Bureau of Local Projects.

THE ABOVE DEFINITIONS, EXPLANATION AND NOTE ARE ADOPTED AND INCORPORATED BY REFERENCE IN THIS CERTIFICATION FOR ALL PURPOSES THE SAME AS IF SET OUT IN FULL IN IT.

The maker of this CERTIFICATION states that it has been signed on the maker's behalf or, if on behalf of some other person, that the maker is vested with legal right and authority to bind and obligate the other person in the making of this CERTIFICATION submitted in regard to this contract.

The maker certifies that: No federal appropriated funds have been paid or will be paid by or on behalf of the maker, to any person, for influencing or attempting to influence any designated person in connection with the awarding of any federal grant or the extension, continuation, renewal, amendment or modification of any federal grant.

In the event that the maker subcontracts work in this contract, the maker will provide to and require the signing of this Certification by the subcontractor, and shall keep and maintain the original signed form as part of the contract with the subcontractor.

The maker understands that this Certification is a material representation of fact upon which reliance was placed as part of this transaction.

DATE: _____

BY: _____

INTERGOVERNMENTAL SERVICES AGREEMENT

THIS INTERGOVERNMENTAL SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2017, by and between the Board of County Commissioners of Sedgwick County, Kansas, hereinafter referred to as “County” and the City of Derby, Kansas, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, County and City are authorized to enter into an agreement for governmental services pursuant to K.S.A. 12-2908, as amended; and

WHEREAS, City desires to construct improvements to Madison Avenue from Derby High School to High Park in the City of Derby; hereinafter referred to as “Madison Avenue Derby High School to High Park Improvements”; and

WHEREAS, City has entered into an agreement with the Kansas Department of Transportation titled “CONTRACT FOR FEDERAL-AID ROAD CONSTRUCTION ENGINEERING BY CITY OF DERBY (FORCE ACCOUNT AGREEMENT)” hereinafter referred to as “Force Account Agreement”; and

WHEREAS, City desires that County perform construction engineering services during the construction of the said improvements; and

NOW, THEREFORE, for and in consideration of the parties’ mutual promises and covenants, it is agreed as follows:

1. The purpose of this Agreement is for the County to provide construction engineering services to the City within the corporate limits of the City.
2. The City agrees to reimburse County for all costs of construction engineering for, as outlined in Attachment No. 4 of the Force Account Agreement and at the rates indicated within Attachment No. 4 of the Force Account Agreement. The parties agree that the total compensation that the City provides to the County under this Agreement shall not exceed \$108,894.19.
3. The City and County agree that performance of this work shall be in accordance with the terms of the Force Account Agreement, including Special Attachments 1 thru 6, which is incorporated herein as Attachment A.
4. The scope of services to be performed by the County is described in Special Attachment No. 1 to the Force Account Agreement.
5. County shall bill City monthly for the costs incurred, including salary and overhead, as further described by the budget set out in Special Attachment No. 4 of the Force Account Agreement.

6. To the extent permitted by law, City does hereby release, discharge, indemnify and hold harmless the County, its agents, servants and employees from any and all liability and damages of whatsoever nature and arising from whatsoever cause, relating to or arising from errors and omissions resulting from the design of the project or from errors and omissions resulting from construction means and methods used in the construction of the project; provided, that such release shall not extend to acts or omissions of the County or its agents, servants or employees in the performance of duties pursuant to this Agreement. This release and indemnity shall survive termination of this Agreement.
7. This Agreement shall terminate upon the later of completion and final acceptance of the Improvements and completion of all tasks described in Section 4 hereof.

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

**BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS**

THE CITY OF DERBY, KANSAS

JAMES M. HOWELL
Chairman, Fifth District

RANDY WHITE
Mayor

ATTEST:

ATTEST:

KELLY B. ARNOLD
County Clerk

KAREN FRIEND
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM

JUSTIN M. WAGGONER,
Assistant County Counselor

JACQUELINE R. BUTLER
City Attorney

ATTACHMENT A

CONTRACT FOR FEDERAL-AID ROAD CONSTRUCTION ENGINEERING
BY CITY OF DERBY (FORCE ACCOUNT AGREEMENT)

City Council Meeting

8.E.

Meeting Date: 01/10/2017

Submitted By: Dan Squires, City Engineer

Agenda Category: Consent

Subject:

Commitment of Funds for Madison Ave. Reconstruction

Background:

- The City's Capital Improvement Plan (CIP) includes a project to reconstruct Madison Ave. from Derby High School to High Park.
 - The project will reconstruct Madison Ave. to an urban standard including a two-way left turn lane, curbs, stormwater sewers, and sidewalks.
 - The City secured federal funds administered by the Wichita Area Metropolitan Planning Organization (WAMPO) to help pay for construction of the improvements.
 - Due to the federal funding, the project must be designed, constructed and inspected in accordance with Kansas Department of Transportation (KDOT) requirements.
- The project design is complete, utilities have been relocated, and all necessary rights-of-way and easements have been acquired.
- On December 16, KDOT opened bids for construction of the improvements. The low bidder is Pearson Construction (\$1,730,034.35).
- As the City moves into the final stages of the project, several items requiring council action will be necessary:
 - Concurrence of the award and commitment of funds for the City's portion of the project costs.
 - Execution of a force account agreement with KDOT for project inspection.
 - Execution of an agreement with Sedgwick County to provide KDOT-certified inspection services.
- The first step, concurrence with the award and adoption of a resolution committing the City's portion of the project costs, is required before KDOT will proceed with award of the project.
- The agreements with KDOT and Sedgwick County for inspection services are being considered concurrently with this item.
- Construction of the project is anticipated to begin between March 6 and April 17, 2017.

Financial/Sustainability Considerations:

- Federal funding is available to pay 80% of eligible (participating) construction and inspection costs up to \$1,996,800. Certain items of work referred to as non-participating items are not eligible for federal funding.
 - The project includes \$4,000 in non-participating items to adjust City-owned utilities.
 - The City share of the cost of eligible construction items is \$345,207 ($\$1,726,034 \times 0.20 = \$345,207$) plus \$4,000 for utility adjustments, which are non-participating items. The total cost to the City for construction is \$349,207 ($\$345,207 + \$4,000 = \$349,207$).
 - KDOT requires the City to pass a resolution concurring with the award and authorizing payment of the City share (rounded to \$350,000) before the project is awarded.
 - The cost of inspection is anticipated to be \$134,606.48 of which 80% ($\$107,685.18$) is reimbursable to the City, resulting in an inspection cost of \$26,921.30 ($\$134,606.48 - 107,685.18 = \$26,921.30$).
- The total cost to the City for construction and inspection of the project is estimated to be \$376,921.30 ($\$350,000 + \$26,921.30 = \$376,921.30$).
- The CIP includes \$475,000 for the City's portion of the project costs. The remaining project funds will be utilized for final design costs and street light installation.
- In order to finance the City's portion of the project in the next bond issue, an authorizing resolution must be adopted. The attached resolution includes all cost components of the project, including KDOT's share, but only the City's share will be financed in the City's bond issue.

Legal Considerations:

- Adoption of the attached commitment of city funds pledges the required city matching funds (\$350,000) and directs they be remitted to KDOT by Feb. 2, 2017.
- The authorizing resolution was prepared by the City's bond counsel, Gilmore & Bell, P.C.

Recommend a Motion to:

- Approve a resolution authorizing improvement of Madison Avenue and providing for payment of the costs, and
- Concur with the award to Pearson Construction and adopt a resolution directing staff to remit \$350,000 to the Kansas Department of Transportation for construction of improvements to Madison Ave. from Derby High School to High Park.

Attachments

Funding Resolution

Project Authorization Resolution

**AUTHORITY TO AWARD CONTRACT
COMMITMENT OF CITY FUNDS**

December 15, 2016

2 Copies to City
Project Number: 87 N-0564-01
STP-N056(401)

WHEREAS bids were received at Topeka, Kansas on 12/14/2016 for the performance of work covered by plans on the above numbered project, and

WHEREAS the bidder and the low bid or bids on work covered by this project were:

CONTRACTOR	TYPE OF WORK	AMOUNT
PEARSON CONSTRUCTION LLC 821 E 25TH ST N WICHITA, KS 67219-4433	Grading and Surfacing	\$ 1,730,034.35

WHEREAS bids are considered satisfactory and have been recommended by the Secretary of Transportation of the State of Kansas, hereinafter referred to as the SECRETARY, for consideration and acceptance of the work on this project as covered by such bid or bids.

A combination of the bid plus an estimated \$0.00 for construction engineering less \$1,996,800.00 of Maximum Federal Funds = \$350,000.00 matching City Funds.

BE IT FURTHER RESOLVED that City funds in the amount of **\$350,000.00** which are required for the matching of Maximum Federal Funds are hereby pledged by the City to be remitted to the Chief of Fiscal Services of the Department of Transportation of the State of Kansas on or before **2/2/2017** for use by the SECRETARY in making payments for construction work and engineering on the above designated project with final cost being determined upon completion and audit of the project.

The City certifies that no known or foreseeable legal impediments exist that would prohibit completion of the project and that the project complies with all applicable codes, standards and or/regulations required for completion.

Adopted this ____ day of _____, _____, at _____, Kansas.

Recommended for Approval:

City Engineer

_____, Mayor

Attest:

(Seal)

_____, Member

_____, Member

City Clerk

Revised 12/03
DOT FORM 1309

RESOLUTION NO. []-2017

A RESOLUTION AUTHORIZING THE IMPROVEMENT OR REIMPROVEMENT OF A MAIN TRAFFICWAY WITHIN THE CITY OF DERBY, KANSAS; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.

WHEREAS, K.S.A. 12-687 provides that the governing body of any city shall have the power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. 12-685 *et seq.* (the “Act”), and such improvement or reimprovement may include grading, regrading, curbing, recurbing, guttering, reguttering, paving, repaving, macadamizing, remacadamizing, constructing, reconstructing, opening, widening, extending, rounding corners, straightening, relocating, building any necessary bridges and approaches thereto, viaducts, overpasses, underpasses, culverts and drainage, trafficway illumination, traffic control devices, pedestrian ways, or other improvements or any two or more of such improvements or reimprovements and the acquisition of right-of-way by purchase or condemnation when necessary for any of such purposes; and

WHEREAS, the Act provides that all costs of improvements or reimprovements authorized thereunder, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the city at large and may be funded, among others, by the issuance of general obligation bonds; and

WHEREAS, the governing body of the City of Derby, Kansas (the “City”), has heretofore by Ordinance No. 1506 designated Madison Avenue within the City as a main trafficway, as provided by and under the authority of the Act; and

WHEREAS, said governing body hereby finds and determines that it is necessary to improve or reimprove said main trafficway, and to provide for the payment of the costs thereof, all as provided by and under the authority of the Act.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. Project Authorization. It is hereby deemed and declared to be necessary to improve or reimprove Madison Avenue as follows (the “Project”) under the authority of the Act:

Complete reconstruction of Madison Avenue from the Derby High School east to the City Limits, including paving, curb and gutter, storm water drainage, bike path, sidewalks and all appurtenances thereto.

The Project will be completed in accordance with plans and specifications therefor prepared or approved by the Kansas Department of Transportation (“KDOT”) and/or the City Engineer.

Section 2. Financing Authority. The estimated costs of the Project, including construction, design and engineering fees, acquisition, contingencies and administrative expenses, are \$2,733,420. The City’s portion of the costs of the Project, interest on interim financing and associated financing costs shall be payable from the proceeds of general obligation bonds of the City issued under

authority of the Act (the “Bonds”), with the balance of said estimated costs to be paid from funds supplied by KDOT.

Section 3. Reimbursement. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation § 1.150-2.

Section 4. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

ADOPTED AND APPROVED by the Governing Body of the City of Derby, Kansas, on January 10, 2017.

(Seal)

ATTEST:

Mayor

Clerk

CERTIFICATE

I, hereby certify that the above and foregoing is a true and correct copy of the Resolution No. []-2017 of the City of Derby, Kansas adopted by the Governing Body on January 10, 2017, as the same appears of record in my office.

DATED: January 10, 2017

Clerk

City Council Meeting

8.F.

Meeting Date: 01/10/2017

Submitted By: Karen Friend, City Clerk

Agenda Category: Consent

Subject:

Assessment Ordinance for Nuisance Abatement

Background:

- City ordinance requires debris be removed from properties and lawns be maintained at 10 inches or less to protect the public health and safety.
- The City has incurred costs in abating nuisances found to exist on 3 properties, of which 1 is a rental house, 1 is owner occupied and 1 is a vacant house. Each owner of record at the time charges were incurred was sent notification that the City Council will consider assessment of the charges by ordinance.
- Because affected lots are often in foreclosure or in process of being sold, timely assessment is important to an equitable recovery of City funds.

Financial/Sustainability Considerations:

- Costs total \$555 which includes the City's mowing and trash removal costs plus administrative fees.

Legal Considerations:

- City ordinance authorizes staff to mow excessively tall vegetation and remove trash when owners fail to do so. Staff seeks to collect reimbursement through informal efforts to avoid the need for formal remedies. Charges not timely paid may be assessed against the properties on which the work was performed.

Recommend a Motion to:

- Adopt an ordinance levying a special assessment upon certain properties the costs incurred by the City of Derby in abating nuisances found to exist thereon.
-

Attachments

011017 Mowing Assessment Ord.

011017 Mowing Assessment spreadsheet

ORDINANCE NO. _____

AN ORDINANCE LEVYING AS SPECIAL ASSESSMENTS UPON CERTAIN REAL PROPERTY, HEREINAFTER DESCRIBED, DIRECT AND INDIRECT COSTS INCURRED BY THE CITY IN MOWING GRASS, CUTTING WEEDS, REMOVING DEBRIS OR OTHERWISE ABATING NUISANCES FOUND TO EXIST THEREON.

WHEREAS, the City of Derby has incurred certain costs in abating nuisances found to exist upon certain real property located within the City; and

WHEREAS, the City is authorized to recover so much of such costs as remains unpaid by levying the same as special assessments against the respective lots and parcels upon which such remedial work was performed by or on behalf of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. The sums set out opposite the following lots and parcels of land should be, and the same are hereby, levied as special assessments upon such lots and parcels to pay the cost incurred by the City in mowing grass, cutting weeds, removing debris, or otherwise abating nuisances found to exist thereon during the year 2016:

Legal Description:	Assessment:
Legal: Lot 12, Block 2, Derby Woodlawn Heights Addition City of Derby, Sedgwick County, Kansas PIN: 00303838 Address: 1101 S Hilltop Rd.	\$250.00
Legal: Lot 5, Block D, Brookwood Addition City of Derby, Sedgwick County, Kansas PIN: 00301910 Address: 1101 E. Hackberry Rd.	\$105.00
Legal: Lot 10, Exc. S .5 Ft., Block 3, Riverview Addition City of Derby, Sedgwick County, Kansas PIN: 00301931 Address: 545 S. Riverview Ave.	\$200.00

Section 2. This Ordinance shall be effective from and after its publication once in the official City newspaper.

PASSED by the City Council on the 10th day of January, 2017, and **SIGNED** by the Mayor.

Randy White, Mayor

ATTEST:

Karen Friend, City Clerk

Approved as to form:

Jacqueline R. Butler, City Attorney

Ordinance No. _____
January 10, 2017

<u>Property Owner</u>	<u>Address</u>	<u>Contractor Payment</u>	<u>Admin Fee</u>	<u>Total Fee</u>
David P. Pritchett, III	509 S. Lakeview Dr.	\$50.00	\$150.00	\$200.00
Martin P. Silva	1101 S. Hilltop Rd.	\$50.00	\$100.00	\$250.00
Vendee Mortgage Tr. 2003-2	1101 Hackberry Rd.	\$30.00	\$75.00	<u>\$105.00</u>
			Total	\$555.00