

**AGENDA**  
**CITY COMMISSION MEETING**  
**Tuesday, June 2, 2015**  
**1:00 p.m.**  
**(Amended 06/01/2015)**

- I. No Pre-Meeting.**
- II. REGULAR MEETING CALLED TO ORDER AND CITY CLERK ANNOUNCING QUORUM PRESENT.**
- III. PLEDGE OF ALLEGIANCE TO THE FLAG AND INVOCATION.**
- IV. APPROVAL OF THE MINUTES OF THE LAST REGULAR MEETING, WHICH IF NO CORRECTIONS ARE OFFERED, SHALL STAND APPROVED.**
- V. PUBLIC COMMENT** Agenda Schedule Allowance: 30 minutes (5 minutes per spokesperson)
- VI. CONSIDERATION OF PETITIONS, MEMORIALS AND REMONSTRANCES.**
  - A. Governing Body consideration and approval to allow the Mayor to proclaim June 2, 2015 as Joel Salmans Day.
- VII. REPORT OF THE CITY MANAGER.**
  - A. Staff would like to take this opportunity to introduce and welcome Mr. James Dummermuth, City Prosecutor. James' first day on the job was May 18, 2015.
  - B. Staff has provided cost information regarding improvements to Bellevue Avenue between Main Street and Eighth Street. The request for such an improvement was brought before the Commission by a resident during the March 31, 2015 Town Hall Meeting. Staff will continue discussions with affected properties regarding cost share options for the Commission's consideration at a later date.
  - C. Staff has provided several items of information for Governing Body review including the following: from Cemetery Sexton Stevenson the monthly activity report, from Interim Police Chief Prewitt the monthly activity report and from Finance Director Hitz the monthly sales tax report.
  - D. Meetings of note:
    - ✓ June 6, 2015 – Beef Empire Day's Children's Parade at Stevens Park at 10:00 a.m.
    - ✓ June 14, 2015 – Beef Empire Day's Golf Scramble at Buffalo Dunes Golf Course at 8:00 a.m.
    - ✓ June 13, 2015 – Beef Empire Day's Chuck Wagon Breakfast at Stevens Park from 6:30 am - 9:30 a.m.
    - ✓ June 13, 2015 – Beef Empire Day's Parade on Main Street starting at 10:30 a.m.
    - ✓ June 13, 2015 – Beef Empire Day's Chuck Wagons in the Park at Stevens Park at 11:30 a.m.
    - ✓ June 15 -19, 2015 – American Junior Golf Association tournament at Buffalo Dunes Golf Course

- ✓ June 17, 2015 – Garden City Area Chamber of Commerce monthly breakfast – The Golf Club at Southwind at 7:30 a.m.
- ✓ June 18, 2015 – Downtown Farmers Market at Stevens Park from 5:00 p.m. – 8:00 p.m.
- ✓ June 19, 2015 – Garden City Area Chamber of Commerce Annual Golf tournament at The Golf Club at Southwind at 11:30 a.m.
- ✓ June 20, 2015 – Shop Small Saturday on Main Street
- ✓ July 15, 2015 – Garden City Area Chamber of Commerce monthly breakfast – The Golf Club at Southwind at 7:30 a.m.
- ✓ August 15, 2015 – Banner Art Walk Preview downtown from 4:00 p.m. – 6:00 p.m.
- ✓ August 19, 2015 – Garden City Area Chamber of Commerce monthly breakfast – The Golf Club at Southwind at 7:30 a.m.
- ✓ August 29, 2015 – Garden City Area Chamber of Commerce 10<sup>th</sup> Annual Wine Tasting Event at the Clarion Inn at 7:00 p.m.

**VIII. CONSIDERATION OF APPROPRIATION ORDINANCE.**

- A. Appropriation Ordinance No. 2389-2015A.

**IX. CONSIDERATION OF ORDINANCES AND RESOLUTIONS.**

- A. Resolution No. \_\_\_\_\_ - 2015, a resolution authorizing the removal of motor vehicle nuisances from certain properties in the City of Garden City, Kansas, pursuant to Section 38-63 of the Code of Ordinances of the City of Garden City, Kansas. ( 2316 Dee Avenue – red and white semi-truck and 201 E. Emerson Street – beige & grey motorhome)

**X. OLD BUSINESS.**

- A. Governing Body consideration of a Wheatland Electric Cooperative franchise request.
- B. Governing Body consideration and approval of bids received for the demolition bid approval at 1904 Crestway Drive.

**XI. NEW BUSINESS.**

- A. Governing Body consideration and approval of a Master Service Agreement between the City of Garden City and Revere Healthcare Solutions, Inc.
- B. Governing Body consideration and approval of a Voice Over Internet Phone Service (VOIP) system for all City departments.
- C. Governing Body consideration and approval for a waiver to the ordinance prohibiting the discharge of fireworks within the corporate limits of the City from June 27, 2015 to July 5, 2015 between the hours of 10:30 a.m. and 10:30 p.m.
- D. City staff requests Governing Body consideration and authorization to select a consulting engineering firm to provide complete street design guidelines which would include road diets, roundabouts, circles, bump outs, crosswalks, bicycle lanes and etc.

E. Governing Body consideration and approval of a five (5) year contract with HD Supply for upgrades to the City's existing FlexNet Metering System and authorizing the Mayor and City Clerk to execute the contract.

F. Executive Director of Downtown Vision Inc., Nicole Lucas will be present to review the quarterly report with the Governing Body.

G. Finance Director Hitz will be present to discuss the following items:

1. Review of Support Funds: Health Insurance (#55), Health Insurance Reserve (#56). Review of Tax Funds: Recreation Commission (#25), Bond & Interest (#40) Airport (#60) and Airport Improvement (#61). Review of General Fund Administrative Divisions – Police, Planning, Engineering, Parks and Inspection.

H. **Consent Agenda for approval consideration:** (The items listed under this “consent agenda” are normally considered in a single motion and represent items of routine or prior authorization. Any member of the Governing Body may remove an item prior to the vote on the consent agenda for individual consideration.)

1. Governing Body consideration and approval of Task Order Number 2 between the City of Garden City and HNTB for construction observation services for Airport Improvement Program (AIP) 3-20-0024-37 - Construction of Partial Parallel Taxiway F at Garden City Regional Airport.
2. Governing Body consideration and approval of the lease agreement between AIR MD LLC d/b/a Lifeteam and the City of Garden City for the rental of the Airport House located at Garden City Regional Airport.
3. Governing Body consideration and approval of an annexation agreement with Grace Bible Church, 2595 Jennie Barker Road.
4. Governing Body consideration and approval of a 2015 Vegetation Mowing application from Mark Schiffelbein.
5. Governing Body consideration and approval of a plat for Maestas Addition.
6. Quit Claim Deed from Ezequiel and Remedios Ledesma and/or Elva Bridgman Ledesma transferring Spaces 5 and 6, Lot 86, Zone F of Valley View Cemetery to Elva Veronica Ledesma and Travus Bridgman.
7. Quit Claim Deed from John or Michelle Dailey transferring Space 6, Lot 58, Zone F of Valley View Cemetery to Ezequiel Ledesma, Jr. and Hector Ledesma.
8. Licenses:

**(2015 New)**

- a) Hard Rock Lanes..... Cereal Malt Beverage
- b) Beef Empire Days Rodeo.....Temporary Cereal Malt Beverage
- c) Phaze Concrete.....Class A General
- d) Total Fire Protection.....Class E-Fire Sprinkler and Protection
- e) Jacob Enns.....Class E-SOC Specialized Other

**(Renewal)**

- f) ServiceExperts, Inc. .... Class D-M Mechanical
- g) Mark’s Custom Signs, Inc. .... Class D-SI Sign

**XII. CITY COMMISSION REPORTS.**

A. Commissioner Cessna

B. Commissioner Dale

C. Mayor Doll

D. Commissioner Law

E. Commissioner Fankhauser

**XIII. ADJOURN.**

**THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS**

City of Garden City

May 19, 2015

The regular meeting of the Board of Commissioners of the City of Garden City was held at 1:00 p.m. at the City Administrative Center on Tuesday, May 19, 2015 with all members present. Commissioner Fankhauser opened the meeting with the Pledge of Allegiance to the Flag and Invocation.

Commissioner Cessna moved to approve and allow the Mayor to proclaim May 10-16, 2015 as National Police Week. Commissioner Fankhauser seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

The Friends of Lee Richardson Zoo presented their calendar of fundraising events for Lee Richardson Zoo for 2015 and provided memos regarding special requests to accommodate these events for Governing Body consideration and approval. Proceeds from these events directly benefit zoo improvements and provide unique events for community and regional involvement and tourism. The following requested require Governing Body approval:

Commissioner Law moved to approve the request for Hullabaloo at the Zoo to include the closure of the zoo at 4:00 p.m., permission to sell beer and other cereal malt beverages under a temporary CMB license and authorization to charge an admission fee on July 11, 2015. Commissioner Cessna seconded the vote. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

Commissioner Fankhauser moved to approve the requests for A Wild Affair to include the closure of the zoo all day, permission to sell alcohol in the form of wine and beer and authorization to charge an admission fee on September 12, 2015. Commissioner Dale seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

Commissioner Doll moved to approve the requests for Boo! At The Zoo to include the closure of the zoo and authorization to charge an admission fee on October 17, 2015. Commissioner Cessna seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

The City received the annual grant in the amount of \$95,000 for the Park and Zoo Departments from the Finnup Foundation Trust including \$10,000 for future land acquisitions. Thank You, Finnup Foundation Trust!

Aquatics Director Colborn, Garden City Recreation Commission provided a memorandum on the progress of the repairs and preparations for the summer swimming season, pool opening will be delayed until May 30, 2015.

Staff provided several items of information for Governing Body review including the following: from Director of Aviation Powell the monthly activity report, from Community Development Director Kentner the building and code enforcement reports, from Finance Director Hitz the monthly financials, from Fire Chief Shelton the monthly activity report, from Public Works Director a project report and from Zoo Director Newland the monthly activity report.

Meetings of note:

- ✓ May 15, 2015 – May 24, 2015 - Beef Empire Day's Ottaway Amusements Carnival
- ✓ May 20, 2015 – Garden City Area Chamber of Commerce monthly breakfast – The Golf Club at Southwind at 7:30 a.m.
- ✓ June 6, 2015 – Beef Empire Day's Children's Parade at Stevens Park at 10:00 a.m.
- ✓ June 13, 2015 – Beef Empire Day's Golf Scramble at Buffalo Dunes Golf Course at 8:00 a.m.
- ✓ June 13, 2015 – Beef Empire Day's Chuck Wagon Breakfast at Stevens Park from 6:30 am - 9:30 a.m.
- ✓ June 13, 2015 – Beef Empire Day's Parade on Main Street starting at 10:30 a.m.
- ✓ June 13, 2015 – Beef Empire Day's Chuck Wagons in the Park at Stevens Park at 11:30 a.m.
- ✓ June 15 -19, 2015 – American Junior Golf Association tournament at Buffalo Dunes Golf Course
- ✓ June 17, 2015 – Garden City Area Chamber of Commerce monthly breakfast – The Golf Club at Southwind at 7:30 a.m.
- ✓ June 19, 2015 – Garden City Area Chamber of Commerce Annual Golf tournament at The Golf Club at Southwind at 11:30 a.m.
- ✓ August 29, 2015 – Garden City Area Chamber of Commerce 10<sup>th</sup> Annual Wine Tasting Event at the Clarion Inn at 7:00 p.m.

Appropriation Ordinance No. 2388-2015A, "AN APPROPRIATION ORDINANCE MAKING CERTAIN APPROPRIATIONS FOR CERTAIN CLAIMS IN THE AMOUNT OF \$1,297,249.85," was read and considered section by section.

Commissioner Fankhauser moved to approve and pass Appropriation Ordinance No. 2388-2015A. Commissioner Cessna seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

Resolution No. 2632-2015, “A RESOLUTION ENCOURAGING EFFORTS TO MAINTAIN THE SOUTHWEST CHIEF PASSENGER SERVICE THROUGH THE STATE OF COLORADO AND PLEDGE FINANCIAL PARTICIPATION IN THE LAJUNTA, COLORADO TIGER VII GRANT APPLICATION MATCH (financial participation).,” was read and considered section by section. Commissioner Fankhauser moved to approve Resolution No. 2632-2015. Commissioner Doll seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

Resolution No. 2633-2015, “A RESOLUTION AUTHORIZING THE CITY OF GARDEN CITY, KANSAS TO ENTER INTO A MUNICIPAL LEASE/PURCHASE AGREEMENT (Lease No. 5000127-006) FOR POLICE DEPARTMENT EQUIPMENT WITH CLAYTON HOLDINGS, LLC (amendment),” was read and considered section by section. Commissioner Cessna moved to approve Resolution No. 2633-2015. Commissioner Law seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

Resolution No. 2634 -2015, “A RESOLUTION AUTHORIZING THE CITY OF GARDEN CITY, KANSAS TO ENTER INTO A MUNICIPAL LEASE/PURCHASE AGREEMENT (Lease No. 5000127-007) FOR POLICE AND FIRE DEPARTMENT EQUIPMENT WITH CLAYTON HOLDINGS, LLC (amendment),” was read and considered section by section. Commissioner Cessna moved to approve Resolution No. 2634-2015. Commissioner Dale seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

Commissioner Cessna moved to approve the Kansas Avenue widening project selection committee’s recommendation for a consulting engineering firm to provide construction, engineering (inspection) and right-of-way acquisition services. Commissioner Fankhauser seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
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Yea Yea Yea Yea Yea

Commissioner Cessna moved to table the consideration of granting a franchise agreement to the Wheatland Electric Cooperative to provide electrical services to recently annexed City Property and move to the June 2, 2015 meeting. Commissioner Law seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna Dale Doll Fankhauser Law  
Yea Yea Yea Yea Yea

Mayor Doll moved to allow for the discharge of fireworks within the corporate limits of the City of Garden City from July 3, 2015 – July 5, 2015. Commissioner Fankhauser seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna Dale Doll Fankhauser Law  
Nay Nay Yea Yea Nay

Commissioner Dale moved to allow for the discharge of fireworks within the corporate limits of the City of Garden City from June 27, 2015 – July 5, 2015. Commissioner Cessna seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna Dale Doll Fankhauser Law  
Yea Yea Nay Yea Nay

Commissioner Cessna move to approve and accept the low bid from Smoky Hill, LLC in the amount of \$1,453,572.90, subject to FAA concurrence and full grant approval. Commissioner Dale seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna Dale Doll Fankhauser Law  
Yea Yea Yea Yea Yea

Commissioner Cessna moved to authorize the City Manager to execute the FAA Grant Application. Commissioner Dale seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna Dale Doll Fankhauser Law  
Yea Yea Yea Yea Yea

Commissioner Cessna moved to authorize the Mayor and City Clerk to execute the contracts when received from the contractor. Commissioner Law seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

Finance Director Hitz reviewed the Enterprise and Support Funds – Golf Course (#70), Golf Course Building (#71), Solid Waste (#75) and Drainage Utility (#79).

Commissioner Cessna moved to appoint Stephanie Juarez to fill the unexpired term to ending December 2015 on the Cultural Relations Board. Commissioner Law seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Yea	Yea

Commissioner Fankhauser moved to approve the following:

1. Staff and Gibson, Mancini, Carmichael and Nelson, PA, (GMCN) have negotiated a contract for design services for the Central Fire Station for Governing Body consideration and approval.
2. Governing Body consideration and approval of a 2015 Vegetation Mowing application from Katina M. Eichhorn and Edwin T. Pahls.

3. Licenses:

**(2015 New)**

- a) McGilton Construction Co. Inc ..... Class A General
- b) Shambaugh & Son, L.P. .... Class A General
- c) Key Construction, Inc..... Class A General
- d) Lynn Barrow..... Class A General
- e) CW Heating..... Class D-M Mechanical
- f) TriMark, Inc. .... Class D-1 Sign Installation

**(2015 Renewal)**

- g) Celeste Installations & Repairs, LLC ..... Class D-E Electrical

Commissioner Cessna seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Absent	Yea

Commissioner Cessna moved that the City Commission go into executive session pursuant to K.S.A. 75-4319(b)(1) for 10 minutes for the purpose of discussing matters of non-elected personnel and their contractual obligations because if this matter were discussed in open session it might invade the privacy of those discussed and that the City Commission reconvene into open session in the City Commission Chambers at

2:08 p.m. Commissioner Fankhauser seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Cessna	Dale	Doll	Fankhauser	Law
Yea	Yea	Yea	Absent	Yea

At the expiration of the designated time, and in open session, Mayor Doll stated no action was taken.

Mayor Doll adjourned the meeting since there was no further business before the Governing Body.

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Janet A. Doll, Mayor

ATTEST:

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Celyn N. Hurtado, City Clerk

### **City Commission Reports**

Commissioner Law attended the Peace Officers Memorial ceremony and stated he looks forward to attending every year and commends the Police, Highway Patrol and Sheriff's Departments for their continued service to the community. Commissioner Law stated the next day was Armed Forces Day and also thanked those that serve locally and abroad. Commissioner Law thanked the Finnup Foundation for their continued contribution to the City.

Commissioner Cessna thanked the Finnup Foundation for their continued support. Commissioner Cessna stated he likes the continued improvements at Lee Richardson Zoo and asked if the trail was completed at the Zoo. City Engineer Cottrell stated the trail was complete. Commissioner Cessna congratulated Chief Hawkins on his retirement. Commissioner Cessna welcomed Communications Intern Amanda Hansen. Commissioner Cessna mentioned that there were only 2 days of school left and mentioned he had a flier out regarding the Community Summer Feeding Kick Off at Florence Wilson on June 2, 2015 at 10:30 a.m. and invited the Commissioners to

attend. Commissioner Cessna passed out a brochure for the 2015 Crystal Apple Awards and stated the deadline to submit a teacher is May 29, 2015.

Commissioner Dale thanked the Finnup Foundation for their contributions to the city. Commissioner Dale stated he attended the Peace Officers Memorial ceremony and appreciates all who serve the community. Commissioner Dale thanked Public Works Director Curran and his staff for helping at the river during the recent cleanup efforts made by volunteers. Commissioner Dale encouraged citizens if they see someone dumping at the river to get a license tag number and call it into the Police Department. Commissioner Dale said goodbye to Government Affairs Report Scott Saust and wished him the best in his new position at the Garden City Telegram. Commissioner Dale encouraged the community to follow the fireworks ordinance law.

Mayor Doll thanked Law Enforcement for the Peace Officers Memorial service and stated she was honored to speak on behalf of the citizens of our community on the good work that our officers do. Mayor Doll congratulated Chief Hawkins on his retirement and thanked him for his nearly 32 years of service. Mayor Doll thanked the Finnup Foundation for their continued contributions to the community.

Commissioner Fankhauser appreciates the continued support of the Finnup Foundation.

# Petitions

# PROCLAMATION

**WHEREAS,** Joel Salmans began working for Dillon's East in Garden City on July 16, 1992 and has devoted nearly 23 years to customer service; and

**WHEREAS,** Joel has become a fixture of Dillon's front end in his position of a Courtesy Clerk, greeting guests with a warm smile, sometimes accompanied by a big hug; and

**WHEREAS,** Joel has been a past recipient of Dillon's Associate of the Quarter Award, an honor for which he was selected by his peers; and

**WHEREAS,** Over the course of his many years with Dillon's, Joel has also been recognized in customer surveys as being a great associate.

**NOW, THEREFORE,** I, Janet Doll, Mayor of the City of Garden City, Kansas, do hereby proclaim June 2, 2015 as

## *Joel Salmans Day*

in Garden City, Kansas and urge all citizens to acknowledge and express their sincere appreciation and thanks for his service to the customers of Dillon's East and to this community.

**SIGNED AND SEALED** this 2nd day of June, 2015.

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Janet Doll, *Mayor*

ATTEST:

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Celyn Hurtado, City Clerk

# Report of the City Manager



# ***MEMORANDUM***

**TO:** GOVERNING BODY

**FROM:** Steve Cottrell

**DATE:** 27 May 2015

**RE:** USE OF SPECIAL ASSESSMENT FINANCING FOR BELLEVUE AVENUE BETWEEN MAIN AND EIGHTH STREETS

## **Engineering Department**

Steven F. Cottrell, P.E.,  
City Engineer

C.W. Harper, P.E.  
Assistant City Engineer

### ISSUE

At your Town Hall meeting on March 31, the Governing Body responded to a question from a resident about improvements to Bellevue Avenue between Main and Eighth Streets. Staff has prepared a cost estimate for further consideration.

### BACKGROUND

Bellevue Avenue has just recently been completely annexed into the City Limits. Prior to last summer, the west 660 feet of the right-of-way was not inside the City. In past years, the City has installed and maintained asphalt millings as a dust control measure.

Previous similar street improvements, Taylor Avenue, south of Fulton Street and A Street south of Hamline Street, were completed with a cost sharing with 30% paid by the benefit district and 70% by the City-at-large.

The attached cost estimate and plan show a 30 foot back to back street, with a 5 foot sidewalk on the south and a 10 foot sidewalk/pathway on the north side. Parking would not be allowed on street.

In the near future, staff will meet with the affected property owners to determine if sufficient interest exists to proceed with a Petition. At a future meeting, the Governing Body will likely be asked to consider the following alternatives.

### ALTERNATIVES

1. Authorize staff to prepare a Petition for a cost share project or at some other cost share determined by the Governing Body.
2. Authorize staff to prepare a Petition with no City participation.
3. Defer action until a later date.

### RECOMMENDATION

None at this time.

### FISCAL

If a cost sharing special assessment project is eventually deemed sufficient, we would temporarily finance the improvements. Special Assessment bonds would be sold in 2016 and the City's first payment would be required in the 2017 budget.

CITY ADMINISTRATIVE  
CENTER  
301 N. 8<sup>TH</sup>  
P.O. Box 998  
GARDEN CITY, KS  
67846-0998  
620.276.1130  
FAX 620.276.1137  
www.garden-city.org

**CITY OF GARDEN CITY, KANSAS  
ENGINEERING DEPARTMENT**

The following is a preliminary estimate of cost for street construction consisting of curb & gutter, sidewalks, roadbase, asphalt pavement (30' back-to-back wide) and related items of work necessary to construct the following street:

<b>Bellevue Avenue Improvements (Main to 8th)</b>					
<b>Conceptual Estimate</b>					
	Bid Item	Unit	Quan	UNIT COST	TOTAL COST
1	Excavation	CY	3375	\$ 12.00	\$ 40,500.00
2	Remove Existing Pavement	SY	4440	\$ 5.00	\$ 22,200.00
3	6" AB-2 Base	SY	1,561	\$ 5.00	\$ 7,804.44
4	Asphalt Pavement (6")	SY	4,083	\$ 28.00	\$ 114,324.00
5	Remove Curb & Gutter	LF	90	\$ 6.50	\$ 585.00
6	Standard 30" Rollover Curb & Gutter	LF	3082	\$ 21.00	\$ 64,722.00
7	Sidewalk Ramp	EA	6	\$ 750.00	\$ 4,500.00
8	5" Concrete Sidewalk	SY	2500	\$ 35.00	\$ 87,500.00
9	7" Concrete	SY	450	\$ 60.00	\$ 27,000.00
10	Permanent Signage	LS	1	\$ 500.00	\$ 500.00
11	Erosion and Sediment Control	LS	1	\$ 5,000.00	\$ 5,000.00
12	Construction Staking	LS	1	\$ 1,500.00	\$ 1,500.00
13	Traffic Control	LS	1	\$ 5,000.00	\$ 5,000.00
<b>TOTAL</b>					<b>\$ 381,100.00</b>

Engineering & Administration	\$ 19,055.00
Issuance Costs	\$ 9,527.50
Temporary financing	\$ 28,582.50
Contingency & Miscellaneous	\$ 19,055.00
	<u>\$ 457,320.00</u>

Apportionment of Cost:			
Benefit District	30%		\$ 137,196.00
City-at-Large	70%		\$ 320,124.00



Steven F. Cottrell, P.E.  
City Engineer

5/12/2015



# Staff Reports

# City Manager / Cemetery Report

## MAY 2015

Cemetery	# of Burials	# of Spaces Sold	# of Spaces Reserved	Revenue Generated			
				Spaces Sold	Spaces Resvd	Opening/Closing of Graves	Other Fees VVC/SMG
VVC	22	14	0	\$ 1,650.00	\$ 3,750.00	\$ 7,575.00	
SMG	1	0	0				\$ 2,810.00

<b>Total Revenue</b>	<b>\$ 15,785.00</b>
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**Spaces Sold:** Revenue collected from spaces purchased at time of need or pre-need

**Spaces Reserved:** Payments collected from reserved spaces

**OTHER FEES:** Monument Layouts  
 Weekend/Holiday Service Fees  
 Tree Removal  
 Chair Rental  
 Administrative Fees

**GARDEN CITY POLICE DEPARTMENT**  
**MASTER ACTIVITY REPORT**  
 April of 2015  
**INCIDENTS REPORTED**

<b>OFFENSES</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Murder/Manslaughter	2	0	2
Rape	2	1	5
Robbery	2	2	5
Aggravated Assault	4	10	30
Burglary	2	5	25
Theft	42	53	181
Auto Theft	2	0	4
Arson	1	0	2
<b>TOTAL</b>	57	71	254
All Other Crimes	123	177	509
<b>GRAND TOTAL</b>	180	248	763

**CRIMINAL ENFORCEMENT ACTIVITIES**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Adult Arrests	205	273	924
Juveniles Detained	31	33	109
<b>TOTAL CUSTODY</b>	236	306	1033
Alcohol Related	28	16	86
Drug Related	28	57	155
Curfew Violations	6	7	20

**INVESTIGATIONS DIVISION ACTIVITIES**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Total Cases Assigned	34	37	122
Total Active Cases	186	166	681
Adult Affidavits Filed	14	17	59
Juvenile Affidavits Filed	1	0	4
Follow-Up Contacts	643	574	2142
Special Assignments	30	58	175
Search Warrants	16	28	62
Supplemental Reports	142	214	643
Other Reports	167	207	687
Cases Referred For Prosecution	60	60	220

**TRAFFIC ACCIDENT INVESTIGATIONS**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Fatal Accidents	0	0	0
Injury Accidents	7	6	20
Non-Injury Accidents	55	46	215
<b>TOTAL ACCIDENTS</b>	62	52	235
Private Property Accidents	3	6	13

**GARDEN CITY POLICE DEPARTMENT  
 MASTER ACTIVITY REPORT  
 April of 2015**

**OFFICERS ASSAULTED**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Firearm	0	0	0
Cutting Instrument	0	0	0
Other Dangerous Weapon	0	0	4
Hands, Fist, Feet, Etc.	2	0	9
Police Service Dog	0	0	0
<b>TOTAL ASSAULTS</b>	<b>2</b>	<b>0</b>	<b>5</b>

**PATROL/CRD DIVISIONS SUMMARY**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Offense Reports	210	260	833
Supplemental Reports	140	132	472
Other Reports	135	118	433
Community Oriented Policing	257	292	1079
Speeding Citations	43	63	173
Other Traffic Citations	262	471	1308
Parking Citations	12	18	62
Warning Notices	428	807	2126
Penal Summons	40	40	143
Felony Cases Cleared	29	41	135
Misdemeanor Cases Cleared	113	148	482
DUI Cases Cleared	10	13	54
Insecure Premises	6	10	34
Field Interviews	3	8	19
Citizen & Business Assists	130	156	548
Alarms	81	77	310
Adult Affidavits Filed	49	45	158
Juvenile Affidavits Filed	16	16	68

**COMMUNICATIONS CENTER ACTIVITIES**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Non-Traffic Activities	2384	2608	9321
Traffic Activities	625	1213	3144
<b>TOTAL ACTIVITIES</b>	<b>3009</b>	<b>3821</b>	<b>12465</b>
911 Calls	1521	1420	5859
Finney County Sheriff's Office Activities	421	395	1625

**GARDEN CITY POLICE DEPARTMENT  
 MASTER ACTIVITY REPORT  
 April of 2015**

**RESPONSE TIME SUMMARY**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST YEAR</b>	<b>5 YEARS AGO</b>
Average Emergency	3.43	2.44	3.54
Average Non-Emergency	11.05	11.33	15.39
Average Traffic Accident	11.58	9.48	17.68

**ANIMAL INCIDENT ACTIVITIES**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Animals Impounded	129	122	509
Animals Disposed	26	20	110
Citations Issued	1	5	15
Animal Bites	2	5	9
Adoptions	26	34	138

**TRAINING HOURS RECEIVED**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Administrative	42.00	91.00	168.00
Patrol/CRD Division	445.50	360.00	1218.50
Support Services Division	78.75	71.25	228.75
Investigation Division	78.00	138.00	273.00
Instructor Hours	50.00	60.00	210.50
<b>SUB-TOTAL TRAINING HRS</b>	694.25	720.25	2098.75
Academy Training Hours	0.00	0.00	96.00
<b>TOTAL TRAINING HOURS</b>	694.25	720.25	2194.75

**ADMINISTRATIVE INVESTIGATIONS**

<b>DESCRIPTION</b>	<b>THIS MONTH</b>	<b>LAST MONTH</b>	<b>TO DATE THIS YEAR</b>
Allegations Received	1	1	7
Unfounded	0	1	1
Unsubstantiated	0	1	1
Sustained	0	1	3
Exonerated	0	0	1
Violation Not Based On Complaint	0	0	0
Investigation In Progress	1	0	8
Administrative Closure	0	0	1
Commendations	4	1	8

## Bias-Based Policing Statistics

April 2015

	March #	March %	April #	April %
<b>SUBJECTS CONTACTED:</b>	355	N/A	178	N/A
<b>AGE:</b>				
15 yoa - 19 yoa	84	24%	36	20%
20 yoa - 29 yoa	128	36%	61	34%
30 yoa - 49 yoa	110	31%	57	32%
50+	33	9%	24	13%
Not Provided	0	0%	0	0%
<i>TOTAL</i>	355	100%	178	100%
<b>RACE:</b>				
White	333	94%	163	92%
Black	15	4%	14	8%
Native American	0	0%	0	0%
Asian	6	2%	1	1%
Other	0	0%	0	0%
More Than One Race	0	0%	0	0%
Not Provided	1	0%	0	0%
<i>TOTAL</i>	355	100%	178	100%
<b>GENDER:</b>				
Male	251	71%	104	58%
Female	102	29%	74	42%
Unknown	1	0%	0	0%
Not Provided	1	0%	0	0%
<i>TOTAL</i>	355	100%	178	100%
<b>ETHNICITY:</b>				
Hispanic/Latino	225	63%	99	56%
Non-Hispanic	126	35%	78	44%
Not Provided	4	1%	1	1%
<i>TOTAL</i>	355	100%	178	100%
<b>RESPONSE AREA:</b>				
1	88	25%	55	31%
2	46	13%	30	17%
3	84	24%	42	24%
4	90	25%	35	20%
5	47	13%	16	9%
Not Provided	0	0%	0	0%
<i>TOTAL</i>	355	100%	178	100%
<b>PRIMARY REASON FOR OFFICER INVESTIGATION:</b>				
Call Related	21	6%	27	15%
Officer Initiated	334	94%	151	85%
Not Provided	0	0%	0	0%
<i>TOTAL</i>	355	100%	178	100%
<b>INFORMATION OBTAINED BY:</b>				
Officer's Perception	323	91%	147	83%
Investigation	32	9%	31	17%
Not Provided	0	0%	0	0%
<i>TOTAL</i>	355	100%	178	100%

## **Bias-Based Policing Statistics**

**April 2015**

	<b>March #</b>	<b>March %</b>	<b>April #</b>	<b>April %</b>
<b>RELIGIOUS DRESS:</b>				
Yes	8	2%	1	1%
No	347	98%	177	99%
Not Provided	0	0%	0	0%
<i>TOTAL</i>	<i>355</i>	<i>100%</i>	<i>178</i>	<i>100%</i>

<b>PRIMARY REASON FOR STOP:</b>				
Moving Violation	224	63%	117	66%
Equipment Violation	107	30%	39	22%
Criminal Offense/Probable Cause	10	3%	8	4%
Other Violation	12	3%	8	4%
To Render Service	1	0%	3	2%
Suspicious Circumstances	1	0%	2	1%
Pre-existing Knowledge	0	0%	1	1%
Special Detail	0	0%	0	0%
Multiple Reasons	0	0%	0	0%
Not Provided	0	0%	0	0%
<i>TOTAL</i>	<i>355</i>	<i>100%</i>	<i>178</i>	<i>100%</i>

<b>ACTION TAKEN:</b>				
Citation	218	61%	129	72%
Search	3	1%	0	0%
Warning	76	21%	24	13%
Arrest	58	16%	25	14%
Warrant Arrest	0	0%	0	0%
Assistance Provided	0	0%	0	0%
No Action	0	0%	0	0%
Not Provided	0	0%	0	0%
<i>TOTAL</i>	<i>355</i>	<i>100%</i>	<i>178</i>	<i>100%</i>

<b>SEARCH RATIONALE:</b>				
Not Applicable	313	88%	167	94%
Vehicle Indicators	7	2%	1	1%
Verbal Indicators	0	0%	0	0%
Physical/Visual Indicators	11	3%	4	2%
Document Indicators	1	0%	0	0%
Incident to Arrest	22	6%	6	3%
Other	1	0%	0	0%
More Than One Reason	0	0%	0	0%
Not Provided	0	0%	0	0%
<i>TOTAL</i>	<i>355</i>	<i>100%</i>	<i>178</i>	<i>100%</i>

<b>TYPE OF SEARCH:</b>				
No Search Conducted	304	86%	160	90%
Consent Search Conducted	8	2%	0	0%
Inventory	0	0%	0	0%
Stop and Frisk	0	0%	0	0%
Search Warrant	0	0%	0	0%
No Search/Consent Denied	1	0%	0	0%
Search Incident to Arrest	30	8%	12	7%
Plain View	3	1%	1	1%
Probable Cause	8	2%	5	3%
More Than One Type	0	0%	0	0%
Not Provided	1	0%	0	0%

**Bias-Based Policing Statistics**

**April 2015**

	<b>March #</b>	<b>March %</b>	<b>April #</b>	<b>April %</b>
<i>TOTAL</i>	355	100%	178	100%

## Bias-Based Policing Statistics

April 2015

	March #	March %	April #	April %
<b>CONTRABAND SEIZED:</b>				
None	337	95%	173	97%
Currency	0	0%	0	0%
Firearms	0	0%	0	0%
Other Weapons	0	0%	0	0%
Drugs/Paraphernalia	11	3%	3	2%
Alcohol/Tobacco Products	6	2%	2	1%
Stolen Property	0	0%	0	0%
Other	0	0%	0	0%
More Than One Type	0	0%	0	0%
Not Provided	1	0%	0	0%
<i>TOTAL</i>	<i>355</i>	<i>100%</i>	<i>178</i>	<i>100%</i>

<b>Hispanic</b>	Arrests	47	21%	15	15%
	Citations	141	63%	72	73%
	Warnings	37	16%	12	12%
<b>Non-Hispanic</b>	Arrests	10	8%	10	13%
	Citations	75	60%	56	72%
	Warnings	38	30%	12	15%

**Crimes April 2015**

**INCIDENTS (Selection)**

<all other values>

**CVLEGEND**

-  HOMICIDE
-  RAPE
-  ROBBERY
-  AGGRAVATED ASSAULT
-  BURGLARY
-  LARCENY
-  MOTOR VEHICLE THEFT
-  BATTERY
-  SIMPLE ASSAULT
-  DOMESTIC VIOLENCE
-  CINC
-  DISORDERLY CONDUCT
-  FORGERY
-  DRUGS (EQUIPMENT)
-  DRUGS (POSSESSION)
-  DUI
-  LIQUOR LAW VIOLATION
-  SEX OFFENSE
-  VANDALISM
-  THREATS
-  TRESPASSING
-  RUNAWAY
-  ANIMAL
-  ALL OTHER OFFENSES

**Road Centerlines**

<all other values>

**Road Class**

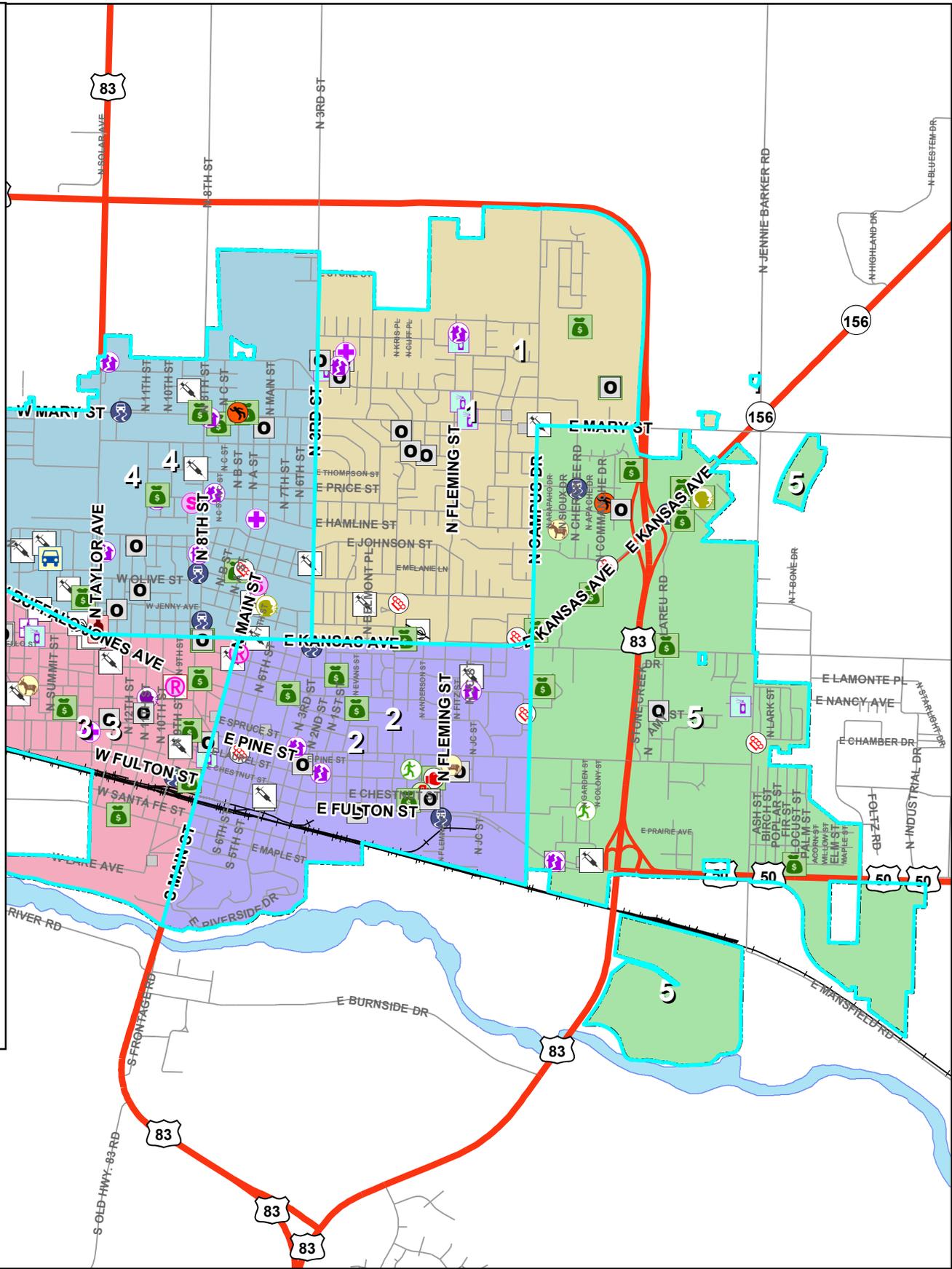
-  Highway
-  Ramp

**Municipal Boundaries**

**County Boundaries**

**Police Districts**

- District**
-  1
  -  2
  -  3
  -  4
  -  5



# Garden City PD

This agency is not responsible for the misinterpretation of this map and makes no inference or judgment as to the relative safety of particular areas. This map does not meet national map accuracy standards and should not be used for engineering purposes.



**CITY OF GARDEN CITY, KANSAS**  
**ANALYSIS OF COUNTY-WIDE SALES TAX RECEIPTS**

MONTH RECEIVED	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
JANUARY	82,749	119,104	99,080	87,049	90,999	89,620	90,890	96,504	112,365	136,559	194,148	172,402	201,675	215,987	207,262	300,664
FEBRUARY	135,771	115,633	119,867	107,746	112,817	106,162	108,918	117,464	120,392	112,708	168,090	206,332	201,136	213,048	244,277	362,832
MARCH	111,517	94,385	89,945	83,994	93,138	83,528	84,800	91,096	111,384	127,434	176,275	176,089	187,616	198,757	200,357	290,207
APRIL	110,045	92,941	86,892	88,516	82,176	88,156	88,367	97,920	97,076	105,529	136,058	140,393	176,191	179,735	202,588	302,975
MAY	111,720	98,017	94,809	97,270	92,019	96,607	100,809	103,484	113,955	102,518	173,875	182,165	217,621	215,823	225,522	329,154
JUNE	99,148	93,362	101,379	98,922	86,040	82,884	99,561	98,793	107,235	110,225	174,577	192,468	197,406	205,745	227,284	
JULY	111,647	91,208	99,915	97,573	91,205	88,888	95,381	109,492	130,863	126,193	163,203	175,188	199,698	238,623	232,796	
AUGUST	113,844	98,717	96,327	91,715	97,295	101,836	104,308	99,317	123,221	103,580	180,595	178,778	209,006	213,331 *	223,986	
SEPTEMBER	84,773	99,232	88,585	102,820	94,038	87,159	93,570	106,941	133,521	111,381	174,612	178,054	180,008	232,303	304,118	
OCTOBER	* 129,697	106,658	102,705	97,918	90,696	105,259	101,146	112,166	117,796	108,343	174,202	189,062	203,819	218,503	313,005	
NOVEMBER	103,094	97,348	82,869	78,619	89,706	95,946	94,231	107,500	117,428	111,973	153,378	174,342	208,611	184,384	304,259	
DECEMBER	97,466	89,406	101,296	96,993	94,616	88,792	94,570	109,693	114,846	160,409	161,622	196,711	182,159	236,524	312,690	
TOTAL RECEIPTS	<u>1,291,473</u>	<u>1,196,011</u>	<u>1,163,668</u>	<u>1,129,136</u>	<u>1,114,745</u>	<u>1,114,837</u>	<u>1,156,551</u>	<u>1,250,370</u>	<u>1,400,082</u>	<u>1,416,852</u>	<u>2,030,635</u>	<u>2,161,984</u>	<u>2,364,946</u>	<u>2,552,763</u>	<u>2,998,144</u>	<u>1,585,832</u>
PERCENTAGE CHANGE	13.05%	-7.39%	-2.70%	-2.97%	-1.27%	"FLAT"	3.74%	8.11%	11.97%	1.20%	43.32%	6.47%	9.39%	7.94%	17.45%	

\* REFLECTS HERE & THEREAFTER THE NET AMOUNT OF COUNTY-WIDE SALES TAX.  
CITY REIMBURSES TO COUNTY THE DEDICATED 1/4 CENT FOR LEC PROJECT THROUGH  
AUGUST 2014 RECEIPTS. FINALED AUGUST 2014.

CITY OF GARDEN CITY, KANSAS

ANALYSIS OF CITY SALES TAX RECEIPTS

MONTH RECEIVED	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
JANUARY	310,710	390,595	379,780	309,257	357,335	335,673	351,457	351,627	409,255	529,129	415,161	432,278	483,869	508,705	480,712	521,960
FEBRUARY	447,336	389,764	444,123	419,884	434,310	423,853	416,061	444,506	465,707	415,062	416,555	509,745	497,844	514,511	575,307	638,635
MARCH	371,146	344,152	321,705	304,720	346,371	316,320	317,599	338,956	418,336	461,822	432,675	426,585	438,777	468,745	469,435	470,493
APRIL	364,979	334,588	303,909	313,029	317,571	318,835	321,431	358,967	361,119	388,668	328,743	328,309	409,253	411,491	468,167	493,539
MAY	377,482	356,202	340,131	354,013	345,880	351,143	372,027	382,562	426,812	362,989	430,701	442,882	502,577	481,623	528,216	556,737
JUNE	344,293	341,573	336,435	356,920	340,240	319,314	364,552	363,536	398,458	413,934	423,173	471,595	457,884	469,940	526,978	
JULY	361,811	331,627	359,143	329,005	338,923	330,628	350,754	394,947	456,516	469,538	402,144	431,189	453,965	554,262	540,941	
AUGUST	369,837	350,737	342,529	322,875	376,955	371,521	377,510	372,473	456,809	373,995	433,641	420,914	490,394	504,212	526,281	
SEPTEMBER	304,050	363,139	324,385	366,794	362,024	323,475	341,558	388,244	463,398	421,706	415,115	433,117	424,160	529,341	509,837	
OCTOBER	449,981	382,926	368,395	357,624	341,725	369,193	365,725	408,881	446,179	411,421	425,392	450,833	468,586	501,467	516,778	
NOVEMBER	332,271	355,951	296,743	287,373	339,384	337,133	351,892	352,723	435,767	402,883	390,433	412,877	474,976	422,213	496,772	
DECEMBER	327,755	323,048	381,904	364,126	338,971	338,058	356,317	396,872	432,701	461,792	412,973	481,207	424,131	501,046	519,605	
TOTAL RECEIPTS	<u>4,361,650</u>	<u>4,264,300</u>	<u>4,199,181</u>	<u>4,085,619</u>	<u>4,239,689</u>	<u>4,135,146</u>	<u>4,286,883</u>	<u>4,554,294</u>	<u>5,171,057</u>	<u>5,112,939</u>	<u>4,926,706</u>	<u>5,241,531</u>	<u>5,526,416</u>	<u>5,867,556</u>	<u>6,159,029</u>	<u>2,681,364</u>
PERCENTAGE CHANGE	6.46%	-2.23%	-1.53%	-2.70%	3.77%	-2.47%	3.67%	6.24%	13.54%	-1.12%	-3.64%	6.39%	5.44%	6.17%	4.97%	

**CONSIDERATION OF  
APPROPRIATION ORDINANCE**

# Ordinances & Resolutions

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE REMOVAL OF MOTOR VEHICLE NUISANCES FROM CERTAIN PROPERTIES IN THE CITY OF GARDEN CITY, KANSAS, PURSUANT TO SECTION 38-63 OF THE CODE OF ORDINANCES OF THE CITY OF GARDEN CITY, KANSAS.**

**WHEREAS**, the Governing Body of the City of Garden City has declared it unlawful for any person to maintain a motor vehicle nuisance on private property within the City of Garden City, and

**WHEREAS**, the residents and/or owners of the private property at the addresses listed herein have been notified pursuant to Section 38-63 of the Code of Ordinances and have neither abated the nuisance conditions nor requested a hearing before the Governing Body.

**NOW THEREFORE, BE IT RESOLVED** by the Governing Body of the City of Garden City, Kansas:

**SECTION 1.** Ten (10) days after passage of this Resolution the Public Officer is hereby authorized to abate the following motor vehicle nuisance conditions:

*2316 Dee Avenue- Inoperable and/or unregistered vehicle-Red & White Semi-Truck  
201 E. Emerson Street- Inoperable and/or unregistered vehicle-Beige & Grey Motorhome*

**SECTION 2.** The abatement costs incurred by the City shall be charged against the lots or parcels of ground on which the motor vehicle nuisance is located.

**PASSED AND APPROVED** by the Governing Body of the City of Garden City, Kansas, on this 2<sup>nd</sup> day of June, 2015.

\_\_\_\_\_  
**Janet A. Doll, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Celyn N. Hurtado, CITY CLERK**

**2316 Dee Avenue**



**201 E. Emerson**



# Old Business



**PUBLIC UTILITIES  
DEPARTMENT**

MIKE MUIRHEAD  
Public Utilities  
Director  
301 N 8<sup>th</sup> St  
620.276.1577

CLIFF SONNENBERG  
Electric Service's Center  
Superintendent  
140 Harvest Ave  
620.276.1290

FRED JONES  
Water Department  
Resource Manager  
106 S 11<sup>th</sup> St  
620.276.1292

ED BORGMAN  
Waste Water  
Superintendent  
345 S Jennie Barker Rd  
620.276.1281

CITY ADMINISTRATIVE  
CENTER  
301 N 8<sup>TH</sup> ST  
P.O. BOX 998  
GARDEN CITY, KS  
67846-0998  
620.276.1160  
FAX 620.276.1169  
[www.garden-city.org](http://www.garden-city.org)

**MEMORANDUM**

TO: Governing Body  
THRU: Matt Allen, City Manager  
FROM: Mike Muirhead, Public Utilities Director  
DATE : May 28, 2015  
RE : Franchise Request / Additional Information

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**ISSUE:**

The Wheatland Electric Cooperative (WEC) has requested consideration of the Governing Body for issuing a franchise agreement to provide electrical service to new annexed area. Pursuant to K.S.A.66-1,176 WEC has presented an analysis of the 9 factors used in the statute for the City to consider in granting a franchise.

The City of Garden City has presented an analysis of the 9 factors for the Governing Body consideration for the Garden City Electric Utility to serve the annexed areas.

The Governing Body on April 21, 2015 approved the procedural schedule outlined in a memorandum from me dated April 16, 2015 (attached) as the schedule of events to follow regarding the determination of electric service / franchise for the newly annexed area.

**BACKGROUND:**

The Governing Body purchased the Jameson property (Property) on January 2, 2013 and it was annexed into the city corporate bounds on November 12, 2014 through Ordinance No. 2674-2014. The Property is predominantly vacant land that is currently zoned I-3, Heavy Industrial and is located adjacent to the Garden City Wastewater Treatment Plant, and the Jameson Energy Center. A map of the area is attached.

On April 1, 2015 WEC asked for a franchise agreement in a letter from Mr. James McVey, WEC's legal counsel to provide electric services to the Property. This letter to the City Attorney outlined their position of the 9 factors to be considered by the Governing Body. This letter is attached.

On April 17, 2015 Mr. Muirhead emailed Mr. Bruce Mueller, General Manager of WEC (attached) that the proposed procedural schedule would be considered by the Governing Body.

On April 21, 2015 the Governing Body considered and approved the procedural schedule outlined in a memorandum from Mr. Muirhead dated April 16, 2015 (attached) as the schedule to follow regarding the determination of electric service



**PUBLIC UTILITIES  
DEPARTMENT**

MIKE MUIRHEAD  
Public Utilities  
Director  
301 N 8<sup>th</sup> St  
620.276.1577

CLIFF SONNENBERG  
Electric Service's Center  
Superintendent  
140 Harvest Ave  
620.276.1290

FRED JONES  
Water Department  
Resource Manager  
106 S 11<sup>th</sup> St  
620.276.1292

ED BORGMAN  
Waste Water  
Superintendent  
345 S Jennie Barker Rd  
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/ franchise for the Property. Ms. Beth Looney, Assistant General Manager of WEC was in attendance at the meeting, but she did not comment about the schedule.

On April 30, 2015 the City sent its analysis of the 9 factors (attached) to WEC.

On May 4, 2015 the City received a letter (attached) from WEC stating that they could not respond by the May 6, 2015 schedule and that they may have something to the City by May 18, 2015.

As of May 14, 2015 the City had not received any additional correspondence from WEC.

**ADDITIONAL INFORMATION:**

*On May 18, 2015 the City received additional information from WEC (attached) regarding the 9 factors the Governing Body may consider in granting a franchise to WEC.*

*In its May 18, 2015 memorandum to the Governing Body, WEC formally requested a franchise agreement to allow WEC to continue to serve its own load (factor 3), third paragraph) of the pump station located adjacent to the City's Wastewater Treatment Plant.*

*The City has the following additional comments to provide to the Governing Body regarding the 9 factors that may be considered by the Governing Body in making its determination if a franchise be issued to WEC.*

***Factor 1.)  
The Public Convenience and Necessity dictate that the City serve the annexed area.***

*WEC stated in its May 18, 2015 memorandum that the City would be required to obtain a certificate of public convenience and necessity from the Kansas Corporation Commission (KCC) to provide electric service to the annexed property.*

- It is the City's position that no authorization from the KCC is necessary or required. See, K.S.A. 66-104 and 66-131.
- The City is currently the electric service provider to all residents and businesses within the corporate city limits and to change that policy would lead to confusion and possibly impact public safety in the area.
- The City Utilities currently operate waste water and other utilities to City residents and businesses, to separate those functions for this annexed area would lend confusion and reduce the economies of scale that are generated from those services.
- The City has a vested public interest in promoting economic development and the general well being of its residents in the City and community. The development of the City owned property and the annexed land is important to the City's public



## PUBLIC UTILITIES DEPARTMENT

MIKE MUIRHEAD  
Public Utilities  
Director  
301 N 8<sup>th</sup> St  
620.276.1577

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Electric Service's Center  
Superintendent  
140 Harvest Ave  
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interest in creating a vibrant and bustling community thus the creation of jobs for the area and the increase in economic development flows to all of the City residents. A coordinated effort of the City and its utility department is an important role to develop the annexed area and to attract suitable businesses or industrial ventures. Such coordinated incentives would include utility services, among other economic development incentives; to separate this land and annexed area from the rest of the City's property would not serve to promote that interest and any benefits would flow outside of the City.

### **Factor 2.) Rates of various suppliers:**

The only customers on the annexed site, apart from WEC at this time are the two small electric loads the rate differences are negligible and probably do not take into consideration the establishment of a City franchise fee of 5%.

Any other potential customer on the annexed site is not a current customer and consideration of its desires is speculative and may be part of a negotiated larger development agreement between the City and the entity.

### **Factor 3.) Desires of the customers being served:**

The City may allow WEC to continue to serve its own load which is a WEC pumping station, collocated on the City's waste water treatment facility. The WEC pump is used to pump effluent water to Sunflower's electric facility.

The load of the other two customers; Linn Energy and BNSF is very small and the impact would be negligible on them, especially after factoring a typical franchise fee with WEC.

### **Factor 4.) Economic impact on the Supplier:**

WEC claims that as a cooperative many of its members can share in the benefits of serving the annexed area but fails to mention that those impacts are spread to its members who are not residents of the City and many live many miles away from the City. WEC also fails to mention that its debt structure and debt covenants may not allow for those benefits to flow to its members. Alternatively, its power supplier, Sunflower, those benefits would not be shared or allowed to be shared with the City.

### **Factor 5.) Economic impact on the customers of the Supplier:**

Again WEC fails to mention that the loss of its small load due to the 2 or 3 customers in the annexed area will have NO impact on them. Alternatively, any new customer is speculative and WEC fails to mention its direct benefit to the City



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and current residents of the City, especially if it is part of a larger development agreement.

**Factors 6, 7, 8 & 9)**

WEC makes several statements in factors 6, 7, & 8 that the City does not have adequate facilities in place to serve the property, and would be required to construct additional distribution lines, and possibly an additional electrical substation.

- Garden City is well-positioned to serve the annexed area. Garden City has three electrical substations within ¼ of a mile, two existing 12.5 KV distribution lines on the property, as well as 27MW of natural gas generation directly adjacent to this property. No additional substations will be required to be constructed.

**ALTERNATIVE:**

- 1) Governing Body approve request, and issue a franchise agreement to the Wheatland Electric Cooperative.
- 2) Governing Body does not approve request, and denies the issuance of a franchise agreement to the Wheatland Electric Cooperative.

**RECOMMENDATION:**

Staff has no recommendation.

**FISCAL NOTE:**

The only known financial impact to the City will be the cost to purchase the three customers from WEC and connect them to the City Electric System. However, this cost has not been provided to the City by WEC. Garden City would fairly and adequately compensate WEC in accordance with K.S.A. 66-1,176 for these small loads, just as it has in the past with all annexations.



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## MEMORANDUM

TO: Governing Body  
THRU: Matt Allen, City Manager  
FROM: Mike Muirhead, Public Utilities Director  
DATE: April 30, 2015  
RE: Franchise Request

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### ISSUE:

Wheatland Electric Cooperative, Inc. (WEC) has requested consideration of the Governing Body of the City of Garden City, Kansas (City), to issue a franchise agreement to WEC to provide electrical services to recently annexed City owned property.

### BACKGROUND:

The City purchased property known as the Jameson property (Property), on January 2, 2013, and it was annexed into the City limits on November 12, 2014, through Ordinance No. 2674-2014. The Property is currently zoned I-3, Heavy Industrial, and is located adjacent to the City Wastewater Treatment Plant, and the Jameson Energy Center. A map of the Property is attached.

On April 1, 2015, WEC asked in a letter from Mr. James McVay, WEC's legal counsel, for a franchise agreement to provide electric services to the Property. The letter to the City Attorney outlined WEC's position concerning the nine (9) factors to be considered by the Governing Body. Mr. McVay's letter is attached.

It is WEC's position that K.S.A. 66-1,176 requires that the City enter into negotiations for a franchise agreement to serve the Property. While it is not clear that this statute applies to the situation where the City is a supplier of electricity and can serve property within the City limits without granting a franchise to any supplier (City does not grant itself a franchise to provide electricity within its corporate limits), nonetheless, the City will proceed as if K.S.A. 66-1,176 applies.

K.S.A. 66-1,176, set forth below, outlines nine (9) factors that shall be taken into consideration by the Governing Body before a final decision is made on issuing a franchise agreement.

**66-1,176. Termination of service rights in annexed areas; right to serve existing customers, when; compensation for termination of service rights.** (a) Whenever a city proposes to annex land that is located within the certified territory of a retail electric supplier, the city shall provide notice to the retail electric supplier in the manner prescribed by K.S.A. 12-520a, and amendments thereto. All rights of



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a retail electric supplier to provide electric service in an area annexed by a city shall terminate 180 days from the date of annexation, unless such electric supplier is then holding a valid franchise for service in the area granted by the annexing city. Such period of 180 days shall be extended to 210 days from the date of annexation if a franchise is granted to the retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within such period of 210 days. Whenever the city annexes land that is located within the certified territory of a retail electric supplier, the city shall negotiate for the issuance of a franchise agreement pursuant to K.S.A. 12-2001, *et seq.*, and amendments thereto, with a retail electric supplier holding a certificate within the annexed area. Nothing herein shall be construed to require a supplier holding both a certificate of convenience and a franchise for the area annexed to obtain a new franchise. The city shall have the final selection of which supplier receives a franchise to operate within the annexed area. When making such selection, the city shall consider certain factors including, but not limited to: (1) The public convenience and necessity; (2) rates of various suppliers; (3) desires of the customer or customers to be served; (4) economic impact on the suppliers; (5) economic impact on the customers of the suppliers; (6) the utility's operational ability to serve the annexed area; (7) avoiding the wasteful duplication of facilities; (8) avoiding unnecessary encumbrance on the landscape; and (9) preventing the waste of materials and natural resources. Within 30 days after the final decision of the city, any supplier aggrieved thereby may file an appeal in the district court of the county in which the annexed area is located to determine the reasonableness of the final decision. In the event that an appeal of the decision is filed in the district court, the retail electric supplier providing service at the time of annexation shall continue to provide service until such time as the appeal has been concluded. In the event service rights are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.

(b) In the event the supplier holding a franchise or then providing retail electric service does not effect the assumption of electric service to the annexed area at the termination of the applicable 180-day or 210-day period as provided in subsection (a), then the originally certified supplier shall have the right to continue service to the annexed area and charge its ordinary rates therefor until such supplier does assume service to the annexed area. Such service shall be free of any franchise fee or other compensation to the city or the electric supplier holding the franchise. If the supplier holding a franchise has not assumed service to the annexed area within 180 days following the applicable 180-day or 210-day period provided in subsection (a), the city may require the originally certified supplier to obtain a franchise in order to continue service to the annexed area. Unless otherwise mutually agreed upon by the affected suppliers, no assumption of electric service shall occur within 15 days following notice to the originally certified supplier of the intended changeover time.



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(c) Whenever the service rights of a retail electric supplier are terminated pursuant to subsection (a), fair and reasonable compensation shall be paid to such retail electric supplier by the supplier subsequently authorized to provide electric service. Such compensation shall be an amount mutually agreed upon by the affected suppliers or the sum of the following:

(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated pursuant to subsection (a). As used in this paragraph, "depreciated replacement cost" shall mean the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility as filed with and approved by the state corporation commission, which are in effect at the time of acquisition;

(2) all reasonable and prudent costs of detaching the electric system facilities to be sold and all reasonable and prudent costs of reintegrating the remaining electric system facilities of the retail electric supplier whose service rights are terminated pursuant to subsection (a);

(3) an amount equal to two times the gross revenues attributable to the customers in the terminated territory during the 12 months next preceding the date of transfer of the service pursuant to subsection (a); and

(4) an amount equal to the state and federal tax liability created by the taxable income pursuant to the provisions of this paragraph and paragraphs (1), (2) and (3) by the retail electric supplier whose service rights are terminated pursuant to subsection (a), calculated without regard to any tax deductions or benefits not related to the sale of assets covered herein.

(d) In the event that the parties are unable to agree upon an amount of compensation to be paid pursuant to subsection (c), after 60 days following the date of termination of service rights either party may apply to the district court having jurisdiction where any portion of the facilities are located, for determination of compensation. Such determination shall be made by the court sitting without a jury.

As stated above in K.S.A. 66-1,176, the City shall have the final selection of which supplier receives a franchise to operate within the annexed area. In this case, WEC will need to receive a franchise from the City to operate within the annexed area. However, since the City owns and operates its own electric utility, it does not need a franchise to continue to serve its residents within the corporate boundaries of the City.

The City addresses the nine (9) factors to be considered as follows:

- 1.) **The public convenience and necessity.** With respect to the first factor, an evaluation of the public convenience and necessity, the City of Garden City Electric Utility System (System) has, since 1914, served the citizens of the City by providing the power needed to meet residential, commercial and industrial needs. The System provides service to approximately 11,639 electric meters and maintains eleven electric substations, 245 miles of overhead power line and 40 miles of underground power line



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throughout the City. The City, in conjunction with the Kansas Municipal Energy Agency (KMEA) owns and operates the 28 MW Jameson Energy Center electric generating facility located adjacent to the City Wastewater Treatment Plant and the Property. The System is a division of the City's Public Utilities Department, it has a bond rating of Aa3, an annual budget of approximately \$32M, and has 22 employees. The City Commission serves as its Board of Directors and the City Manager as its CEO.

Kansas law states that "Public convenience means the convenience of the public, not the convenience of particular individuals. Public necessity does not necessarily mean there must be a showing of absolute need. The word "necessity" means a public need without which the public is inconvenienced to the extent of being handicapped."<sup>1</sup>

The City believes that the public convenience and necessity should also strive to avoid customer confusion in the area, that is, every customer within the City limits should have the same supplier to maintain continuity and consistency of service.

The City has provided safe, reliable, adequate and efficient service to its residents for over one hundred years. The City is publicly accountable to its citizens, and is in the best position to gauge what is appropriate for the public convenience and necessity of its residents.

- 2.) **Rates of various suppliers.** The following table sets forth the rate structure for the System, effective as of March 1, 2013 (with the exception of the rates for Churches/Schools which were effective June 1, 2013), pursuant to Ordinance No. 2580-2013, dated February 5, 2013.

**Residential:**

Customer Charge - \$22.50  
Energy Charge - \$0.110  
Demand Charge - \$0.00

**Small General Service:**

Customer Charge - \$40.00  
Energy Charge - \$0.069  
Demand Charge - \$0.00

**Large General Service:**

Customer Charge - \$85.00  
Energy Charge - \$0.069  
Demand Charge - \$11.86

<sup>1</sup> *Central Kansas Power Co. v. State Corp. Comm'n*, 206 Kan. 670, 676, 482 P. 2d 1 (1971).



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It should be noted that there is no differential in summer or winter rates, nor is there any Energy Cost Adjustment, Power Cost Adjustment or other charges added to the City utility bill. In addition, the Governing Body also has the authority under Section 90-275 of the City Code to negotiate contracts for supplying electricity to its citizens and others, within and without the City, on such terms as may be deemed advisable and are approved by the Governing Body.

**3.) The desires of the customer or customers to be served.**

There is no evidence that the citizens of the City are not satisfied with the level of service provided by its electric utility. The Electric Services Division often receives complements for its service reliability and quick response whenever there is a service interruption.

The Garden City Comprehensive Plan was adopted on February 4, 2010, by Ordinance No. 2469-10, and establishes a vision for future growth over a 15 to 20 year period. Comprehensive plans are anticipatory, forward thinking, and long range in nature. A comprehensive plan is a tool that is designed and developed to help a community determine its needs and set goals and recommendations to direct future development. The plan should serve as the foundation for local planning programs, policies, and principles. The Garden City Comprehensive Plan contains recommendations that promote quality development and Land Use Guiding Principles to promote appropriate areas of growth by providing municipal infrastructure and services that is congruent with the vision of the community. In addition, the City is incentivized to attract new businesses for economic development purposes, and having the City provide all utility services will facilitate the creation of new jobs and the enhancement of economic development.

The Property is owned by the City, and as such, the Governing Body of the City will determine if it is in the best interest of the citizens of the City to have its own electric utility serve the Property, or have it served by WEC.

- 4.) **The economic impact on the suppliers.** Presently, there are three (3) WEC meters being served on the Property. An oil/gas well, a BNSF rail signal pole and a WEC pumping station. The City would fairly and adequately compensate WEC in accordance with K.S.A. 66-1,176 for these small loads, just as it has in the past with all annexations.
- 5.) **The economic impact on the customers of the suppliers.** There is no economic impact on the customers of WEC. WEC will be fairly and adequately compensated for the loss of the three (3) meters as prescribed by Kansas statutes, and City customers will see no impact to their rates by absorbing the existing three (3) customers.



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- 6.) **The utility's operational ability to serve the annexed area.** The City is well-positioned to serve the annexed area. The City has three (3) electrical substations within ¼ of a mile, two (2) existing 12.5 KV distribution lines on the Property, as well as 27MW of natural gas generation directly adjacent to the Property.
- 7.) **Avoiding the wasteful duplication of facilities.** Both the City and the WEC have facilities on the Property so no additional duplication of facilities would be necessary, with the exception of a small underground distribution line extension to serve the existing gas well indicated on the attached exhibit. In conversations with WEC staff, its existing facilities will continue to serve other areas of its electrical distribution system. The City does not consider the underground distribution extension to be a major addition, but rather is minor and when other beneficial factors are considered, does not rise to the level of wastefulness
- 8.) **Avoiding unnecessary encumbrance upon the landscape.** There will be no additional encumbrance upon the landscape of the Property should the City provide electric utility service to the Property.
- 9.) **Preventing the waste of materials and natural resources.** There will be no waste of materials or natural resources should the City provide electric utility service to the Property.

**ALTERNATIVE:**

**RECOMMENDATION:**

**FISCAL NOTE:**

WEC has not provided the City with the costs associated with K.S.A. 66-1,176 that describe a fair and reasonable compensation be made for the three (3) customers that will be served by the City. Therefore the financial impact of absorbing these three (3) customers by the City is unknown at this time.



LAW OFFICES OF  
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Of Counsel  
L. EARL WATKINS, JR.

WICHITA OFFICE  
Phone 316-239-6200

April 1, 2015

Randall Grisell  
124 Grant Avenue  
Garden City, Kansas 67846

Re: Garden City Annexation  
Our File No. 994.11177

Dear Randy:

Enclosed please find a form copy of our franchise agreement for annexations. It is a little different than the agreements that you have seen in the past. It defines the annexed area boundaries, and then throughout the agreement, it makes clear that all services are within the defined area.

By earlier e-mail you wanted a letter from Wheatland addressing the nine factors set forth in K.S.A. 66-1,176. Regarding factors 1-3, Wheatland believes it will be in the best interest of Garden City (City) and potential future customers locating on the annexed land to use Wheatland as a franchisee in the annexed area. Wheatland is already the holder of the certified service territory for the purpose of providing electrical service to this area. Wheatland has a long history of successfully providing municipalities with electric service. We have the staff, management and operation personnel to successfully address electric service, and any potential emergent situation for the City. No other entity can provide the full service of Wheatland; Wheatland has 57 employees within a few miles of this property ready to respond to any situation.

Also, enclosed please find Wheatland's current rate schedules. These rate schedules are "all-in" including transmission costs and Wheatland's Local Access Charges for its 34.5 kV lines. In exchange, we would also request whatever "all-in" rates the City would use from other suppliers. As a deregulated electric utility, Wheatland is able to offer contractual rate schedules apart from those that are attached which are capable of being more than competitive with any other supplier.

We do not want a situation where we provide our rates and then have a different supplier review our rates and undercut our rates by exercising market power due to its inside intelligence. I am confident that our rates will be very competitive, and we would work hard to ensure that Wheatland's rates are in the best interest of the City and potential future customers locating on the annexed land. We believe that the customer's desire should be of paramount importance to the City in establishing a franchise. We

are confident that a customer, especially a large commercial operation, would obviously serve its own best interest. As such, the customer's personal desires for power supplier should be heard and observed by the City.

Specifically addressing factors four and five, Wheatland is an electric distribution cooperative, whereas the City is a municipal electric system. Wheatland is a not - for - profit utility, while the City is free to set rates which may earn returns for the City or set rates which may be used to fund other municipal programs which may not benefit the electric consumer in the annexed area. As such, if Wheatland were to serve the load in the annexed area, it has no motivation to charge the annexed load more than it costs to serve the load. This is clearly in the best interest of the potential customers in the annexed area. In the event Wheatland's rates return revenues in excess of its expenses, Wheatland is required to return the excess revenue to its member/customers in the form of rate reductions or patronage capital. This would economically benefit the potential customers in the annexed area and the 36,000 meters/member customers that Wheatland serves within its certified service territory.

Furthermore, the wholesale power that Wheatland utilizes to serve its member customers, including the potential customers in the annexed area, comes from Sunflower Electric Power Corporation (Sunflower). Sunflower is a generation and transmission cooperative. Like Wheatland, as a cooperative, Sunflower may only collect revenues to cover expenses. Any excess revenues are returned to the member consumers in the form of rate reductions or patronage capital. In this respect, if Wheatland were to serve the potential customers in the annexed area with power supply from Sunflower, Sunflower would have more kW hours of sales with which to spread its fixed expenses. This would result in lower rates and/or increased patronage capital to six distribution cooperatives who collectively serve 200,000 member customers in western Kansas. Clearly the economic impact of serving the potential customers in the annexed area will have a greater good to the local and regional community if that load is served by Wheatland.

Factor six through nine seemed to touch upon many of the same themes. The bottom line is Wheatland already has existing infrastructure and facilities that are in the best position to serve any potential customers in the newly annexed area. Also, Wheatland has electrical infrastructure in place that can easily serve new industrial loads on the recently annexed property. An existing Wheatland 34.5 kV three phase sub-transmission line borders the west and north side of this property. An existing Wheatland 15 kV three phase distribution line borders the southern and eastern side of this property. Any additional electric facilities brought into the property from another supplier would be a duplication of the electrical infrastructure and would further encumber the land. This could clearly interfere with Wheatland's ability to serve existing electrical customers in the general area.

If you have any questions, do not hesitate to contact me. I look forward to hearing from you about the rate issue. We want to make certain that we are not subject to being undercut by a different supplier. Thank you for your attention to this matter.

Sincerely,

WATKINS, CALCARA, CHTD.

James M. McVay

JMM/emc  
Enclosures

**66-104. Utilities subject to supervision; exceptions.** (a) The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power. No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission. As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.

(b) The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located in an area outside of and more than three miles from the corporate limits of such municipality, but regulation of the rates, charges and terms and conditions of service of such utility within such area shall be subject to commission regulation only as provided in K.S.A. 2014 Supp. [66-104f](#), and amendments thereto. Nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three miles thereof except as provided in K.S.A. [66-131a](#), and amendments thereto.

(c) Except as herein provided, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to the corporation commission as provided in K.S.A. [66-133](#), and amendments thereto, and to the provisions of K.S.A. [66-104e](#), and amendments thereto. A transit system principally engaged in rendering local transportation service in and between contiguous cities in this and another state by means of street railway, trolley bus and motor bus lines, or any combination thereof, shall be deemed to be a public utility as that term is used in this act and, as such, shall be subject to the jurisdiction of the commission.

(d) The term "public utility" shall not include any activity of an otherwise jurisdictional corporation, company, individual, association of persons, their trustees, lessees or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel.

(e) At the option of an otherwise jurisdictional entity, the term "public utility" shall not include any activity or facility of such entity as to the generation, marketing and sale of electricity generated by an electric generation facility or addition to an electric generation facility which:

(1) Is newly constructed and placed in service on or after January 1, 2001; and

(2) is not in the rate base of: (A) An electric public utility that is subject to rate regulation by the state corporation commission; (B) any cooperative, as defined by K.S.A. [17-4603](#), and amendments thereto, or any nonstock member-owned cooperative corporation incorporated in this state; or (C) a municipally owned or operated electric utility.

(f) Additional generating capacity achieved through efficiency gains by refurbishing or replacing existing equipment at generating facilities placed in service before January 1, 2001, shall not qualify under subsection (e).

(g) For purposes of the authority to appropriate property through eminent domain, the term "public utility" shall not include any activity for the siting or placement of wind powered electrical generators or turbines, including the towers.

**History:** L. 1911, ch. 238, § 3; R.S. 1923, 66-104; L. 1949, ch. 335, § 1; L. 1951, ch. 366, § 1; L. 1968, ch. 333, § 6; L. 1974, ch. 262, § 1; L. 1975, ch. 339, § 1; L. 1978, ch. 263, § 2; L. 1992, ch. 69, § 1; L. 1997, ch. 84, § 1; L. 2001, ch. 206, § 1; L. 2005, ch. 72, § 2; L. 2007, ch. 176, § 2; July 1.

**Revisor's Note:**

Other provisions of 1968 act, see [12-806](#), [12-808](#), [12-808a](#), [12-808b](#), [12-820](#), [12-821](#), [13-1223](#) and [66-131](#).

Section was amended by L. 2007, ch. 112, § 2, but that version was repealed by L. 2007, ch. 176, § 4.

**66-131. Permit to transact business required; exceptions; limitations on commission's authority and jurisdiction; time period for determination of application.** (a) No person or entity seeking to construct electric transmission lines as defined in K.S.A. [66-1,177](#), and amendments thereto, or common carrier or public utility, including that portion of any municipally owned utility defined as a public utility by K.S.A. [66-104](#), and amendments thereto, governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state. In no event shall such jurisdiction authorize the corporation commission to review, consider or effect the facilities or rates charged for services or in any way the operation of such municipally owned or operated electric or gas utility within the corporate limits or outside but within three miles of the corporate limits of any city, or facilities, or rates charged for services or in any way the operation of facilities or their replacements now owned by any such utility. No prescribed rates, orders or other regulatory supervision of the corporation commission shall be contrary to any lawful provision of any revenue bond ordinance authorizing the issuance of revenue bonds to finance all or any part of the municipally owned or operated electric or gas utility so subjected to the jurisdiction of the corporation commission. This section shall not apply to any common carrier or public utility governed by the provisions of this act now transacting business in this state, nor shall this section apply to the facilities and operations of any municipally owned or operated utility supplying electricity or gas outside of the corporate limits of any municipality where such facilities and operations are in existence on the effective date of this act, but any extension of such facilities or any new facilities located outside of and more than three miles from the municipality's corporate limits, shall be subject to the requirements of this section, nor shall this section apply to any municipally owned or operated electric or gas utility furnishing electricity or gas to a facility owned or jointly owned by such municipality and located outside the corporate limits of such municipality.

(b) The commission shall issue a decision on a common carrier or public utility's application for a certificate of public convenience and necessity within 180 days of receiving the application. Nothing in this subsection shall preclude an applicant and the commission from agreeing to a waiver or an extension of the 180-day period.

(c) The commission shall issue a decision on a common carrier or public utility's application for mergers or acquisitions within 300 days of receiving the application. Nothing in this subsection shall preclude an applicant and the commission from agreeing to a waiver or an extension of the 300-day period. The commission shall expeditiously process every application covered within this subsection.

**History:** L. 1911, ch. 238, § 31; R.S. 1923, 66-131; L. 1968, ch. 333, § 7; L. 1978, ch. 263, § 3; L. 2012, ch. 101, § 2; L. 2014, ch. 107, § 2; July 1.

**Revisor's Note:**

Other provisions of 1968 act, see [12-806](#), [12-808](#), [12-808a](#), [12-808b](#), [12-820](#), [12-821](#), [13-1223](#) and [66-104](#).



A Touchstone Energy® Cooperative 

To: The Governing Body of the City of Garden City, Kansas  
From: Wheatland Electric Cooperative, Inc.  
Date: May 18, 2015  
Regarding: Response to Nine Factors

This narrative is in response to the City of Garden City, Kansas (City) request of Wheatland Electric Cooperative, Inc. (Wheatland) to provide support for Wheatland's position that it should be granted a franchise to serve the annexed land commonly referred to as the Jameson property (Parcel). In the City of Garden City Electric Utility System (System) memo dated April 30, 2015 addressing its position on the nine factors, the System fails to address a key issue which is significant and germane to the City's decision.

A large manufacturing company (Manufacturer) has been in discussions with Wheatland and the City regarding a new processing facility (Facility) which is anticipated to be constructed on the Parcel. While ownership transfer of the land from the City to Manufacturer has not been completed yet, ultimately, the Parcel will house the Facility. Deciding whether to offer Wheatland a franchise to serve the Parcel without considering the impending land transfer, new electric load, and the wishes and desires of the intended electric consumer is imprudent.

Wheatland would like to know the desires of the Manufacturer so that their voice will be heard in the process. Manufacturer is not prepared at this point to make that decision as it would likely require public disclosures that they are not yet prepared to make. We can only presume the City would want to know, and honor, the desires of the Manufacturer. As such, in an effort to maintain their optionality on power provider selection, Manufacturer has expressly provided Wheatland consent to confidentially discuss the Facility with the City.

1) Public convenience and necessity.

With respect to the public convenience and necessity, Wheatland currently holds the Kansas Corporation Commission (KCC) certificate of public convenience and necessity to serve electric utilities to the Parcel. The System would have to apply for and be granted a certificate of public convenience and necessity to serve electric utilities to the Parcel. As such, as the incumbent utility with electric facilities to serve already in place, it is more convenient to the public for Wheatland to serve the Parcel than for the City to do so.

Wheatland Electric Cooperative, Inc.

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P.O. Box 230  
Scott City, Kansas 67871

Phone (620)-872-5885  
Fax (620)-872-7170  
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Wheatland agrees with the City that public convenience and necessity should strive to avoid customer confusion. As Wheatland has held the certificate of convenience for the Parcel since 1959, changing utility providers haphazardly and in a non-contiguous pattern surrounding the City does not provide the public with future utility certainty or consistency in geographic design of neighboring utilities.

Lastly, the City has pointed out that “necessity” means a public need without which the public is inconvenienced to the extent of being handicapped. In this instance there is no necessity for the System to serve the Parcel as it is already served by Wheatland. Transferring the certificate of public convenience and necessity from Wheatland to the System is unnecessary as there is no public necessity on the Parcel that rises to the level of being inconvenienced to the extent of being handicapped.

2) Rates of the various suppliers.

With respect to Wheatland’s rates, it is Wheatland’s understanding that the Facility will be a large heavy industrial electric consumer. Incidentally, the Parcel is zoned for heavy industrial. Therefore, we will address the only relevant published rates that are applicable for heavy industrial. Wheatland has two large industrial tariffs. The applicable tariff based on the load determinants Manufacturer has provided is Transerv I. Please see the attached rate comparison of Wheatland’s Transerv I rate as compared to the System’s Large General Service rate (Attachment A). It is clear that the applicable Wheatland rate (\$0.0795 per kWh) is significantly less than the applicable System rate (\$0.0927 per kWh).

Additionally, just as the City has indicated that it has the ability to authorize negotiated contracts for rates other than published rates, Wheatland has such ability as well. In fact, Wheatland has offered a long term contract rate to Manufacturer which provides for even more favorable rates than Transerv I allows.

3) The desires of the customer or customers to be served.

Though the Parcel is owned by the City, the City takes no electric services from the Parcel. Therefore the desires of the City are not relevant in the discussion of this factor since the City is not a customer. There are three customers on the Parcel who do take electric service from Wheatland: Linn Operating, BNSF utilities, and Wheatland itself. Below is a representation of average annual power requirements for each existing customer as well as the Facility proposed power requirements.

<b>Consumer</b>	<b>Annual kWh Sales</b>
BNSF Utilities	258
Linn Operating	1,203
Wheatland Electric	217,120
<b>Manufacturer Facility</b>	<b>36,500,000</b>

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Wheatland and the Manufacturer's proposed Facility represent over 99.999% of the total load requirement on the Parcel. These two consumers' desires are highly relevant to the franchise decision of this Parcel.

As the single largest current paying customer on the Parcel, Wheatland's desire is to not change service providers and hereby formally requests the City to grant the franchise to Wheatland so that it may continue to serve its own load.

Manufacturer is not prepared to disclose publicly its impending Facility and therefore cannot publicly commit to its choice of power providers. However, as previously mentioned, Manufacturer clearly wants to maintain its optionality of choice.

To address the two remaining existing small loads, Wheatland has received no requests to change service providers, nor has it experienced any complaints about service quality or rates from these customers.

4) The economic impact on the suppliers.

Providing Wheatland a franchise to serve the Parcel will have cascading benefits to 200,000 electric consumers in western Kansas. As the Facility load is significant in size, the revenue Wheatland receives from the load will be returned to Wheatland and to Wheatland's power provider Sunflower Electric Power Corporation (Sunflower). Wheatland and Sunflower are electric cooperatives. As cooperatives, Wheatland and Sunflower cannot amass excess margins or profits. Any excess is returned to its customers in the form of capital credit allocations or rate reductions. The revenues collected from Facility will be applied to Wheatland and Sunflower's revenue requirements to meet fixed costs. With more revenue and kWh's to spread fixed costs amongst, the overall rates charged by Wheatland and Sunflower can be reduced or can be held stable in the event of rising costs. This provides a direct benefit to the 21,000 members Wheatland serves, including all customers in the Parcel, and the 200,000 members Sunflower serves through its other distribution cooperatives.

In the event Wheatland is not granted a franchise by the City it would incur increased costs. Wheatland would no longer be able to serve its own load on the Parcel, thereby being subject to the System's higher rates. Wheatland currently pays approximately \$0.0782 per kWh for its load. If it were to take service from the System, the rate would be approximately \$0.1051 per kWh. This represents an average annual increase in cost of \$5,831, an increase of over 34% (Attachment B).

Lastly, after the statutory one years' revenue times two payment under K.S.A. 66-1,176, Wheatland would have less ongoing revenue to collect and therefore utilize to spread fixed costs. Therefore, all of Wheatland's 21,000 members, and Sunflower's 200,000 members served through its other distribution cooperatives would be negatively impacted.

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5) The economic impact on the customers of the suppliers.

In addition to the significant economic impacts on Wheatland, Wheatland's customers and Sunflower's customers mentioned in Section 4, the economic impact of Manufacturer should be considered. According to published rate schedules from both Wheatland and System applied to the billing determinants Manufacturer provided, it is unmistakable that Manufacturer would be economically disadvantaged by not allowing Wheatland a franchise (Attachment A). Wheatland's published rates would result in significant annual savings over Systems' rates for the Facility: a difference of \$483,798 annually.

6) The utility's operational ability to serve the annexed area.

As the incumbent utility provider, Wheatland is in the best position to serve the Parcel. Wheatland owns three 115 kV to 34.5 kV substations within five miles of the Parcel. Additionally, Wheatland surrounds the Parcel on two sides with 34.5 kV line and a third side with 12.5 kV line (Attachment C and D). Electrical interconnection to the existing customers is already in place. Electrical interconnection for the proposed Facility would be minimal and meets the requirements of Manufacturer. Manufacturer has made it clear to Wheatland that the Facility requires instantaneous automatic switching in the event an electrical circuit fails. Wheatland currently has two 34.5 kV circuits with reserve capacity that can handle this requirement. The System does not have existing capability to meet the requirements of the Facility without installing additional electrical facilities.

In addition to having physical assets already in place to meet the electrical requirements of Facility, Wheatland has a specialized labor force and equipment that the System does not have which would be a mandatory requirement for the Facility. These assets and specialized skills include, but are not limited to, underground fault finding radar equipment and infrared testing equipment with certified staff to operate it. Additionally Wheatland has 137 employees, 45 of which serve the Garden City area, including electrical engineers and a certified safety specialist.

7) Avoiding the wasteful duplication of facilities.

All of the current electric customers on the Parcel are interconnected to Wheatland's distribution system. Any change of providers would require additional lines to be built by the System. Additionally, interconnecting service to the Facility will require the System to duplicate large 34.5 kV electrical facilities which Wheatland already has in place on the Parcel. Duplicating these expensive electrical facilities provides for significant waste.

8) Avoiding unnecessary encumbrance on the landscape.

In order for the System to provide electrical service at the service level requested by Manufacturer for the Facility, it will have to construct a duplicative 34.5 kV line and possibly a 34.5 kV to 12.5 kV substation which would have significant encumbrance on the landscape. Since Wheatland already has a 34.5 kV line on the Parcel,

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interconnection for the Facility would be as simple as tapping the 34.5 kV line. No substation would be required and no duplicate line would be installed, and therefore there would be little or no visual encumbrance on the landscape.

9) Preventing the waste of materials and natural resources.

Again, given the Facilities requirements, Wheatland could provide the service level requested by Manufacturer with little investment in materials and resources. On the contrary, System would necessarily have to invest in significant material and resources to construct an additional duplicative 34.5 kV line and possible substation. Additionally System may potentially have to acquire specialized equipment to service underground electrical facilities.

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## Attachment A

### Garden City Large General Service Within Corporate Limits Rate

	Energy	Demand		Customer Charge	Energy Charge	Demand Charge	Total Annual Expense	Average Price per kWh
	(kWh)	(kW)			(kWh)	(kW)		
					<b>\$0.0690</b>	<b>\$11.86</b>		
<b>January</b>	3,100,000	6,200		\$85	\$213,900	\$73,532		
<b>February</b>	2,800,000	5,600		\$85	\$193,200	\$66,416		
<b>March</b>	3,100,000	6,200		\$85	\$213,900	\$73,532		
<b>April</b>	3,000,000	6,000		\$85	\$207,000	\$71,160		
<b>May</b>	3,100,000	6,200		\$85	\$213,900	\$73,532		
<b>June</b>	3,000,000	6,000		\$85	\$207,000	\$71,160		
<b>July</b>	3,100,000	6,200		\$85	\$213,900	\$73,532		
<b>August</b>	3,100,000	6,200		\$85	\$213,900	\$73,532		
<b>September</b>	3,000,000	6,000		\$85	\$207,000	\$71,160		
<b>October</b>	3,100,000	6,200		\$85	\$213,900	\$73,532		
<b>November</b>	3,000,000	6,000		\$85	\$207,000	\$71,160		
<b>December</b>	3,100,000	6,200		\$85	\$213,900	\$73,532		
	36,500,000	73,000		\$1,020	\$2,518,500	\$865,780	<b>\$3,385,300</b>	<b>\$0.0927</b>

### Wheatland Transerv 1 Rate

	Energy	Demand		Sunflower Demand Charge	Sunflower Energy Charge	Sunflower Transmission Charge	Sunflower ECA	Wheatland Demand Charge	Wheatland Energy Charge	Total Annual Expense	Average Price per kWh
	(kWh)	(kW)		(kW)	(kWh)	(kWh)	(kWh)	(kW)	(kWh)		
				<b>\$8.07 Oct - May</b> <b>\$10.77 Jun-Sep</b>	<b>\$0.0182</b>	<b>\$0.0102</b>	<b>Projected 2015</b>	<b>\$1.00</b>	<b>\$0.0050</b>		
<b>January</b>	3,100,000	6,200		\$50,034	\$56,532	\$31,713	\$66,728	\$6,200	\$15,500		
<b>February</b>	2,800,000	5,600		\$45,192	\$51,061	\$28,644	\$50,316	\$5,600	\$14,000		
<b>March</b>	3,100,000	6,200		\$50,034	\$56,532	\$31,713	\$86,800	\$6,200	\$15,500		
<b>April</b>	3,000,000	6,000		\$48,420	\$54,708	\$30,690	\$79,800	\$6,000	\$15,000		
<b>May</b>	3,100,000	6,200		\$50,034	\$56,532	\$31,713	\$94,860	\$6,200	\$15,500		
<b>June</b>	3,000,000	6,000		\$64,620	\$54,708	\$30,690	\$82,200	\$6,000	\$15,000		
<b>July</b>	3,100,000	6,200		\$66,774	\$56,532	\$31,713	\$96,410	\$6,200	\$15,500		
<b>August</b>	3,100,000	6,200		\$66,774	\$56,532	\$31,713	\$90,210	\$6,200	\$15,500		
<b>September</b>	3,000,000	6,000		\$64,620	\$54,708	\$30,690	\$75,300	\$6,000	\$15,000		
<b>October</b>	3,100,000	6,200		\$50,034	\$56,532	\$31,713	\$77,500	\$6,200	\$15,500		
<b>November</b>	3,000,000	6,000		\$48,420	\$54,708	\$30,690	\$75,000	\$6,000	\$15,000		
<b>December</b>	3,100,000	6,200		\$50,034	\$56,532	\$31,713	\$76,880	\$6,200	\$15,500		
	36,500,000	73,000		\$654,990	\$665,614	\$373,395	\$952,004	\$73,000	\$182,500	<b>\$2,901,503</b>	<b>\$0.0795</b>

## Attachment B

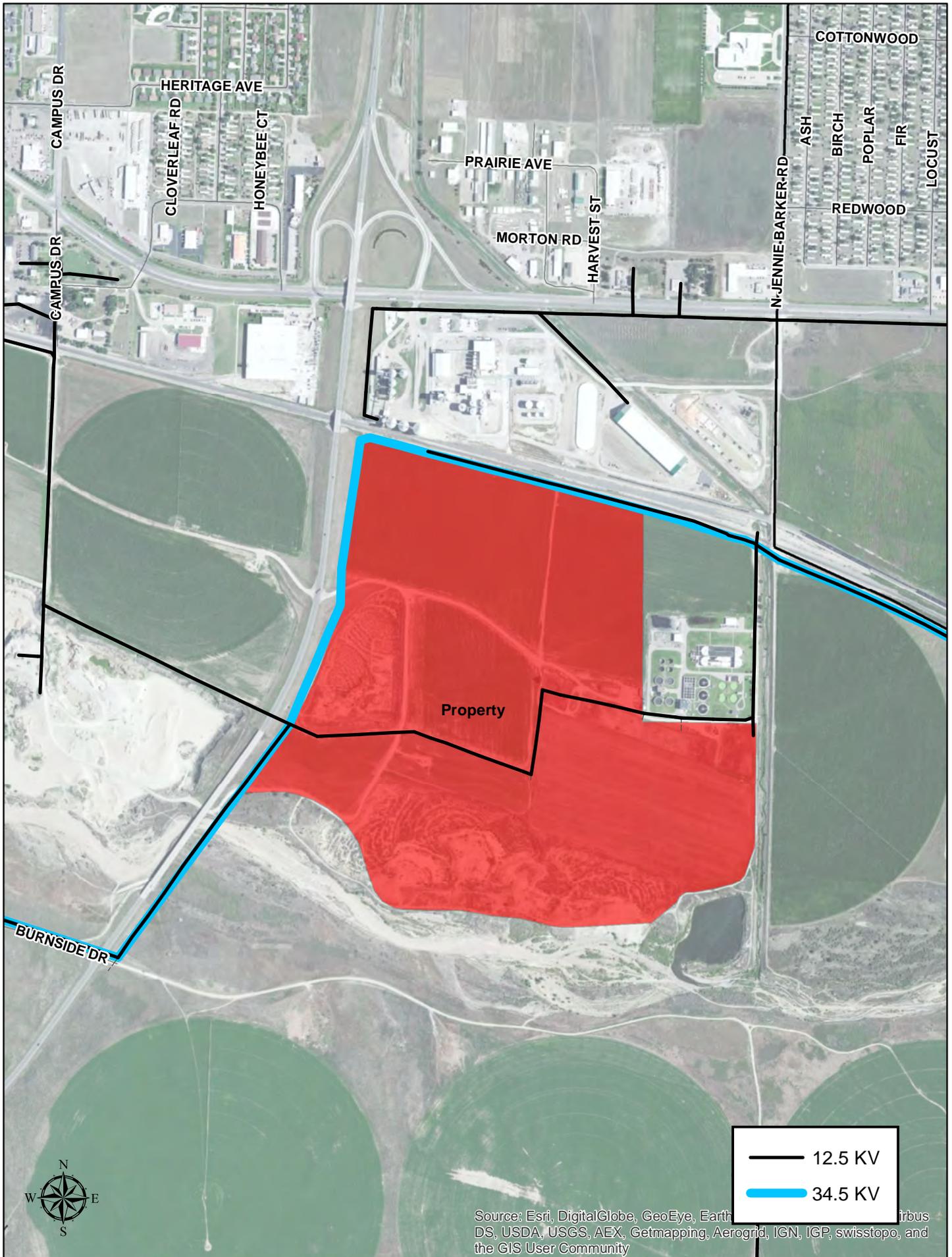
### Garden City Large General Service Within Corporate Limits Rate

	Energy	Demand		Customer Charge	Energy Charge	Demand Charge	Total Annual Expense	Average Price per kWh
	(kWh)	(kW)			(kWh)	(kW)		
					\$0.0690	\$11.86		
January	26,400	62		\$85	\$1,822	\$740		
February	27,040	40		\$85	\$1,866	\$474		
March	26,080	66		\$85	\$1,800	\$778		
April	33,440	64		\$85	\$2,307	\$759		
May	18,880	66		\$85	\$1,303	\$778		
June	12,000	42		\$85	\$828	\$493		
July	23,360	67		\$85	\$1,612	\$797		
August	25,920	40		\$85	\$1,788	\$474		
September	960	38		\$85	\$66	\$455		
October	20,800	83		\$85	\$1,435	\$987		
November	1,120	3		\$85	\$77	\$38		
December	1,120	3		\$85	\$77	\$38		
	217,120	574		\$1,020	\$14,981	\$6,812	\$22,814	\$0.1051

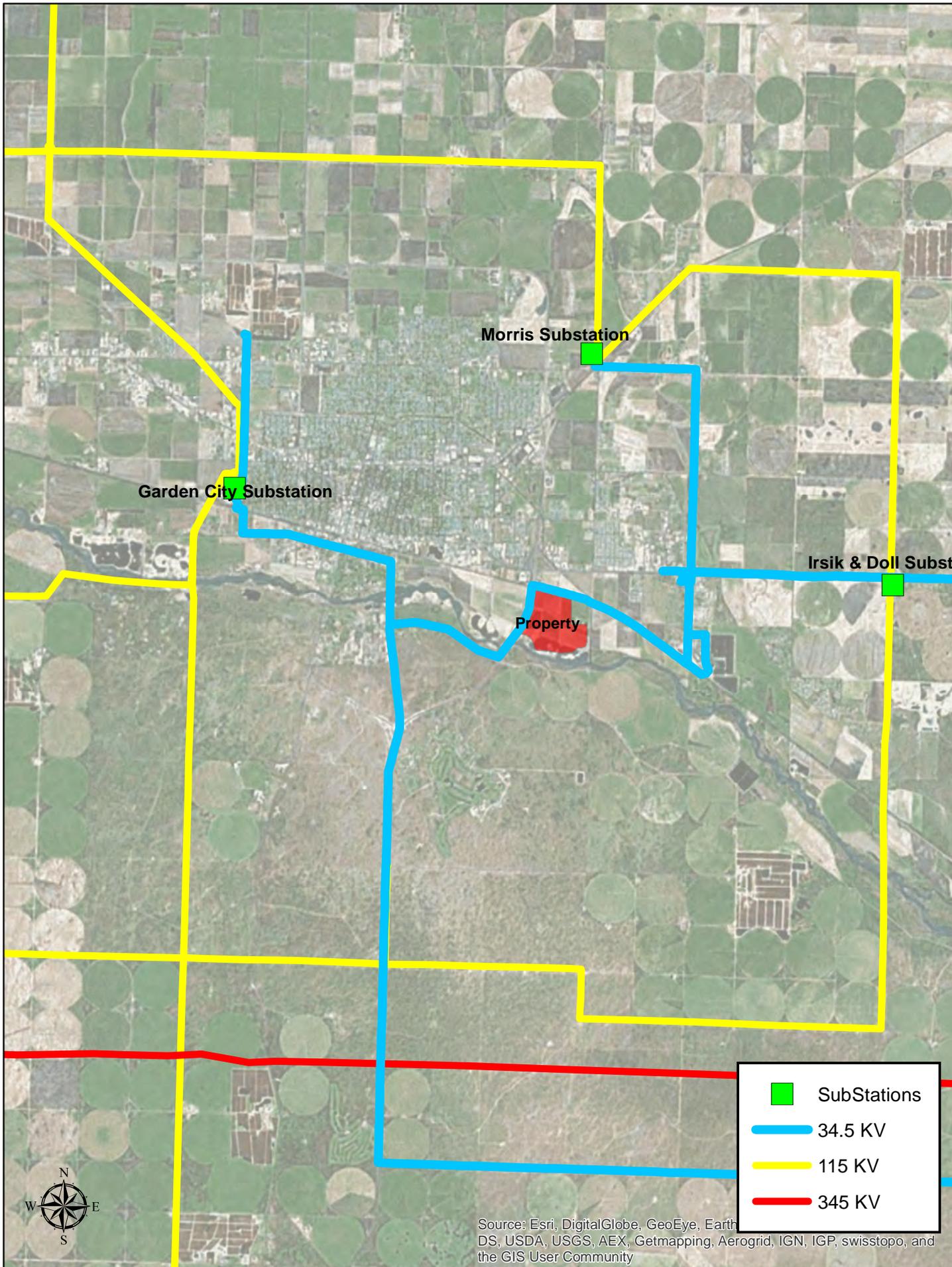
### Wheatland Power Cost

	Energy	Demand		Sunflower Demand Charge	Sunflower Energy Charge	Sunflower Transmission Charge	Sunflower ECA	Total Annual Expense	Average Price per kWh
	(kWh)	(kW)		(kW)	(kWh)	(kWh)	(kWh)		
				\$8.07 Oct - May \$10.77 Jun-Sep	\$0.0182	\$0.0102	Projected 2015		
January	26,400	62		\$504	\$481	\$270	\$568		
February	27,040	40		\$323	\$493	\$277	\$486		
March	26,080	66		\$529	\$476	\$267	\$730		
April	33,440	64		\$516	\$610	\$342	\$890		
May	18,880	66		\$529	\$344	\$193	\$578		
June	12,000	42		\$448	\$219	\$123	\$329		
July	23,360	67		\$724	\$426	\$239	\$726		
August	25,920	40		\$431	\$473	\$265	\$754		
September	960	38		\$414	\$18	\$10	\$24		
October	20,800	83		\$671	\$379	\$213	\$520		
November	1,120	3		\$26	\$20	\$11	\$28		
December	1,120	3		\$26	\$20	\$11	\$28		
	217,120	574		\$5,141	\$3,959	\$2,221	\$5,661	\$16,982	\$0.0782

# Attachment C



# Attachment D



Source: Esri, DigitalGlobe, GeoEye, Earth  
DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and  
the GIS User Community



**PUBLIC UTILITIES  
DEPARTMENT**

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Public Utilities  
Director  
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**MEMORANDUM**

TO: Governing Body  
THRU: Matt Allen, City Manager  
FROM: Mike Muirhead, Public Utilities Director  
DATE: May 14, 2015  
RE: Franchise Request / Approved Procedural Schedule

---

**ISSUE:**

The Wheatland Electric Cooperative (WEC) requested consideration of the Governing Body to issue a franchise agreement to them to provide electrical services to recently annexed City property.

The Governing Body on April 21, 2015 approved the procedural schedule outlined in a memorandum from me dated April 16, 2015 (attached) as the schedule of events to follow regarding the determination of electric service / franchise for the newly annexed area.

**BACKGROUND:**

The Governing Body purchased the Jameson property (Property) on January 2, 2013 and it was annexed into the city corporate bounds on November 12, 2014 through Ordinance No. 2674-2014. The Property is currently zoned I-3, Heavy Industrial and is located adjacent to the Garden City Wastewater Treatment Plant, and the Jameson Energy Center. A map of the area is attached.

On April 1, 2015 WEC asked for a franchise agreement in a letter from Mr. James McVey, WEC's legal counsel to provide electric services to the Property. This letter to the City Attorney outlined their position of the 9 factors to be considered by the Governing Body. This letter is attached.

On April 17, 2015 Mr. Muirhead emailed Mr. Bruce Mueller, General Manager of WEC (attached) that the proposed procedural schedule would be considered by the Governing Body.

On April 30, 2015 the Governing Body considered and approved the procedural schedule outlined in a memorandum from Mr. Muirhead dated April 16, 2015 (attached) as the schedule to follow regarding the determination of electric service / franchise for the Property. Ms. Beth Looney, Assistant General Manager of WEC was in attendance at the meeting, but she did not comment about the schedule.

On April 30, 2015 the City sent its analysis of the 9 factors (attached) to WEC.



**PUBLIC UTILITIES  
DEPARTMENT**

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On May 4, 2015 the City received a letter (attached) from WEC stating that they could not respond by the May 6, 2015 schedule and that they may have something to the City by May 18, 2015.

As of May 14, 2015 the City has not received any additional correspondence from WEC. The City intends to follow the procedural schedule approved by the Governing Body. If any additional information is received from WEC, staff will forward it to the Governing Body as soon as it is received.

**ALTERNATIVE:**

No alternatives to consider during this review process.

**RECOMMENDATION:**

No recommendation from staff.

**FISCAL NOTE:**

None at this time.



**PUBLIC UTILITIES  
DEPARTMENT**

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## MEMORANDUM

TO : Governing Body  
THRU: Matt Allen, City Manager  
FROM: Mike Muirhead, Public Utilities Director  
DATE : April 16, 2015  
RE : Procedural Schedule

---

**ISSUE:**

Set a procedural schedule for determination of electric service / franchise for annexed areas.

**BACKGROUND:**

The Wheatland Electric Cooperative (WEC) has requested consideration of the Governing Body for issuing a franchise agreement to provide electrical service to annexed areas. Pursuant to K.S.A.66-1,176 WEC has presented an analysis of the 9 factors used in the statute for the City to consider in granting a franchise. This procedural schedule will provide a schedule for both the WEC and the City of Garden City to follow.

**ALTERNATIVE:**

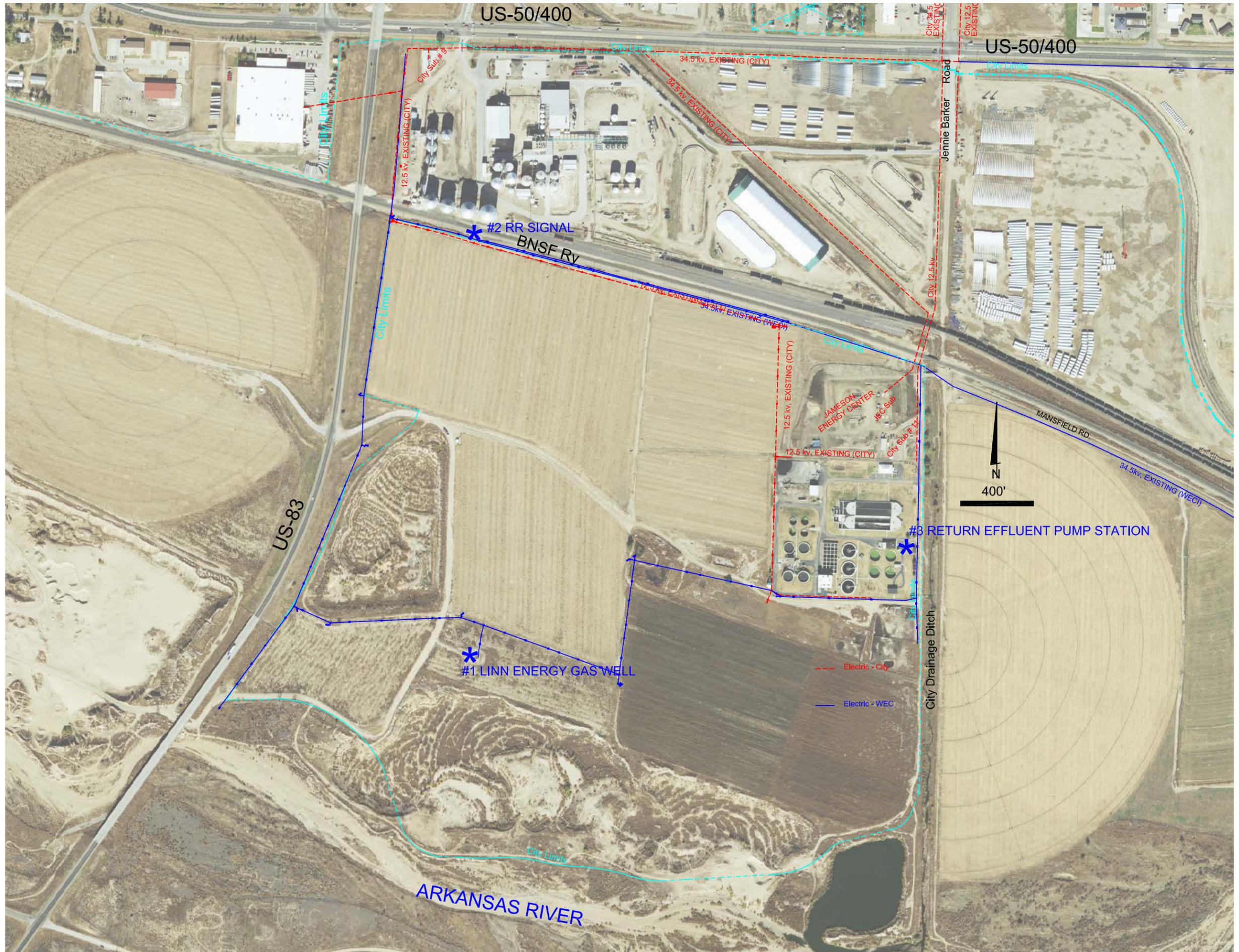
April 21, 2015 Set procedural schedule  
April 30, 2015 City's Analysis or 9 factors  
May 6, 2015 WEC reply to City  
May 12, 2015 City's Reply  
May 14, 2015 Analysis presented to City Commission  
May 19, 2015 City Commission final determination.

**RECCOMENDATION:**

Staff recommends approval of the procedural schedule outlined above.

**FISCAL NOTE:**

No financial impact by setting the procedural schedule.



LAW OFFICES OF  
WATKINS CALCARA, CHTD.

MARK D. CALCARA  
MARK A. RONDEAU  
RICHARD L. FRIEDEMANN  
ALLEN G. GLENDENNING\*  
JAMES M. MCVAY  
ROBIN R. FABRICTUS\*\*  
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1321 MAIN, SUITE 300  
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\*Licensed in Kansas and Colorado  
\*\*Licensed in Kansas and Missouri

Of Counsel  
L. EARL WATKINS, JR.

WICHITA OFFICE  
Phone 316-239-6200

April 1, 2015

Randall Grisell  
124 Grant Avenue  
Garden City, Kansas 67846

Re: Garden City Annexation  
Our File No. 994.11177

Dear Randy:

Enclosed please find a form copy of our franchise agreement for annexations. It is a little different than the agreements that you have seen in the past. It defines the annexed area boundaries, and then throughout the agreement, it makes clear that all services are within the defined area.

By earlier e-mail you wanted a letter from Wheatland addressing the nine factors set forth in K.S.A. 66-1,176. Regarding factors 1-3, Wheatland believes it will be in the best interest of Garden City (City) and potential future customers locating on the annexed land to use Wheatland as a franchisee in the annexed area. Wheatland is already the holder of the certified service territory for the purpose of providing electrical service to this area. Wheatland has a long history of successfully providing municipalities with electric service. We have the staff, management and operation personnel to successfully address electric service, and any potential emergent situation for the City. No other entity can provide the full service of Wheatland; Wheatland has 57 employees within a few miles of this property ready to respond to any situation.

Also, enclosed please find Wheatland's current rate schedules. These rate schedules are "all-in" including transmission costs and Wheatland's Local Access Charges for its 34.5 kV lines. In exchange, we would also request whatever "all-in" rates the City would use from other suppliers. As a deregulated electric utility, Wheatland is able to offer contractual rate schedules apart from those that are attached which are capable of being more than competitive with any other supplier.

We do not want a situation where we provide our rates and then have a different supplier review our rates and undercut our rates by exercising market power due to its inside intelligence. I am confident that our rates will be very competitive, and we would work hard to ensure that Wheatland's rates are in the best interest of the City and potential future customers locating on the annexed land. We believe that the customer's desire should be of paramount importance to the City in establishing a franchise. We

are confident that a customer, especially a large commercial operation, would obviously serve its own best interest. As such, the customer's personal desires for power supplier should be heard and observed by the City.

Specifically addressing factors four and five, Wheatland is an electric distribution cooperative, whereas the City is a municipal electric system. Wheatland is a not - for - profit utility, while the City is free to set rates which may earn returns for the City or set rates which may be used to fund other municipal programs which may not benefit the electric consumer in the annexed area. As such, if Wheatland were to serve the load in the annexed area, it has no motivation to charge the annexed load more than it costs to serve the load. This is clearly in the best interest of the potential customers in the annexed area. In the event Wheatland's rates return revenues in excess of its expenses, Wheatland is required to return the excess revenue to its member/customers in the form of rate reductions or patronage capital. This would economically benefit the potential customers in the annexed area and the 36,000 meters/member customers that Wheatland serves within its certified service territory.

Furthermore, the wholesale power that Wheatland utilizes to serve its member customers, including the potential customers in the annexed area, comes from Sunflower Electric Power Corporation (Sunflower). Sunflower is a generation and transmission cooperative. Like Wheatland, as a cooperative, Sunflower may only collect revenues to cover expenses. Any excess revenues are returned to the member consumers in the form of rate reductions or patronage capital. In this respect, if Wheatland were to serve the potential customers in the annexed area with power supply from Sunflower, Sunflower would have more kW hours of sales with which to spread its fixed expenses. This would result in lower rates and/or increased patronage capital to six distribution cooperatives who collectively serve 200,000 member customers in western Kansas. Clearly the economic impact of serving the potential customers in the annexed area will have a greater good to the local and regional community if that load is served by Wheatland.

Factor six through nine seemed to touch upon many of the same themes. The bottom line is Wheatland already has existing infrastructure and facilities that are in the best position to serve any potential customers in the newly annexed area. Also, Wheatland has electrical infrastructure in place that can easily serve new industrial loads on the recently annexed property. An existing Wheatland 34.5 kV three phase sub-transmission line borders the west and north side of this property. An existing Wheatland 15 kV three phase distribution line borders the southern and eastern side of this property. Any additional electric facilities brought into the property from another supplier would be a duplication of the electrical infrastructure and would further encumber the land. This could clearly interfere with Wheatland's ability to serve existing electrical customers in the general area.

If you have any questions, do not hesitate to contact me. I look forward to hearing from you about the rate issue. We want to make certain that we are not subject to being undercut by a different supplier. Thank you for your attention to this matter.

Sincerely,

WATKINS, CALCARA, CHTD.

James M. McVay

JMM/cmc  
Enclosures

## Mike Muirhead

---

**From:** Mike Muirhead  
**Sent:** Friday, April 17, 2015 4:08 PM  
**To:** Mueller, Bruce  
**Cc:** Randall Grisell; Jim McVay; Looney, Beth  
**Subject:** RE: Garden City Commission Agenda

Very good.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** "Mueller, Bruce"  
**Date:** 04/17/2015 4:00 PM (GMT-06:00)  
**To:** Mike Muirhead  
**Cc:** Randall Grisell, Jim McVay, "Looney, Beth"  
**Subject:** RE: Garden City Commission Agenda

Mike: Thank you. Beth Looney and potentially Jim McVay will be in attendance from Wheatland.

You have great weekend also.

*Bruce W. Mueller*

General Manager  
Wheatland Electric Cooperative  
P.O. Box 230  
Scott City, KS 67871  
Phone: 620-872-5885  
Cell: 620-214-1597

---

**From:** Mike Muirhead [<mailto:Mike.Muirhead@gardencityks.us>]  
**Sent:** Friday, April 17, 2015 3:41 PM  
**To:** Mueller, Bruce  
**Cc:** Randall Grisell  
**Subject:** Garden City Commission Agenda

Bruce,

Please find attached a copy of the proposed City Commission agenda and memorandum for the April 21, 2015 meeting. The meeting will start at 1:00 PM in the City Commission Chambers here at City Hall in Garden City.

Some items on the agenda may move around before it is in final form, but I wanted to provide you with the information regarding a procedural schedule for the City Commission to consider.

It is currently listed under XII. E. *Governing Body is asked to set a procedural schedule for determination of electric service/franchise for annexed areas.*

Have a great weekend, and feel free to call should you have questions.

Mike

Mike Muirhead  
Public Utilities Director  
301 N. 8<sup>th</sup> St.  
P.O. Box 998  
Garden City, KS 67846

620-271-1577

[Mike.Muirhead@gardencityks.us](mailto:Mike.Muirhead@gardencityks.us)

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Unless specifically stated, this email does not create a legal relationship between the recipient and Wheatland Electric Cooperative, Inc., and Wheatland disclaims any liability for the consequences of any actions taken by recipient on the basis of the information provided in this email or its attachments. Nothing in this email constitutes a binding offer, acceptance or opinion for Wheatland Electric Cooperative, Inc. unless specifically and explicitly set forth in a separate document. This email is intended solely for the use of the intended recipient(s) and may contain information that is confidential, privileged or otherwise protected from disclosure. Any unauthorized review, copying, use, disclosure or distribution is prohibited. If you are not the intended recipient of this email, please immediately notify the sender, and delete the email and any attachments from your system.

D|G  
**DOERING & GRISELL, P.A.**

ATTORNEYS AT LAW  
124 GRANT AVENUE  
GARDEN CITY, KANSAS 67846  
TEL: (620) 275-8084  
FAX: (620) 275-5076

Michael C. Doering  
Randall D. Grisell  
Jacob M. Cunningham

miked@genet.com  
randyg@genet.com  
jacobe@genet.com

April 30, 2015

VIA U.S. MAIL/EMAIL (jmcvay@wcrf.com)

James M. McVay  
WATKINS CALCARA, CHTD.  
P. O. Drawer 1110  
Great Bend, Kansas 67530-1110

Re: K.S.A. 66-1,176 Analysis-  
City of Garden City, Kansas

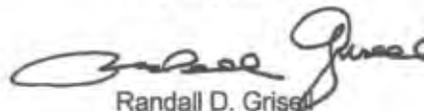
Dear Jim:

Enclosed with this correspondence is a memorandum from Mike Muirhead, Public Utilities Director, City of Garden City, Kansas (City). The City has analyzed the nine (9) factors set out in K.S.A. 66-1,176. Also included is your correspondence of April 1, 2015, which contains the request of Wheatland Electric Cooperative, Inc. (WEC) for the K.S.A. 66-1,176 analysis, as well as your comments about the nine (9) factors.

According to the procedural schedule established by the City Commission, the enclosed analysis is to be submitted to WEC on April 30, 2015. WEC is to submit a reply to the City on or before May 6, 2015. The reply should address the City's analysis, together with information WEC would like the Governing Body to consider in its final determination as to whether a franchise should be granted to WEC for the annexed City owned property. On or before May 12, 2015, the City will forward a response to WEC, and on May 14, 2015, the Governing Body will consider the information provided and make a determination concerning the franchise request.

If you have any questions, please contact me.

Very truly yours,

  
Randall D. Grisell

RDG:pbb  
pc: Matthew C. Allen, City Manager  
Michael J. Muirhead, Director, Public Utilities  
W:\RDG\CITY\WHEATLAND.ELEC\McVay.ltr(FranchiseAnalysis).docx

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\*\*Licensed in Kansas and Missouri

TAYLOR P. CALCARA  
Of Counsel  
L. EARL WATKINS, JR.

WICHITA OFFICE  
Phone 316-239-6200

May 4, 2015

Randall Grisell  
Doering & Grisell, P.A.  
124 Grant Ave.  
Garden City, Kansas 67846

Re: Annexation of Jameson  
Our File No. 994.11177

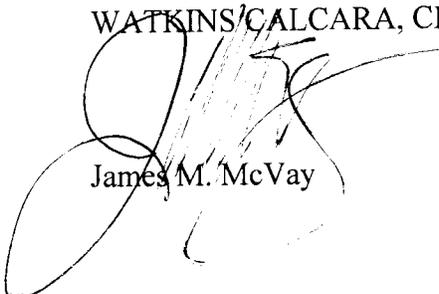
Dear Randy:

I am unable to respond to your letter dated April 30, 2015, before May 6, 2015. First, Wheatland was not consulted on the time line adopted by the City. Also, the management team is out of state for most of this week and key technical personnel are currently out of the office. Once the necessary personnel have returned, I will be in a better position to respond. I anticipate forwarding my response to you no later than May 18, 2015.

Thank you for your attention to this matter.

Sincerely,

WATKINS/CALCARA, CHTD.



James M. McVay

JMM/mdm



**COMMUNITY  
DEVELOPMENT  
DEPARTMENT**  
SERVING THE  
CITIES OF  
GARDEN CITY  
HOLCOMB  
AND  
FINNEY COUNTY  
620-276-1170

INSPECTIONS  
620-276-1120  
[inspection@garden-city.org](mailto:inspection@garden-city.org)

CODE  
ENFORCEMENT  
620-276-1120  
[code@garden-city.org](mailto:code@garden-city.org)

PLANNING AND  
ZONING  
620-276-1170  
[planning@garden-city.org](mailto:planning@garden-city.org)

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620.276.1170  
FAX 620.276.1173  
[www.garden-city.org](http://www.garden-city.org)

**MEMORANDUM**

**DATE:** June 2, 2015  
**TO:** Mayor & City Commission  
**FROM:** Kaleb Kentner, Planning & Community Development Director  
**cc:** File  
**RE:** Demolition Bid Approval- 1904 Crestway Drive

**Issue:** Demolition of fire damaged structure

**Background:** The house at 1904 Crestway Drive was severely damaged as a result of a fire. Insurance proceeds for the fire damage received from the property owners insurance is \$6,426.90.

On December 2, 2014, the City Commission approved an Unsafe, Unfit or Dangerous Structure Order for the repair and/or demolition of the fire damaged structure at 1904 Crestway Drive. The structure was not repaired or demolished in the time frame specified in the approved order.

On March 18, 2015, a bid packet was put together and opened to the public for the demolition of the structure. Two bids were received by the Community Development Department. Due to the high dollar amount of the bids received, both bids were rejected.

On May 6, 2015, a second bid packet was put together and opened to the public for the demolition of the structure. One bid was received by the Community Development Department from Lee Construction in the amount of \$37,200.

**Alternatives:**

1. City Commission may approve the submitted bid from Lee Construction for \$37,200.
2. City Commission may approve that the Public Works Department remove all accessory structures and attached carport, and remove all dead trees, shrubs and vegetation for the amount of \$12,850, then rebid the demolition of the main dwelling to licensed contractors.

Labor	5 worker for 80 hours at \$30/hour= \$12,000
Front End Loader	5 hours at \$100/hour= \$500
Dump Truck	2 trucks-5 hours each at \$35/hour= \$350
Total	\$12,850



3. City Commission may take no action.

**Recommendation:** Staff recommends approving Alternative 1 or 2.

**Fiscal Impact:** Fees assessed through the code compliance process cover the cost of contractors. However, if the violator does not pay fees, the City covers the cost of the contractor until the fee is collected through either collections or through a lien on the property.

In either case a lien will be placed on the property for the cost of demolition. The city would have to pay for the upfront costs. The insurance proceeds will also be used for payment of abatement expenses.

**COMMUNITY  
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[www.garden-city.org](http://www.garden-city.org)**

# New Business



CITY COMMISSION

ROY CESSNA,  
Mayor

MELVIN L. DALE

JANET A. DOLL

DAN FANKHAUSER

J. CHRISTOPHER LAW

MATTHEW C. ALLEN  
City Manager

MELINDA A. HITZ, CPA  
Finance Director

RANDALL D. GRISELL  
City Counselor

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FAX 620.276.1169  
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MEMORANDUM

**TO:** City Commission  
**FROM:** Matt Allen, City Manager  
Randy Grisell, City Attorney  
**DATE:** April 17, 2015  
**UPDATED:** **May 28, 2015**  
**RE:** Consideration of a Master Services Agreement with Revere Health Systems for the operation of an on-site clinic

---

**Issue**

The Governing Body is asked to consider a Master Service Agreement for the operation of the City's on-site health clinic.

**Background**

WINS provided notice of default on their contract with the City of Garden City on March 16<sup>th</sup>. The City has considered a proposal by Revere Health System to resume operation of the clinic under new terms and conditions outline in the attached Master Service Agreement. If the agreement is approved and the City finds the relationship to be satisfactory, the agreement provides for a continuation of services by Revere Health Systems and some "credit" for payments made without services rendered under the WINS contract.

***Since the Governing Body approved a Master Service Agreement with RHS on April 21, 2015, RHS has encountered difficulty in procuring a nurse practitioner to fill the position for the clinic. The cost to RHS was going to be significantly higher than originally planned. RHS renegotiated a higher monthly fee, but in exchange, agreed to provide more hours the clinic would be open (20 per week to 26 per week). Renegotiating an agreement with RHS also allows the clinic to reopen on or about June 1, 2015, rather than RHS not being able to open by the same date, resulting in the City terminating the agreement. The alternative available to the City at that point would have been to seek RFPs from interested parties, or simply not reopen the clinic. The City still maintains the option of early termination of the agreement if it is dissatisfied with RHS's performance, on December 1, 2016 or December 1, 2017.***

***The difference between what we originally agreed to with RHS and the revised agreement is \$4000 a month. Therefore, \$24,000 is the impact to the 2015 budget. The impact beyond 2015 is \$48,000 per year.***

**Alternatives**

1. Approve the Master Service Agreement.
2. Deny the Master Service Agreement and direct staff to issue request for proposals for on-site health clinic services.
3. Deny the Master Service Agreement and discontinue offering an on-site health clinic for insureds.



CITY COMMISSION

ROY CESSNA,

Mayor

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CITY ADMINISTRATIVE

CENTER

301 N. 8<sup>TH</sup>

P.O. Box 998

GARDEN CITY, KS

67846-0998

620.276.1160

FAX 620.276.1169

[www.garden-city.org](http://www.garden-city.org)

**Recommendation**

Staff recommends approval as the contract provides for the quickest reopening of our on-site clinic, an opportunity to recover “losses” following WINS’s default, and provisions for termination of the agreement should the City not be happy with the services.

***Staff recommends formal approval of the attached agreement, approved by RHS.***

**Fiscal Note**

For the remainder of 2015, the additional cost to Fund 55 will be the sum of the \$83,000 of payments made but services not received and approximately an additional \$30,000 which accounts for the monthly cost difference between the Revere proposed MSA and the WINS contract.

***2015 - \$24,000 additional to the previously negotiated agreement***

***2016 - \$48,000 additional to the previously negotiated agreement***

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## MASTER SERVICE AGREEMENT

This Master Services Agreement (the "Agreement") is entered into this 2nd day of June, 2015, by and between:

**REVERE HEALTHCARE SOLUTIONS INC.** ("RHS"), a Kansas corporation with offices located at 4121 W. 83<sup>rd</sup> Street, Suite 151, Prairie Village, KS 66208;

AND

**THE CITY OF GARDEN CITY, KS** (the "City of GC" and together with RHS the "Parties"), with offices located at 301 N. 8<sup>th</sup> Street, Garden City, KS 67846.

This Agreement details the terms and conditions under which, RHS undertakes to deliver the Services (as defined below) to Participants (as defined below) at a location provided by the City of GC (the "Clinic").

Parties hereby agree to the following terms and conditions of this Agreement.

### **1. RHS' UNDERTAKINGS**

- 1.1. Services. RHS undertakes to provide to the employees of the City of GC (the "Participants"), as identified by the City of GC, health screenings and other healthcare and wellness services as detailed in Exhibits 1); 2) and 3).
- 1.2. Personnel, Employment and Taxes. RHS undertakes to cause that all personnel provided by RHS for the delivery of the Services are either employees ("RHS Employed Personnel") or contractors ("RHS Contracted Personnel") of RHS. RHS undertakes to follow its standard employment policies and procedures to verify that all Personnel meet applicable licensing requirements. RHS (or its subcontractors), undertakes to maintain direct responsibility as employer (or contractor) for the payment of wages and other compensation, and for any applicable mandatory withholdings and contributions such as federal, state, and local income taxes, social security taxes, workers' compensation and unemployment insurance.
- 1.3. Health & Safety Guidelines. Prior to the commencing of operations RHS undertakes to obtain a physician's order authorizing the provision of Services, as required under the applicable law of the State of Kansas. RHS undertakes to follow applicable guidelines issued by the Kansas Department of Health and Environment related to Services and waste disposal. Upon receipt of written request, RHS shall forward a copy of its Infection Control Guidelines to the City of GC.
- 1.4. Supplies. RHS undertakes to provide all necessary medical supplies, vaccine, and forms to be used in administering and/or providing the Services. However, RHS is not responsible for the payment of such Supplies, which shall be billed to the City of GC in accordance to Exhibit 4).3.
- 1.5. Insurance. At its own expenses, RHS undertakes to maintain, or require the Personnel to maintain, a valid insurance policy with general and professional liability coverage of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in aggregate, covering negligent acts or omissions of Personnel occurring in connection with the provision of the Services under this Agreement. Upon request by the City of GC, RHS shall provide a certificate of insurance proving such coverage. RHS undertakes to maintain any required workers' compensation insurance



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for RHS Employed Personnel. RHS shall also include a minimum of Five Hundred Thousand Dollars (\$500,000) Hired and Non-Owned Auto Liability Insurance during the term of this Agreement. City of GC shall be listed as an additional insured on all applicable insurance policies. RHS shall be responsible for insuring all of the personal property and equipment owned by RHS.

## 2. THE CITY OF GC'S UNDERTAKINGS

- 2.1. Insurance. At its own expense, the City of GC undertakes to maintain a valid insurance policy with general liability limits of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence as may be subjected to the Kansas Tort Claims Act, covering the alleged negligent acts of its elected officials, employees or agents within their scope of duties for the City of GC. Upon request by RHS, the City of GC shall provide a Certificate of Insurance with RHS listed as certificate holder. The City of GC shall insure all personal property and equipment owned by the City of GC.
- 2.2. Emergency Situations. On the first day of operations and then once every three (3) months, the City of GC undertakes to instruct in writing all the Participants that i) emergency situations are not handled by RHS; ii) are not included in the Services provided by RHS under this Agreement and iii) shall be handled by Participants solely by activating 911. For the avoidance of any doubt, the City of GC acknowledges that emergency situations are not included in the Services provided by RHS under this Agreement.
- 2.3. Clinic; Clinic's Rent. The City of GC undertakes to provide, at its own expenses, a suitable location which will enable RHS to safely provide the Services to Participants. The City of GC also undertakes to provide furniture, including, but not limited to, tables and chairs, and provide, at its own expenses, for Personnel to have reasonable access to telephone and internet connections.
- 2.4. Clinic's Cleaning. The City of GC undertakes to be responsible, at its own expenses, for daily and extended cleaning of the Clinic.
- 2.5. Non-Solicitation. The City of GC undertakes not to solicit, directly or indirectly, for employment (as an employee or as a contractor) RHS' Personnel for a period of two (2) years after such Personnel has terminated any employment or contractor engagement with RHS.
- 2.6. Medical Records. In the course of this Agreement, RHS shall provide, from a third party vendor, an information technology infrastructure and software comparable to or exceeding the quality and features of athena Communicator, in order to allow Participants' ongoing access to medical records (the "Medical Records' Software") and to minimize disruption upon termination of this Agreement. The City of GC shall be responsible for the monthly fee for the Medical Records' Software in an amount not to exceed Six Hundred Fifty Dollars (\$650) per month. On or before January 1, 2016, the City of GC shall have the option of terminating the Medical Records' Software described herein and the obligation to pay for same, or continuing with it through the end of any annual term of this Agreement. Should RHS procure another client to use the Clinic, and an additional Advanced Registered Nurse Practitioner is not required, the fee paid by the City of GC in this section shall be reduced by Fifty Percent (50%).

## 3. OTHER UNDERTAKINGS

- 3.1. Non-discrimination. The Parties undertake not to discriminate on the basis of age, race, color, national origin, religion, gender, sexual orientation, disability, being a qualified veteran, being a qualified disabled veteran of the Vietnam era, or any other category protected by applicable law.

CAP

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#### 4. COMPENSATION

- 4.1. Billing. RHS shall submit invoices to the City of GC for the Services rendered, according to the provisions set forth in the Exhibit 4); the City of GC shall promptly pay the invoices.
- 4.2. Payment Terms. All amounts invoiced by RHS are due and payable within fourteen (14) days from the date of such invoice. Payments shall be sent to:

Revere Healthcare Solutions Inc.  
Attention: Treasury Department  
4121 W.83<sup>rd</sup> Street, Suite 151  
Prairie Village, KS 66208

#### 5. TERMS OF THE AGREEMENT

- 5.1. Interim Term. This Agreement shall be in effect for the period of June 1, 2015, through November 30, 2015.
- 5.2. First Term. This Agreement shall be extended for the period of December 1, 2015, through November 30, 2016.
- 5.3. Second Term. Unless the First Termination Option (as defined below) is exercised by the City of GC, this Agreement shall be extended for the period of December 1, 2016, through November 30, 2017.
- 5.4. Third Term. Unless the Second Termination Option (as defined below) is exercised by the City of GC, this Agreement shall be extended for the period of December 1, 2017, through November 30, 2018.
- 5.5. Termination If Clinic Not Open By July 1, 2015. If the Clinic is not opened by RHS and in full service by July 1, 2015, this Agreement shall terminate as of July 1, 2015.

#### 6. TERMINATION AND TERMINATION OPTIONS

- 6.1. Termination for Cause. Both Parties have the right to terminate this Agreement for Cause. Cause is intended as the breach of the terms and conditions of this Agreement as undertaken by the other party. The breaching party shall have ten (10) business days (the "Cure Period") to cure the breach, following the receipt of a written notice of breach from the non-breaching party. If the breach is not cured in the course of the Cure Period, the non-breaching party has the right to immediately terminate this Agreement for Cause.
- 6.2. The City of GC Termination Options. The City of GC has two (2) options (in aggregate the "Two Termination Options") to terminate this Agreement, for any reason. The First Termination Option can be exercised in the period between September 15, 2016, and September 30, 2016 (the "First Termination Option"); the Second Termination Option can be exercised in the period between September 15, 2017, and September 30, 2017 (the "Second Termination Option"). The Two Termination Options can be exercised by way of sending a written termination notice to RHS. If the City of GC exercises a termination option, the term of this Agreement shall end on November 30th of the then current term. Upon termination of this Agreement, all obligations and duties of the Parties shall cease, except for payment of fees already earned to date of termination by RHS, but not yet paid by the City of GC. For the avoidance of any doubt, i) RHS shall deliver the Services through November 30th of the then current term and ii) fees already earned to date of termination by RHS shall be intended as the fees to be paid by the City of GC through November 30th of the then current term.

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- 6.3. Medical Records. Upon termination of this Agreement, RHS shall cooperate with the City of GC to promptly and efficiently transfer and deliver Participants' medical records to the City of GC (the "Medical Records' Transfer"), or its designated medical representative, to allow for the uninterrupted provision of medical services to Participants by other health care providers. Any cost incurred by RHS in connection with the Medical Records' Transfer shall be entirely paid for by the City of GC.

**7. GENERAL TERMS**

- 7.1. Independent Contractors. RHS enters into this Agreement as an independent contractor, and nothing contained in this Agreement shall be construed to create a partnership, joint venture, agency, or employment relationship between the Parties.
- 7.2. Assignment. Neither of the Parties shall assign this Agreement to a third party without the prior written consent (the "Consent") of the other party, and such Consent shall not be unreasonably withheld. However, no such Consent shall be required for the assignment to an entity owned by or under common control with the assignor; in such event, the assignor shall provide the assignee with a written notice of the assignment, within fifteen (15) business days. In any circumstance, the assignor shall remain responsible for the performance under this Agreement.
- 7.3. City of GC Indemnification. RHS agrees to indemnify and hold harmless the City of GC, including its elected officials, employees, and agents from and against any and all claims, actions, and liabilities which may be asserted against them by third parties as a consequence of RHS' and/or its directors', officers', employees' or agents' negligence in providing the Services.
- 7.4. RHS Indemnification. The City of GC agrees to indemnify and hold harmless RHS, including its directors, officers, employees, contractors and agents from and against any and all claims, actions, and liabilities which may be asserted against them by third parties as a consequence of the City of GC' and/or its elected officials', employees' or agents' negligence under the terms and conditions of this Agreement.
- 7.5. Notices. Any notice required under this Agreement shall be in writing; shall be served or sent by certified mail, return receipt requested and postage pre-paid, or by a recognized overnight carrier which provides proof of receipt; and shall be sent to the addresses below. Parties may change the address to which notices shall be sent, by sending a written notice of such changes to the other party.

**The City of Garden City, Kansas**  
Attention: Mr. Matt Allen  
City Manager  
301 N.8<sup>th</sup> Street  
P. O. Box 998  
Garden City, KS 67846

**Revere Healthcare Solutions Inc.**  
Attention: Mr. Carmine Di Palo  
Chairman and Chief Executive Officer  
4121 W.83<sup>rd</sup> Street, Suite 151  
Prairie Village, KS 66208

- 7.6. Entire Contract, Counterparts. This Agreement constitutes the entire contract between the City of GC and RHS regarding the Services and supersedes any other letters, term sheets, agreements, promises or representations not expressly set forth in this Agreement. This Agreement shall be executed in two (2) copies, each of which will be deemed to be the original, but both shall constitute one and the same document. No amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of each of the Parties. The Parties hereby acknowledge and agree that the execution and delivery of this Agreement by facsimile transmission or by e-mail of a scanned copy shall be valid and binding.



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- 7.7. Availability of Vaccine and/or Supplies. As applicable, the Parties agree that RHS' undertaking under this Agreement to provide the Services is expressly conditioned upon the availability of vaccine and/or Supplies. Should vaccine and/or Supplies become unavailable, RHS shall not be required to provide the Services, and shall have no liability whatsoever to the City of GC or to any third party as a result of its failure or inability to provide the Services.
- 7.8. Force Majeure. Neither RHS nor the City of GC shall be liable for any failure or inability to perform their respective obligations under this Agreement for a period of up to forty-five (45) days due to any cause beyond the reasonable control of the non-performing party, including but not limited to acts of God, regulations of laws of any government, acts of war or terrorism, acts of civil or military authority, fires, floods, accidents, epidemics, quarantine restrictions, unusually severe weather, explosions, earthquakes, strikes, labor disputes, loss or interruption of electrical power or other public utility, freight embargoes or delays in transportation, or any similar or dissimilar cause beyond its reasonable control. If a party's non-performance under this section extends for at least forty-five (45) calendar days, the party affected by such non-performance may terminate this Agreement by providing written notice thereof to the other party.
- 7.9. Compliance with Laws. RHS undertakes that the Services shall be performed in compliance with all applicable federal, state and/or local laws and regulations.
- 7.10. Severability. In the event that one or more provisions of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions shall be deemed to continue in full force and effect.
- 7.11. Governing Law; Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of Kansas. Any dispute or claim from this Agreement shall be resolved exclusively in the federal and state courts of the State of Kansas.
- 7.12. Amendment. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed and signed by both Parties.
- 7.13. Attorneys' Fees. In the event that either of the Parties is required to obtain legal assistance to enforce its rights under this Agreement, or to collect any monies due, the prevailing party shall be entitled to recover from the other party, in addition to all other sums due, reasonable attorneys' fees, court costs and expenses, if any, incurred enforcing its rights and/or collecting its monies, subject to a cap of Seven Thousand Five Hundred Dollars (\$7,500).
- 7.14. Nonappropriation of Funds. In the event sufficient funds shall not be appropriated by the City of GC for the payments and obligations required under the terms and conditions of this Agreement, the City of GC may terminate this Agreement pursuant to Section 6.2 above. This Agreement is subject to the terms and provisions of the Cash Basis Law, K.S.A. 10-1101 *et seq.*, and the Kansas Budget Law, K.S.A. 79-2925 *et seq.*
- 7.15. Previous Master Service Agreement. This Agreement shall supersede and replace a previous Master Service Agreement between the parties, dated April 21, 2015. The parties stipulate and agree the previous Master Service Agreement is mutually terminated and no longer in force and effect.

## 8. CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION ("PHI")

- 8.1. HIPAA Compliance. RHS undertakes:
- a) To comply with the applicable provisions of the Administrative simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Par. 1320d through d-8 and as amended ("HIPAA"), and the requirements of any regulation promulgated thereunder;

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- b) Not to use or further disclose any Participants' PHI, other than as permitted by this Agreement, the requirements of HIPAA and/or applicable federal regulations. The receiving party shall implement appropriate safeguards to prevent the use or the disclosure of Participants' PHI other than as provided by this Agreement.
  - c) To promptly report to the City of GC any violation, use and/or disclosure of PHI not provided for by this Agreement as soon as it is practicable, upon becoming aware of the improper violation, use and/or disclosure; and
  - d) To comply with the privacy, security and electronic transaction requirements as defined in the HIPAA regulations.
- 8.2. Breach of Confidentiality. In the event that either party is in material breach of any provision(s) of section 8.1. above, such party shall immediately advise the other party and take commercially reasonable steps to remedy such breach, including, but not limited to protecting against the consequences of any disclosure or use of PHI in violation of this Agreement. Both Parties acknowledge that use or disclosure of the PHI, in any manner inconsistent with this Agreement, may result in irreparable and continuing damage. As applicable by law, legal remedies, such as equitable relief may be necessary to protect against such breach or threatened breach, including, without limitation, injunctive relief.

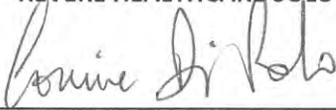
The City of GC and RHS have acknowledged their understanding of and agree to the mutual promises written above by executing this Agreement as of the date first set forth above.

**THE CITY OF GARDEN CITY, KS**

**REVERE HEALTHCARE SOLUTIONS INC.**

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Date: June 2, 2015  
Printed Name: Janet A. Doll  
Title: Mayor

  
Date: MAY 27, 2015  
Carmine Di Palo  
Chairman and Chief Executive Officer

**EXHIBIT 1) GENERAL TERMS**

<b>Index</b>	<b>Description</b>	<b>Detailed Description</b>
1).1	<b>Description of Services</b>	<ul style="list-style-type: none"> <li>✓ Health Risk Assessments (HRAs), including biometrics and lab work. <i>Each Participant (as defined above) shall meet with a RHS nurse to review HRA results, receive wellness recommendations, and set appropriate personal health improvement goals. All High Risk Participants (“HRPs”) shall meet with RHS’ NP (as defined below).</i></li> <li>✓ Lifestyle Management shall be provided for all HRPs by RHS’ NP and, Dietitian and Fitness Experts. <i>Mid-year lab will be included. Participants who qualify as Medium Risk shall be provided a mid-year coaching session and mid-year lab.</i></li> <li>✓ Provision of aggregate report to the management of the City of GC. <i>The City of GC’ management shall be provided with aggregate report providing health information based on all Participants. RHs will assist the City of GC’ management in the analysis of reports.</i></li> <li>✓ Treatment of only minor work related injuries and illnesses can be treated at the onsite clinic.</li> <li>✓ Occupational health services including, but not limited to, DOT exams, urine drug screening, and other required health screenings shall be offered at the onsite clinic, as appropriate.</li> </ul> <p><i>Other Information: Wellness Guides, Lifestyle Management Guides, Self Care Guides, Wellness Website and all other educational materials utilized in the wellness program will be branded with the City of Garden City logo.</i></p>
1).2	<b>Clinic’s Hours of Operation</b>	<ul style="list-style-type: none"> <li>✓ 26 hours per week, 50 weeks per year (excluding Thanksgiving and Christmas through New Year’s Day weeks).</li> <li>✓ 4-5 onsite nursing days per week</li> </ul>
1).3	<b>Staffing</b>	<ul style="list-style-type: none"> <li>✓ One (1) Advanced Registered Nurse Practitioner (“NP”).</li> <li>✓ One (1) Receptionist / Admin staff member.</li> </ul>
1).4	<b>Promotion of Services</b>	The City of GC and, to a lesser extent, RHS shall promote the utilization of Services by Participants. Promotion activities may include, from time to time, posting of hours of operations, participation to employees’ meetings, participation to employees’ events, submissions to the City of GC’ newsletter, distribution of informational material to Participants, maintenance of a bulletin board at the clinic, with health education, self-care and wellness information.
1).5	<b>Administrative Board</b>	The Administrative Board shall be formed including two (2) representatives from RHS and two (2) representatives from the City of GC. The Administrative Board shall meet once a month until November 30, 2015. And once every two months, thereafter. The key objectives of the Administrative Board shall be: setting goals, strategies to optimize/maximize employees’ utilization of Services, troubleshooting, and overall program evaluation (including the identification of best practices).
1).6	<b>Referrals</b>	Referrals from NP will be made to in-network clinic providers only.
1).7	<b>Clinic Hours</b>	Clinic hours shall be posted and advertised. Wellness appointments shall be scheduled. Episodic care appointments shall be scheduled. Walk-ins will be accommodated, only if possible, or given a scheduled appointment. Emergency situations shall not be handled and are expressly excluded from Services: all clinic materials to Participants and to the City of GC’ employees will include instructions clearly stating that such situations should be handled solely by activating 911.
1).8	<b>Evaluation of Return on Investment</b>	RHS shall identify, with the City of GC assistance, appropriate methodologies to evaluate, on an annual basis, the City of GC’ Return-On-Investment related to the Services. Such methodologies may include, but are not limited to, a comparison of estimated future claims trends with current claims trends, direct costs avoidance connected by RHS’ pricing for its Services, reduction in health risks (and costs avoidance), and workers’ compensation costs.

**EXHIBIT 2): ONSITE CLINIC SERVICES**

Index	Description	Detailed Description	Delivered by	Estimated month of Delivery	Additional Information
2).1	<b>Triage and Treatment of Personal and Work related Conditions</b>	Medical evaluation and treatment of minor illnesses/injuries and routine care: sore throats; respiratory infections; sinus infections; ear infections; urinary tract infections; routine physicals; athletic physicals; musculoskeletal pain; strains/sprains; minor burns; minor lacerations; allergy shots; vaccinations.	<b>Nurse Practitioner</b>	<b>Target Clinic Open Date: June15, 2015*</b>	<ul style="list-style-type: none"> <li>✓ Instant testing utilized whenever appropriate;</li> <li>✓ Bulk lab rates will be negotiated for specimens which are sent to external lab for processing;</li> <li>✓ Medications such as antibiotics and anti-inflammatory medications will be dispensed on site;</li> <li>✓ Physician referrals will be made to in-network providers only.</li> </ul>
2).2	<b>Medical Management of Disease and Pre-Disease Conditions</b>	Diagnosis and ongoing medical treatment including: hypertension; pre-diabetes and uncomplicated diabetes; hyper-lipidemia; tobacco addiction; metabolic syndrome; obesity	<b>Nurse Practitioner</b>	<b>Target Clinic Open Date: June15, 2015*</b>	<ul style="list-style-type: none"> <li>✓ Bulk lab rates will be negotiated for specimens which are sent to external lab for processing;</li> <li>✓ Treatment includes prescribing and monitoring medication. Generics will be utilized if appropriate;</li> <li>✓ Physician referrals will be made to in-network providers only.</li> </ul>
2).3	<b>Additional Occupational Medicine Services</b>	Include: treatment of minor work related injuries and illnesses; urine drug screens; DOT physicals, post-employment exams; safety training; return-to-work management; administrative (first report of injury and case management); coordination of referrals.	<b>Nurse Practitioner</b>	<b>Target Clinic Open Date: June 15, 2015*</b>	<ul style="list-style-type: none"> <li>✓ Common medications used to treat work injuries will be dispensed onsite.</li> </ul>
					✓

Note \*: Actual Clinic Open Date no later than July 1<sup>st</sup>, 2015.

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**EXHIBIT 3): WELLNESS SERVICES**

Index	Description	Detailed Description	Delivered by	Est. month of Delivery	Additional Information
3).1	Coordination with City of GC's Benefits Coordinator	Once a month meetings during the Interim Term, once every two months meetings afterwards.	Nurse Practitioner		
3).2	Program Promotion	Attend informational and employees' benefit meetings; collaborate with Benefits Coordinator.	RHS	As needed	
3).3	Health Risk Assessments ("HRAs") (Optional, in case the City of GC elects to conduct annual Health Risk Assessments)	<ul style="list-style-type: none"> <li>✓ Biometrics: height, weight, % body fat; blood pressure; waist circumference;</li> <li>✓ Cholestech Lab including Lipid panel (cholesterol, LDL, HDL, triglycerides), glucose</li> <li>✓ Lifestyle questionnaire (20 minutes / employee)</li> <li>✓ Meeting to discuss aggregate data</li> <li>✓ 20-minute coaching session for each HRA participant with RN</li> </ul>	RHS	October – November (2015, 2016, 2017 and 2018)	<ul style="list-style-type: none"> <li>✓ RHS will conduct screenings at the beginning of each shift to accommodate for fasting (12 hours fast);</li> <li>✓ Cholesterol finger-stick collection;</li> <li>✓ Participants with abnormal blood pressure results and key questionnaire questions shall receive RN follow-up the day of testing.</li> <li>✓ Distribute results and annual wellness guide</li> </ul>
3).4	Lifestyle Management	<ul style="list-style-type: none"> <li>✓ 1<sup>st</sup> coaching session (30 minutes)</li> <li>✓ 2<sup>nd</sup> coaching session (30 minutes)</li> <li>✓ 3<sup>rd</sup> coaching session (30 minutes)</li> <li>✓ 4<sup>th</sup> coaching session (15 minutes)</li> <li>✓ 5<sup>th</sup> coaching session (15 minutes)</li> <li>✓ 6<sup>th</sup> coaching session (15 minutes)</li> </ul>	<ul style="list-style-type: none"> <li>✓ NP</li> <li>✓ Dietitian</li> <li>✓ Fitness Pro</li> <li>✓ NP</li> <li>✓ NP</li> <li>✓ NP</li> </ul>	<ul style="list-style-type: none"> <li>✓ Feb</li> <li>✓ Mar</li> <li>✓ Apr</li> <li>✓ Jun</li> <li>✓ Aug</li> <li>✓ Oct</li> </ul>	<ul style="list-style-type: none"> <li>✓ Coaching will be provided onsite for high risk participants (6 sessions) and for medium risk (1 session);</li> <li>✓ Plan outlined in column (2) is for year one Lifestyle Management participants. Repeat participants may have a different schedule, based on mutual agreement between the City of GC and RHS, prior to the beginning of each wellness year.</li> </ul>
3).5	Blood Pressure Screenings	<ul style="list-style-type: none"> <li>✓ Quarterly screenings</li> </ul>		Feb; May; Aug; Nov	

3).6	<b>Exercise/Wellness Challenges</b>	<ul style="list-style-type: none"> <li>✓ Two (2) or four (4)) challenges;</li> <li>✓ Weigh-ins and weigh-outs may be included for all challenges, if provided during onsite hours;</li> <li>✓ RHS shall provide IT support for challenges and track participation to the wellness program.</li> </ul>		To be agreed	<ul style="list-style-type: none"> <li>✓ Pedometer included for all participants for pedometer challenges.</li> </ul>
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**EXHIBIT 3): WELLNESS SERVICES CONT'D**

Index	Description	Detailed Description	Delivered by	Est. month of Delivery	Additional Information
3).7	<b>Wellness Education</b>	<ul style="list-style-type: none"> <li>✓ Bulletin board information wellness newsletter</li> <li>✓ Quarterly Wellness Presentations</li> <li>✓ Presentations</li> <li>✓ Wellness Website</li> </ul>	<p align="center">RHS</p> <p align="center">NP, Dietitian, Fitness Professional</p> <p align="center">RN</p>	<p align="center">Monthly</p> <p align="center">To be agreed</p> <p align="center">To be agreed</p>	<p align="center">Self-care guides</p> <p align="center">Each topic presented in single presentation (1 hour)</p> <p align="center">Links to benefit website of other requested links can be added. Links to reputable medical and resource websites are included.</p>



**EXHIBIT 4): FEES AND PAYMENT TERMS**

		Interim Term	First Term	Second Term	Third Term		
4).1	Base Fees	Starting Date	June 1, 2015	December 1, 2015	December 1, 2016	December 1, 2017	
		Ending Date	November 30, 2015	November 30, 2016	November 30, 2017	November 30, 2018	
		Number of Monthly Payments	6	12	12	12	
		Amount/Monthly Payment	\$28,000.00	\$26,950.00	\$28,210.00	\$29,533.00\$	
		Payment Terms	1 <sup>st</sup> day of the month				
		<hr/>					
4).2	Health Risk Assessments (HRA) (Optional in case the City of GC elects to conduct annual Health Risk Assessment, in any given year)		Interim Term	First Term	Second Term	Third Term	
		Estimated Months of Performance	June - November 2015	December - November 2016	December - November 2017	December - November 2018	
		Finger-stick (1;3) Price/Participant	\$115.00	\$121.00	\$127.00	\$133.00	
		Venipuncture (2;3) Price/Participant	\$125.00	\$131.00	\$138.00	\$145.00	
		Down-payment	\$20,000.00	\$21,000.00	\$22,000.00	\$23,000.00	
		Down-payment payment term	September 1, 2015	September 1, 2016	September 1, 2017	September 1, 2018	
		Balance	Based on actual participation				
		Balance payment term	Upon invoice	Upon invoice	Upon invoice	Upon invoice	
		<p><i>Note (1): Includes lipid panel, glucose, blood pressure, height, weight, waist measurement, body fat analysis, and HRA questionnaire.</i></p> <p><i>Note (2): Includes comprehensive metabolic panel, lipid panel, glucose, HbA1C, complete blood count plus blood pressure, height, weight, waist measurement, body fat analysis, and HRA questionnaire. \$25 additional for men who need prostate antigen testing (based on age and history); \$25 additional for women who need thyroid testing (TSH) (based on age and history).</i></p> <p><i>Note (3): Both Finger-stick and Venipuncture include in clinic mid-year retest (panel, glucose, blood pressure, height, weight, waist measurement, and body fat analysis).</i></p>					
		<hr/>					
4).3	Lab Tests	Excluding HRAs related lab tests (covered by HRAs fees), pass-through including shipping and handling with 10% markup (administrative costs coverage). Invoiced monthly.					

**EXHIBIT 4): FEES AND PAYMENT TERMS CONT'D**

4).4	Supplies	Pass-through including shipping and handling with 10% markup (administrative costs coverage). Invoiced monthly.				
4).5	Hourly Rate for additional clinic hours (over 20 Hours/week)		<b>Interim Term</b>	<b>First Term</b>	<b>Second Term</b>	<b>Third Term</b>
		Price / Hour	\$197.50	\$207.50	\$217.50	\$227.50
4).6	Clinic Rent, Utilities, Phone and Internet Services	Clinic rent, utilities, phone and internet services will be billed directly to and paid by the City of GC.				





## Inter-City Memorandum

**TO:** *City Commissioners*  
*City Manager, Matt Allen*

**FROM:** *Jennifer V. Cunningham, IT Director*

**SUBJECT:** *Voice Over Internet Phone Service (VOIP) – Citywide*

**DATE:** *May 27, 2015*

**ISSUE:**

The City Manager and City Commission are asked to consider a VOIP system across all departments.

**BACKGROUND:**

The City's current system is the original system placed in service at the time the Administrative building was built in 1980. There has been much advancement made to the use of telephones today. The current system is providing a dial tone to the telephone jack. There currently exists no symmetry in the phones in use by the City. The City IT Department has spent a significant period of time working on this project. The development began over two years ago under a previous Director and in combination with the County IT Department. This joint venture began with the purchase of 50 phones (25 to each) with no memorialized plan. Before seriously considering this project again in November of 2014, the IT Director met with the County to see what direction the VOIP project had taken. It was determined that the joint venture ended in the County IT department moving forward with a five year plan of installation for their VOIP system using AT&T locally and buying the 25 phones belonging to the City. The County had begun implementing this project over a year prior. The connectivity between departments is limited until all departments are switched over and therefore a five year plan did not seem reasonable to the City IT Director. The City IT Department then began actively researching and developing the plan that is before you today.

The VOIP system is software driven. It does not require hardware to take advantage of new features. It is an application that is loaded onto the main server. This central control makes it easier to configure different telephones for the features that users need. The VOIP system allows for the IT Department to seamlessly change the telephone number or move the telephone number to a different location. This VOIP system will allow for unified messaging. Unified messaging provides the ability to receive and listen to messages from an Outlook email inbox. Faxes are received as a PDF into Outlook. Contacts in Outlook are passed to cellular devices and can be dialed from either the phone or computer. The system further provides the capability of having an office phone ring to a computer or cellular phone if remote access is necessary. The VOIP system once in place can be managed by the City IT Department when physical locations, personnel, or phone numbers change.

**CITY COMMISSION**

JANET A. DOLL,  
Mayor

ROY CESSNA

MELVIN L. DALE

DAN FANKHAUSER

J. CHRISTOPHER LAW

MATTHEW C. ALLEN  
City Manager

MELINDA A. HITZ, CPA  
Finance Director

RANDALL D. GRISELL  
City Counselor

**CITY ADMINISTRATIVE  
CENTER**

301 N. 8<sup>TH</sup>

P.O. Box 998

GARDEN CITY, KS

67846-0998

620.276.1160

FAX 620.276.1169

[www.garden-city.org](http://www.garden-city.org)



CITY COMMISSION

JANET A. DOLL,

Mayor

ROY CESSNA

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ALTERNATIVES:

1. Authorize CNP Technologies, LLC to provide Voice Over Internet Phone System for the entire City of Garden City at a cost of \$125,558.24.
2. Authorize CNP Technologies, LLC to provide Voice Over Internet Phone Service to the new Electric Department Building and City Administration Building in phase #1 and after a period of testing make a determination on the rest of the City as phase #2. Phase #1 costing \$80,000 and phase #2 costing \$45,558.24.
3. Delay the authorization and continue looking into other options.
4. Deny the authorization.

RECOMMENDATION:

The IT Director along with the IT Department recommends alternative #1

FISCAL NOTE:

The cost of the VOIP system would be \$125,558.24. This includes hardware, software and training for the entire City.

Additionally, there exists a yearly maintenance fee of \$14,001.57, waived during the first year. Currently the City pays a total of \$7,400 per month for phone service for all lines. In switching to the voice over internet system monthly costs would go down to \$4,006.40. This would save the City \$40,723 a year in recurring costs. After the yearly maintenance fee there would be \$26,721 in savings per year. Therefore the project will have paid for itself in savings in 4.7 years. With a lease for 36 months at a rate of .02080 through Commerce Bank there would be three yearly installments of \$42,808.49 in 2015, 2016 and 2017. The Service Center Expansion Project will make the first payment in 2015. The payments in 2016 and 2017 plus the maintenance fee will be budgeted in the General Fund-IT Department.



## **MEMORANDUM**

**TO:** Mayor & City Commissioners  
**FROM:** City Clerk Celyn Hurtado  
**DATE:** May 28, 2015  
**RE:** 2015 Fireworks Waiver of Ordinance

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CITY COMMISSION

JANET A. DOLL,  
Mayor

ROY CESSNA

MELVIN L. DALE

DAN FANKHAUSER

J. CHRISTOPHER LAW

MATTHEW C. ALLEN  
City Manager

MELINDA A. HITZ, CPA  
Finance Director

RANDALL D. GRISELL  
City Counselor

### **ISSUE:**

Governing Body consideration and approval for a waiver to the ordinance prohibiting the discharge of fireworks within the corporate limits of the City of Garden City from June 27, 2015 – July 5, 2015 between the hours of 10:30 a.m. – 10:30 p.m.

### **BACKGROUND:**

Chief Shelton has been discussing the time period to be allowed for discharge of fireworks for the upcoming July 4th holiday with the Governing Body and the County Commission. The County Commission indicated that they would follow your decision on the matter. State law allows the sale of fireworks between June 27 and July 5. At your meeting on May 19, 2015, after discussion with the Chief Shelton and Captain Utz, the Governing Body voted to allow for the discharge of fireworks within the corporate limits of the City of Garden City from June 27, 2015 – July 5, 2015 between the hours of 10:30 a.m. – 10:30 p.m.

### **ALTERNATIVES:**

1. Approve the fireworks waiver of ordinance to allow fireworks discharge from June 27, 2015 – July 5, 2015 between the hours of 10:30 a.m. – 10:30 p.m.
2. Deny the fireworks waiver.

### **RECOMMENDATION:**

Staff recommends Alternative 1.

### **FISCAL NOTE:**

There is no cost to the City to waive the ordinance.

CITY ADMINISTRATIVE  
CENTER  
301 N. 8<sup>TH</sup>  
P.O. Box 998  
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67846-0998  
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FAX 620.276.1169  
[www.garden-city.org](http://www.garden-city.org)

## FIREWORKS WAIVER OF ORDINANCE

The Governing Body of the City of Garden City, Kansas, after due and careful consideration of factors pertaining to discharge of fireworks in the corporate limits of the City of Garden City, Kansas (City), herein waives application of Code of Ordinances Section 62-12, as follows:

Fireworks, as defined in the International Fire Code, Chapter 33, Sections 3301 and 3302 (Exhibit A), and Finney County Resolution No. 20-2012 (Exhibit B), both Exhibits attached hereto and incorporated herein, may be discharged in the corporate limits of the City, subject to the specified exceptions, from June 27, 2015, through July 5, 2015, from the hours of 10:30 a.m. to 10:30 p.m. This Waiver of Ordinance does not apply to the discharge of fireworks at the Finney County Exhibition Building parking lot during the time of the public fireworks display on July 4, 2015, public parks, public recreation areas such as soccer fields or ball fields, or the Lee Richardson Zoo; Code of Ordinances Section 62-12 shall remain in full force and effect for these areas. No fireworks may be discharged on real property without the permission of the owner or person or entity in control of the real property. The Chief of the Garden City Fire Department (GCFD) shall have the authority granted to him by the Governing Body to rescind this Waiver of Ordinance, should, in the judgment and discretion of the GCFD Chief, the weather conditions make discharge of fireworks in the City hazardous to property or persons. The GCFD Chief shall notify the public of any rescission of this Fireworks Waiver of Ordinance by public notice through dissemination of information over radio, television, or newspaper. Fireworks not listed on the attached Exhibits, or prohibited by state of Kansas or federal laws, are prohibited from being discharged in the City at any time. Any discharge of prohibited fireworks shall be considered a violation of applicable state or federal laws, or Code of Ordinances Section 62-12. This Waiver of Ordinance does not apply to the sale of fireworks in the City; therefore, the sale of fireworks shall continue to be prohibited by Code of Ordinances Section 62-12.

This Waiver of Ordinance approved and adopted by the City of Garden City, Kansas, this 2nd day of June, 2015.

CITY OF GARDEN CITY, KANSAS

\_\_\_\_\_  
JANET A. DOLL, Mayor

ATTEST:

\_\_\_\_\_  
CELYN N. HURTADO, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
RANDALL D. GRISELL, City Counselor

## CHAPTER 33

# EXPLOSIVES AND FIREWORKS

### SECTION 3301 GENERAL

**3301.1 Scope.** The provisions of this chapter shall govern the possession, manufacture, storage, handling, sale and use of explosives, explosive materials, fireworks and small arms ammunition.

#### Exceptions:

1. The Armed Forces of the United States, Coast Guard or National Guard.
2. Explosives in forms prescribed by the official United States Pharmacopoeia.
3. The possession, storage and use of small arms ammunition when packaged in accordance with DOTn packaging requirements.
4. The possession, storage, and use of not more than 1 pound (0.454 kg) of commercially manufactured sporting black powder, 20 pounds (9 kg) of smokeless powder and 10,000 small arms primers for hand loading of small arms ammunition for personal consumption.
5. The use of explosive materials by federal, state and local regulatory, law enforcement and fire agencies acting in their official capacities.
6. Special industrial explosive devices which in the aggregate contain less than 50 pounds (23 kg) of explosive materials.
7. The possession, storage and use of blank industrial-power load cartridges when packaged in accordance with DOTn packaging regulations.
8. Transportation in accordance with DOTn 49 CFR Parts 100-178.
9. Items preempted by federal regulations.

**3301.1.1 Explosive material standard.** In addition to the requirements of this chapter, NFPA 495 shall govern the manufacture, transportation, storage, sale, handling and use of explosive materials.

**3301.1.2 Explosive material terminals.** In addition to the requirements of this chapter, the operation of explosive material terminals shall conform to the provisions of NFPA 498.

**3301.1.3 Fireworks.** The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

#### Exceptions:

1. Storage and handling of fireworks as permitted in Section 3304.
2. Manufacture, assembly and testing of fireworks as permitted in Section 3305.

3. The use of fireworks for display as permitted in Section 3308.

4. The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by applicable local or state laws, ordinances and regulations provided such fireworks comply with CPSC 16 CFR, Parts 1500 and 1507, and DOTn 49 CFR, Parts 100-178, for consumer fireworks.

**3301.1.4 Rocketry.** The storage, handling and use of model and high-power rockets shall comply with the requirements of NFPA 1122, NFPA 1125, and NFPA 1127.

**3301.1.5 Ammonium nitrate.** The storage and handling of ammonium nitrate shall comply with the requirements of NFPA 490 and Chapter 40.

**Exception:** Storage of ammonium nitrate in magazines with blasting agents shall comply with the requirements of NFPA 495.

**3301.2 Permit required.** Permits shall be required as set forth in Section 105.6 and regulated in accordance with this section.

**3301.2.1 Residential uses.** No person shall keep or store, nor shall any permit be issued to keep or store, any explosives at any place of habitation, or within 100 feet (30 480 mm) thereof.

**Exception:** Storage of smokeless propellant, black powder, and small arms primers for personal use and not for resale in accordance with Section 3306.

**3301.2.2 Sale and retail display.** No person shall construct a retail display nor offer for sale explosives, explosive materials, or fireworks upon highways, sidewalks, public property, or in Group A or E occupancies.

**3301.2.3 Permit restrictions.** The fire code official is authorized to limit the quantity of explosives, explosive materials, or fireworks permitted at a given location. No person, possessing a permit for storage of explosives at any place, shall keep or store an amount greater than authorized in such permit. Only the kind of explosive specified in such a permit shall be kept or stored.

**3301.2.4 Financial responsibility.** Before a permit is issued, as required by Section 3301.2, the applicant shall file with the jurisdiction a corporate surety bond in the principal sum of \$100,000 or a public liability insurance policy for the same amount, for the purpose of the payment of all damages to persons or property which arise from, or are caused by, the conduct of any act authorized by the permit upon which any judicial judgment results. The fire code official is authorized to specify a greater or lesser amount when, in his or her opinion, conditions at the location of use indicate a greater or lesser amount is required. Government entities shall be exempt from this bond requirement.

**3301.2.4.1 Blasting.** Before approval to do blasting is issued, the applicant for approval shall file a bond or submit a certificate of insurance in such form, amount and coverage as determined by the legal department of the jurisdiction to be adequate in each case to indemnify the jurisdiction against any and all damages arising from permitted blasting.

**3301.2.4.2 Fireworks display.** The permit holder shall furnish a bond or certificate of insurance in an amount deemed adequate by the fire code official for the payment of all potential damages to a person or persons or to property by reason of the permitted display, and arising from any acts of the permit holder, the agent, employees or subcontractors.

**3301.3 Prohibited explosives.** Permits shall not be issued or renewed for possession, manufacture, storage, handling, sale or use of the following materials and such materials currently in storage or use shall be disposed of in an approved manner.

1. Liquid nitroglycerin.
2. Dynamite containing more than 60-percent liquid explosive ingredient.
3. Dynamite having an unsatisfactory absorbent or one that permits leakage of a liquid explosive ingredient under any conditions liable to exist during storage.
4. Nitrocellulose in a dry and uncompressed condition in a quantity greater than 10 pounds (4.54 kg) of net weight in one package.
5. Fulminate of mercury in a dry condition and fulminate of all other metals in any condition except as a component of manufactured articles not hereinafter forbidden.
6. Explosive compositions that ignite spontaneously or undergo marked decomposition, rendering the products of their use more hazardous, when subjected for 48 consecutive hours or less to a temperature of 167°F (75°C).
7. New explosive materials until approved by DOTn, except that permits are allowed to be issued to educational, governmental or industrial laboratories for instructional or research purposes.
8. Explosive materials condemned by DOTn.
9. Explosive materials containing an ammonium salt and a chlorate.
10. Explosives not packed or marked as required by DOTn 49 CFR, Parts 100-178.

**Exception:** Gelatin dynamite.

**3301.4 Qualifications.** Persons in charge of magazines, blasting, fireworks display, or pyrotechnic special effect operations shall not be under the influence of alcohol or drugs which impair sensory or motor skills, shall be at least 21 years of age, and shall demonstrate knowledge of all safety precautions related to the storage, handling or use of explosives, explosive materials or fireworks.

**3301.5 Supervision.** The fire code official is authorized to require operations permitted under the provisions of Section 3301.2 to be supervised at any time by the fire code official in

order to determine compliance with all safety and fire regulations.

**3301.6 Notification.** Whenever a new explosive material storage or manufacturing site is established, including a temporary job site, the local law enforcement agency, fire department, and local emergency planning committee shall be notified 48 hours in advance, not including Saturdays, Sundays and holidays, of the type, quantity and location of explosive materials at the site.

**3301.7 Seizure.** The fire code official is authorized to remove or cause to be removed or disposed of in an approved manner, at the expense of the owner, explosives, explosive materials or fireworks offered or exposed for sale, stored, possessed or used in violation of this chapter.

**3301.8 Establishment of quantity of explosives and distances.** The quantity of explosives and distances shall be in accordance with Sections 3301.8.1 and 3301.8.1.1.

**3301.8.1 Quantity of explosives.** The quantity-distance tables in Sections 3304.5 and 3305.3 shall be used to provide appropriate distances from potential explosion sites. The classification of the explosives and the weight of the explosives are primary characteristics governing the use of these tables. The net explosive weight shall be determined in accordance with Sections 3301.8.1.1 through 3301.8.1.4.

**3301.8.1.1 Mass-detonating explosives.** The total net explosive weight of Division 1.1, 1.2 or 1.5 explosives shall be used. See Table 3304.5.2 (2) or Table 3305.3 as appropriate.

**Exception:** When the TNT equivalence of the explosive material has been determined, the equivalence is allowed to be used to establish the net explosive weight.

**3301.8.1.2 Non-mass-detonating explosives (excluding Division 1.4).** Non-mass-detonating explosives shall be as follows:

1. Division 1.3 propellants. The total weight of the propellants alone shall be the net explosive weight. The net weight of propellant shall be used. See Table 3304.5.2(3).
2. Combinations of bulk metal powder and pyrotechnic compositions. The sum of the net weights of metal powders and pyrotechnic compositions in the containers shall be the net explosive weight. See Table 3304.5.2(3).

**3301.8.1.3 Combinations of mass-detonating and non-mass-detonating explosives (excluding Division 1.4).** Combination of mass-detonating and non-mass-detonating explosives shall be as follows:

1. When Division 1.1 and 1.2 explosives are located in the same site, determine the distance for the total quantity considered first as 1.1 and then as 1.2. The required distance is the greater of the two. When the Division 1.1 requirements are controlling and the TNT equivalence of the 1.2 is known, the TNT equivalent weight of the 1.2 items shall be allowed to be added to the total explosive weight of Division 1.1 items to determine the net explosive

weight for Division 1.1 distance determination. See Table 3304.5.2(3) or Table 3305.3 as appropriate.

2. When Division 1.1 and 1.3 explosives are located in the same site, determine the distances for the total quantity considered first as 1.1 and then as 1.3. The required distance is the greater of the two. When the Division 1.1 requirements are controlling and the TNT equivalence of the 1.3 is known, the TNT equivalent weight of the 1.3 items shall be allowed to be added to the total explosive weight of Division 1.1 items to determine the net explosive weight for Division 1.1 distance determination. See Table 3304.5.2(2), 3304.5.2 (3) or 3305.3, as appropriate.
3. When Division 1.1, 1.2 and 1.3 explosives are located in the same site, determine the distances for the total quantity considered first as 1.1, next as 1.2 and finally as 1.3. The required distance is the greatest of the three. As permitted by paragraphs 1 and 2 above, TNT equivalent weights for 1.2 and 1.3 items are allowed to be used to determine the net weight of explosives for Division 1.1 distance determination. Table 3304.5.2 (2) or 3305.3 shall be used when TNT equivalency is used to establish the net explosive weight.
4. For composite pyrotechnic items Division 1.1 and Division 1.3, the sum of the net weights of the pyrotechnic composition and the explosives involved shall be used. See Tables 3304.5.2 (2) and 3304.5.2 (3).

**3301.8.1.4 Moderate fire — no blast hazards.** Division 1.4 explosives. The total weight of the explosive material alone is the net weight. The net weight of the explosive material shall be used. See Table 3304.5.2 (4).

## SECTION 3302 DEFINITIONS

**3302.1 Definitions.** The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

**AMMONIUM NITRATE.** A chemical compound represented by the formula  $\text{NH}_4\text{NO}_3$ .

**BARRICADE.** A structure that consists of a combination of walls, floor and roof, which is designed to withstand the rapid release of energy in an explosion and which is fully confined, partially vented or fully vented; or other effective method of shielding from explosive materials by a natural or artificial barrier.

**Artificial barricade.** An artificial mound or revetment a minimum thickness of 3 feet (914 mm).

**Natural barricade.** Natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures that require protection cannot be seen from the magazine or building containing explosives when the trees are bare of leaves.

**BARRICADED.** The effective screening of a building containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point 12 feet (3658 mm) above the center of a railway or highway shall pass through such barrier.

**BLAST AREA.** The area including the blast site and the immediate adjacent area within the influence of flying rock, missiles and concussion.

**BLAST SITE.** The area in which explosive materials are being or have been loaded and which includes all holes loaded or to be loaded for the same blast and a distance of 50 feet (15 240 mm) in all directions.

**BLASTER.** A person qualified in accordance with Section 3301.4 to be in charge of and responsible for the loading and firing of a blast.

**BLASTING AGENT.** A material or mixture consisting of fuel and oxidizer, intended for blasting provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test detonator when unconfined. Blasting agents are labeled and placarded as Class 1.5 material by US DOT.

**BULLET RESISTANT.** Constructed so as to resist penetration of a bullet of 150-grain M2 ball ammunition having a nominal muzzle velocity of 2,700 feet per second (fps) (824 mps) when fired from a 30-caliber rifle at a distance of 100 feet (30 480 mm), measured perpendicular to the target.

**DETONATING CORD.** A flexible cord containing a center core of high explosive used to initiate other explosives.

**DETONATION.** An exothermic reaction characterized by the presence of a shock wave in the material which establishes and maintains the reaction. The reaction zone progresses through the material at a rate greater than the velocity of sound. The principal heating mechanism is one of shock compression. Detonations have an explosive effect.

**DETONATOR.** A device containing any initiating or primary explosive that is used for initiating detonation. A detonator shall not contain more than 154.32 grains (10 grams) of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and noninstantaneous and delay blasting caps which use detonating cord, shock tube or any other replacement for electric leg wires. All types of detonators in strengths through No. 8 cap should be rated at 1.5 pounds (0.68 kg) of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the manufacturer.

**DISCHARGE SITE.** The immediate area surrounding the fireworks mortars used for an outdoor fireworks display.

**DISPLAY SITE.** The immediate area where a fireworks display is conducted. The display area includes the discharge site, the fallout area, and the required separation distance from the mortars to spectator viewing areas. The display area does not include spectator viewing areas or vehicle parking areas.

## EXPLOSIVES AND FIREWORKS

**EXPLOSIVE.** A chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters and display fireworks, 1.3G (Class B, Special).

The term "explosive" includes any material determined to be within the scope of USC Title 18: Chapter 40 and also includes any material classified as an explosive other than consumer fireworks, 1.4G (Class C, Common) by the hazardous materials regulations of DOTn 49 CFR.

**High explosive.** Explosive material, such as dynamite, which can be caused to detonate by means of a No. 8 test blasting cap when unconfined.

**Low explosive.** Explosive material that will burn or deflagrate when ignited. It is characterized by a rate of reaction that is less than the speed of sound. Examples of low explosives include, but are not limited to, black powder, safety fuse, igniters, igniter cord, fuse lighters, fireworks, 1.3G (Class B special) and propellants, 1.3C.

**Mass-detonating explosives.** Division 1.1, 1.2 and 1.5 explosives alone or in combination, or loaded into various types of ammunition or containers, most of which can be expected to explode virtually instantaneously when a small portion is subjected to fire, severe concussion, impact, the impulse of an initiating agent, or the effect of a considerable discharge of energy from without. Materials that react in this manner represent a mass explosion hazard. Such an explosive will normally cause severe structural damage to adjacent objects. Explosive propagation could occur immediately to other items of ammunition and explosives stored sufficiently close to and not adequately protected from the initially exploding pile with a time interval short enough so that two or more quantities must be considered as one for quantity-distance purposes.

**UN/DOTn Class 1 explosives.** The former classification system used by DOTn included the terms "high" and "low" explosives as defined herein. The following terms further define explosives under the current system applied by DOTn for all explosive materials defined as hazard Class 1 materials. Compatibility group letters are used in concert with the Division to specify further limitations on each division noted, (i.e., the letter G identifies the material as a pyrotechnic substance or article containing a pyrotechnic substance and similar materials).

**Division 1.1.** Explosives that have a mass explosion hazard. A mass explosion is one which affects almost the entire load instantaneously.

**Division 1.2.** Explosives that have a projection hazard but not a mass explosion hazard.

**Division 1.3.** Explosives that have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard.

**Division 1.4.** Explosives that pose a minor explosion hazard. The explosive effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire must not

cause virtually instantaneous explosion of almost the entire contents of the package.

**Division 1.5.** Very insensitive explosives. This division is comprised of substances that have a mass explosion hazard but which are so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of transport.

**Division 1.6.** Extremely insensitive articles which do not have a mass explosion hazard. This division is comprised of articles that contain only extremely insensitive detonating substances and which demonstrate a negligible probability of accidental initiation or propagation.

**EXPLOSIVE MATERIAL.** The term "explosive" material means explosives, blasting agents, and detonators.

**FALLOUT AREA.** The area over which aerial shells are fired. The shells burst over the area, and unsafe debris and malfunctioning aerial shells fall into this area. The fallout area is the location where a typical aerial shell dud falls to the ground depending on the wind and the angle of mortar placement.

**FIREWORKS.** Any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration or detonation that meets the definition of 1.4G fireworks or 1.3G fireworks as set forth herein.

**Fireworks, 1.4G.** (Formerly known as Class C, Common Fireworks.) Small fireworks devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks which comply with the construction, chemical composition and labeling regulations of the DOTn for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission as set forth in CPSC 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this code.

**Fireworks, 1.3G.** (Formerly Class B, Special Fireworks.) Large fireworks devices, which are explosive materials, intended for use in fireworks displays and designed to produce audible or visible effects by combustion, deflagration or detonation. Such 1.3G fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as 1.4G fireworks. Such 1.3G fireworks, are also described as Fireworks, UN0335 by the DOTn.

**FIREWORKS DISPLAY.** A presentation of fireworks for a public or private gathering.

**HIGHWAY.** A public street, public alley or public road.

**INHABITED BUILDING.** A building regularly occupied in whole or in part as a habitation for people, or any church, schoolhouse, railroad station, store or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

Published in the Garden City Telegram 6-8, 2012

RESOLUTION NO. 20-2012

A RESOLUTION PERTAINING TO THE SALE, HANDLING, USE OR STORAGE OF FIREWORKS WITHIN FINNEY COUNTY, KANSAS; ESTABLISHING REGULATIONS THEREFORE; AND REPEALING RESOLUTION FINNEY COUNTY RESOLUTION 32-2003.

WHEREAS, the Board of County Commissioners of Finney County, Kansas, has, in its judgment, determined that the sale, handling, use and storage of certain fireworks within Finney County, Kansas are a hazard to the citizens of the County; and

WHEREAS, K.S.A. 31-134 authorizes the Board of County Commissioners to regulate or prohibit the sale, handling, use or storage of fireworks within the boundaries of the County; and

WHEREAS, K.S.A. 19-101, et seq., defines the County Commissioners power of local legislation and authority for enforcement of Resolution; and

WHEREAS, Finney County Resolution 32-2003 was adopted August 28, 2003 to establish standards and permit requirements related to the sale, handling, use and storage of fireworks.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Finney County, Kansas, that effective upon publication hereof, the sale, handling, use and/or storage of fireworks as hereafter defined, shall be and are hereby regulated in the unincorporated areas of Finney County, as follows:

- a) The Kansas Fireworks Act, Kansas Statutes Annotated, Chapter Thirty One (31), Article 5 (K.S.A. 31-501 to 31-506) are incorporated herein and adopted by reference in their entirety.
- b) The Kansas Administrative Regulations (KAR) 22-6-1 through 22-6-27, promulgated pursuant to the authority granted in K.S.A. 31-506 are incorporated by reference and adopted in their entirety.
- c) All rules and regulations adopted by KAR 22-6-1 through 22-6-27 incorporating by reference nationally recognized fire prevention codes that are in effect as of the effective date hereof are hereby adopted.
- d) Any person(s), organization or other lawful entity desiring to sell authorized fireworks in Finney County, Kansas, shall, *at least two (2) weeks prior to the first date for sale of said fireworks*, obtain an application from the County Clerk and, upon proper completion, payment of fees, and verification by the County Fire Marshal that the applicant is in compliance with all laws, a permit shall be issued

EXHIBIT B

by the Clerk of Finney County, Kansas, authorizing such person(s) organization or other lawful entity to do so. The person(s), organization or other lawful entity shall pay \$100.00 for said permit. *The fee for a permit purchased less than two (2) weeks prior to the first date of sale of said fireworks shall be \$200.00.*

- e) An organization may obtain a permit from the Clerk of Finney County, Kansas, allowing such organization to store, handle, use, but not sell fireworks which are commonly used in commercial fireworks displays within Finney County, under the following terms and conditions:
1. Permits issued hereunder shall be valid for one (1) day only, and the date shall be specifically stated on such permit.
  2. Any permit issued hereunder shall be valid only at a location specifically stated on the permit issued hereunder.
  3. Payment of a \$100.00 fee for each permit to the Clerk of Finney County, Kansas.
  4. All permits shall be obtained at least two (2) weeks prior to any display. *Permits obtained less than two (2) weeks prior to any display shall be \$200.00.*
  5. Permits shall be issued only to those organizations wishing to provide a display of fireworks for the public, and any such display must be supervised by a competent adult experienced in the use and display of fireworks. The supervising adult must be approved by the Fire Chief prior to obtaining a permit.
  6. Any organization seeking a permit must show to the Clerk of the County proof of insurance insuring against bodily injury and property damage in the amount of \$100,000.00 by single limit policy for damages arising out of accidents during the fireworks display.
- f) Any person(s), organization or other entity found to sell fireworks prohibited by this Resolution or any person(s), organization or other entity found to have in his, her or its possession any fireworks prohibited by this Resolution shall be fined in an amount not less than \$200.00 nor more than \$500.00 per occurrence. Any person(s), organization or other entity found to have violated this Resolution shall forfeit his, her or its license and shall not be eligible to have a license reissued.

- g) It shall be unlawful for any person, organization or other entity to sell fireworks approved for sale herein on days other than June 27, 1989 through July 5, 1989 and each and every year thereafter.
- h) It shall be unlawful for any person, organization or other entity to discharge fireworks on days other than July 3, 1989 through July 5, 1989, and each and every year thereafter.
- i) This Resolution shall take effect upon its publication in the Official County Newspaper.
- j) Finney County Resolution 32-2003 is hereby repealed.

Adopted this 4 day of June, 2012.



Elsa Ulrich  
Finney County Clerk

THE BOARD OF FINNEY COUNTY  
COMMISSIONERS OF FINNEY COUNTY,  
KANSAS

Don Doll  
Don Doll

Larry Jones  
Larry Jones

Roman Halbur  
Roman Halbur

Cliff Mayo  
Cliff Mayo

Dave Jones  
Dave Jones



# MEMORANDUM

**TO:** Governing Body  
**FROM:** Sam Curran  
**DATE:** May 26, 2015  
**SUBJECT:** Transportation Study – Consultant Selections

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CITY COMMISSION

JANET A. DOLL,  
Mayor

ROY CESSNA

MELVIN L. DALE

DAN FANKHAUSER

J. CHRISTOPHER LAW

MATTHEW C. ALLEN  
City Manager

MELINDA A. HITZ, CPA  
Finance Director

RANDALL D. GRISELL  
City Counselor

## **ISSUE**

Following Finney County Healthy Community Design Summit with nationally-known transportation consultant Mark Fenton, the Governing Body had interest in developing complete street design concepts into City projects. City Staff requests authorization to select a consulting engineering firm to provide complete street design guidelines which would include road diets, roundabouts, circles, bump outs, crosswalks, bicycle lanes and etc.

## **BACKGROUND**

The Governing Body authorised Staff to prepare RFQ(s) on a Transportation Study at the April 15<sup>th</sup> Commission Meeting with endorsements from the Traffic Advisory and the Community Health Advisory Boards. The Transportation Study would investigate the following scope of work:

1. Segment capacity analysis to understand the level of potential congestion of roadway exhibits as a 3-lane roadway compared to the existion 4-lane condition (road diet analysis). The road segments to be evaluated include:
  - a. Fulton Street between Main Street and Campus Drive
  - b. Campus Drive between Fulton Street and Mary Street
  - c. Mary Street between Taylor Avenue and US 50/83/400 Bypass
  - d. Jennie Barker Road between E US-50/400 HWY and Schulman Avenue
2. Provide diagrammatic stripping plans for the four corridors based on the conclusions from the capacity analysis.
3. Provide conceptual single-lane roundabout geometric layouts to identify potential right-of-way conflicts and conduct intersection traffic

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301 N. 8<sup>TH</sup>

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CITY COMMISSION

JANET A. DOLL,  
Mayor

ROY CESSNA

MELVIN L. DALE

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MATTHEW C. ALLEN  
City Manager

MELINDA A. HITZ, CPA  
Finance Director

RANDALL D. GRISELL  
City Counselor

control analysis, using peak hour traffic counts. The intersections to be evaluated include:

- a. Jennie Barker Road/Spruce Street
- b. Jennie Barker Road/Schulman Avenue
- c. Lareu Street/Leslie Road
- d. Lareu Street/Schulman Avenue
- e. Mary Street/High School Entrance
- f. Fulton Street/Main Street

An RFQ was sent to four qualified firms; three responded.

- Earles Engineering and Inspection, Inc., Salina and Liberal
- Wilson & Company, Salina
- Professional Engineering Consultants (PEC), Wichita
- H. W. Lochner, Salina

The selection Committee, Mayor Janet Doll, Assistant City Engineer C.W. Harper, Craig Fisher and myself, reviewed the submittals and advanced the first three firms noted for interviews. H. W. Lochner didn't respond to the RFQ.

Telephone interviews were conducted on May 21<sup>st</sup> and May 26<sup>th</sup>. The Committee recommends negotiating a contract for the necessary services with Professional Engineering Consultants.

**ALTERNATIVES**

- 1) The Governing Body may concur with the selection Committee's recommendation.
- 2) The Governing Body may direct the Committee into another direction.
- 3) The Governing Body may defer action until a later date.

**RECOMMENDATION**

Staff recommends negotiating a professional services contract with Professional Engineering Consultants in Wichita.

**FISCAL**

Cost of these services are included in the 2015 Budget, 001-21-133-5347.10.

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**PUBLIC UTILITIES  
DEPARTMENT**

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Public Utilities  
Director  
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620.276.1577

CLIFF SONNENBERG  
Electric Service's Center  
Superintendent  
140 Harvest Ave  
620.276.1290

FRED JONES  
Water Department  
Resource Manager  
106 S 11<sup>th</sup> St  
620.276.1292

ED BORGMAN  
Waste Water  
Superintendent  
345 S Jennie Barker Rd  
620.276.1281

CITY ADMINISTRATIVE  
CENTER  
301 N 8<sup>th</sup> ST  
P.O. Box 998  
GARDEN CITY, KS  
67846-0998  
620.276.1160  
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[www.garden-city.org](http://www.garden-city.org)

**MEMORANDUM**

TO: Governing Body  
THRU: Matt Allen, City Manager  
FROM: Mike Muirhead, Public Utilities Director  
DATE: May 22, 2015  
RE: Upgrade to AMI Meter Reading System

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**ISSUE:**

Consideration of upgrades pertaining to software related applications associated with the City's existing FlexNet Metering System with HD Supply. HD Supply is the licensed authorized Sensus Metering distributor for the State of Kansas.

**BACKGROUND:**

In 2009 and 2010 the City of Garden City contracted for the purchase and installation of software and water and electric meters to allow for automated meter reading. The contract was with HD Supply out of Wichita Kansas and the software was provided by Sensus.

There have been numerous upgrades to the Sensus software over the past five years and the City's current FlexNet system is outdated with portions of it that are not supported anymore by Sensus.

One major change that will occur with this upgrade is the storage of data. Currently all data is stored on servers in the Garden City IT Department. These servers had hard drives that failed twice in the past three years causing a temporary shutdown of the meter reading portion of the utility billing system. Even though there are redundant hard drives in the system, the failure is something that occasionally can occur and even if caught directly after failure, the downtime would be detrimental to the Public Utilities Department. Due to the complexity of the system and the need to work directly with Sensus; the two instances of failure caused the meter reading capability to be inoperable for more than four days each time. The shutdown of the system for this period of time in turn leads to billing issues and unnecessary manual entry. It is proposed that the data will be stored "off-site" or "cloud based" thus eliminating the need for the servers and maintenance of the system by the IT Department.

**ALTERNATIVES:**

1. Approve the proposed 5 year contract with HD Supply for AMI system upgrades.
2. Do not approve the proposed 5 year contract with HD Supply for AMI system upgrades.



**PUBLIC UTILITIES  
DEPARTMENT**

MIKE MUIRHEAD  
Public Utilities  
Director  
301 N 8<sup>th</sup> St  
620.276.1577

CLIFF SONNENBERG  
Electric Service's Center  
Superintendent  
140 Harvest Ave  
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**RECOMMENDATION:**

Staff recommends approval of the proposed 5 year contract with HD Supply and authorizing the Mayor and City Clerk to execute the contract.

**FISCAL NOTE:**

The 2015 Electric budget has sufficient funding to cover the \$54,000 associated with necessary the upgrade and will budget appropriately for each the remaining 4 years of the contract.

<b>Sensus Logic Meter Data Management Software</b>			
<b>Software as a Service (SaaS)</b>	<u>Quantity</u>	<u>Price to Customer</u>	<u>Total Price to Customer</u>
Logic MDM Software (1st Year)	1	\$39,000.00	\$39,000.00
RNI Set-Up/Integration (One-time)	1	\$15,000.00	\$15,000.00
Year 2 Logic (SaaS)	1	\$40,050.00	\$40,050.00
Year 3 Logic (SaaS)	1	\$41,200.00	\$41,200.00
Year 4 Logic (SaaS)	1	\$42,300.00	\$42,300.00
Year 5 Logic (SaaS)	1	\$43,450.00	\$43,450.00
Training	1	\$5,000.00	\$5,000.00
<b>Alarm Manager</b>			
	<u>Quantity</u>	<u>Price to Customer</u>	<u>Total Price to Customer</u>
FlexNet Development Service - Alarm Manager	1	\$9,375.00	\$9,375.00
Year 2 Alarm Manager (SaaS)	1	\$1,750.00	\$1,750.00
Year 3 Alarm Manager (SaaS)	1	\$1,802.50	\$1,802.50
Year 4 Alarm Manager (SaaS)	1	\$1,856.25	\$1,856.25
Year 5 Alarm Manager (SaaS)	1	\$1,912.28	\$1,912.28

**Advanced Metering Infrastructure (AMI) Agreement**

**between**

**City of Garden City  
 (“Customer”)**

**and  
Sensus USA Inc.  
 (“Sensus”)**

IN WITNESS WHEREOF, the parties have caused this AMI Agreement (“Agreement”) to be executed by their duly authorized representatives as of the day and year written below. The date of the last party to sign is the “Effective Date.”

This Agreement shall commence on the Effective Date and continue for/until: 5 Years (“Initial Term”). At the end of the Initial Term, this Agreement shall automatically renew for an additional term of 3 years (“Renewal Term”). The “Term” shall refer to both the Initial Term and the Renewal Term.

This Agreement contains two parts: Part (1) is The FCC Notification for Spectrum Manager Lease, to be filed with the FCC by Sensus on behalf of the Customer and Part (2) is a AMI Agreement between Sensus and Customer. Together, these two parts create the Agreement.

**Sensus USA Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer: City of Garden City**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Contents of this Agreement:

Part 1: Notification for Spectrum Manager Lease

Part 2: AMI Agreement

Exhibit A Software as a Service

Exhibit B Technical Support

### Part 1: Notification for Spectrum Manager Lease

In order for Sensus to apply to the FCC on the Customer's behalf for a spectrum manager lease, Customer must complete the information below in boxes one (1) through ten (10) and certify via authorized signature. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum Lessee, and if Customer does not already have one, ownership disclosure information on FCC Form 602.

<b>1</b>	Customer/Lessee Name:		
	Attention To:		Name of Real Party in Interest:
	Street Address:		City:
	State:	Zip:	Phone:
	Fax:		Email:

Is Customer contact information same as above?  Yes  No (If No, complete box 2 below)

**Additional Customer/Lessee Contact Information**

<b>2</b>	Company Name:		
	Attention To:		
	Street Address:		City:
	State:	Zip:	Phone:
	Fax:		Email:

<b>3</b>	Customer/Lessee is a(n) (Select one): <input type="checkbox"/> Individual   <input type="checkbox"/> Unincorporated Association   <input type="checkbox"/> Trust <input type="checkbox"/> Government Entity   <input type="checkbox"/> Corporation   <input type="checkbox"/> Limited Liability Company   <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership   <input type="checkbox"/> Limited Liability Partnership   <input type="checkbox"/> Consortium   <input type="checkbox"/> Other _____
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<b>4</b>	FCC Form 602: FCC File Number of Customer's Form 602 Ownership Information: _____. If Customer has not filed a Form 602, Sensus will file one for Customer. Please complete questions 5, 6, and 7 below if Customer does <u>not</u> have a Form 602 on file. Customer must complete items 8, 9 and 10 irrespective of whether Customer has an ownership report on file.
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<b>5</b>	Customer Tax ID:
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**Individual Contact For FCC Matters**

<b>6</b>	Please designate one individual (the Director of Public Works or similar person) who is responsible to the FCC for the operation of the FlexNet radio system.	
	Name	
	Title:	
	Email:	Phone:

**Ownership Disclosure Information**

<b>7</b>	If Customer/Lessee is a government entity, list the names of the Mayor and all Council Members below, as well as verify citizenship and ownership interests in any entity regulated by the FCC. Such ownership must be disclosed where a mayor/council member owns 10% or more, directly or indirectly, or has operating control of any entity subject to FCC regulation. If any answer to Ownership question is Yes, or any answer to Citizenship question is No, provide an attachment with further explanation.		
		US Citizen?	Ownership Disclosure?
	Mayor:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

**8** Alien Ownership Questions (if the answer is Yes, provide an attachment explaining the circumstances)

1) Is the Customer/Lessee a foreign government or the representative of any foreign government?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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**9** Basic Qualification Information

1) Has the Customer or any party to this application had any FCC station authorization, license, or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license or construction permit denied by the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2) Has the Customer or any party to this filing, or any party directly or indirectly controlling the Customer or any party to this filing ever been convicted of a felony by any state or federal court?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3) Has any court finally adjudged the Customer or any party directly or indirectly controlling the Customer guilty of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**10** Customer/Lessee Certification Statements

1) The Customer/Lessee agrees that the Lease is not a sale or transfer of the license itself.	<input type="checkbox"/> Yes
2) The Customer/Lessee acknowledges that it is required to comply with the Commission's Rules and Regulations and other applicable law at all times, and if the Customer/Lessee fails to so comply, the Lease may be revoked, cancelled, or terminated by either the Licensee or the Commission.	<input type="checkbox"/> Yes
3) The Customer/Lessee certifies that neither it nor any other party to the Application/Notification is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance (See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.)	<input type="checkbox"/> Yes
4) The Customer/Lessee hereby accepts Commission oversight and enforcement consistent with the license and lease authorization. The Lessee acknowledges that it must cooperate fully with any investigation or inquiry conducted either by the Commission or the Licensee, allow the Commission or the Licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the Licensee and to the extent that such suspension of operation would be consistent with applicable Commission policies.	<input type="checkbox"/> Yes
5) The Customer/Lessee acknowledges that in the event an authorization held by a Licensee that has associated with it a spectrum leasing arrangement that is the subject of this filing is revoked, cancelled, terminated, or otherwise ceases to be in effect, the Customer/Lessee will have no continuing authority to use the leased spectrum and will be required to terminate its operations no later than the date on which the Licensee ceases to have any authority to operate under the license, unless otherwise authorized by the Commission.	<input type="checkbox"/> Yes
6) The Customer/Lessee agrees the Lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's Rules and Regulations.	<input type="checkbox"/> Yes
7) The Customer/Lessee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by spectrum lease or otherwise.	<input type="checkbox"/> Yes
8) The Customer/Lessee certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.	<input type="checkbox"/> Yes

The Customer/Lessee certifies that all of its statements made in this Application/Notification and in the schedules, exhibits, attachments, or documents incorporated by reference are material, are part of this Application/Notification, and are true, complete, correct, and made in good faith. The Customer/Lessee shall notify Sensus in writing in the event any information supplied on this form changes.

Type or Printed Name of Party Authorized to Sign

First Name:	MI:	Last Name:	Suffix:
Title:		Customer Name:	
Signature:			Date:
FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)) AND/OR FORFEITURE (U.S. Code Title 47, Section 503).			

## Part 2: AMI AGREEMENT

### 1. Equipment.

- A. **Purchase of Equipment.** Customer shall purchase all Equipment from Sensus' authorized distributor pursuant to the terms and conditions (including any warranties on such Equipment) agreed by Customer and Sensus' authorized distributor. This Agreement shall not affect any terms and conditions, including any warranty terms, agreed by Customer and Sensus' authorized distributor. If Customer elects to purchase any equipment or services directly from Sensus, or if Customer pays any fees or other costs to Sensus, then Sensus' Terms of Sale shall apply. The "Terms of Sale" are available at: <http://na.sensus.com/TC/TermsConditions.pdf>, or 1-800-METER-IT.
- B. **First Article Testing.** Prior to manufacture of full order of FlexNet electric meters and/or modules, Sensus shall manufacture and deliver four (4) samples, or other Customer-designated quantity not to exceed twelve (12), (the "First Articles") of each electric meter and/or module ordered to Customer to ensure that the meter and/or module meets the Customer's Requirements Documentation. Following Customer acceptance of the First Articles in accordance with Sensus' first article policy, Sensus will commence manufacture of the applicable meters and/or modules. As used herein, Requirements Documentation shall mean the meter order packet, nameplate definition and approval, manufacturing data file, specific metrology configuration, specific FlexNet configuration, and labeling information. This provision shall apply whether the Customer orders meters directly from Sensus or Sensus' authorized distributor.
- C. **THERE ARE NO WARRANTIES IN THIS AGREEMENT, EXPRESS OR IMPLIED. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.**

### 2. Services.

- A. **Installation of Equipment.** Installation services will be as agreed between the Customer and Sensus' authorized distributor. Sensus will not provide installation services pursuant to this Agreement.
- B. **Software Implementation.** Sensus shall install and configure the Software and shall install the Software on the Server Hardware.
- C. **IT Systems Integration Services.** Integration of the Software into Customer's new or existing internal IT systems is not included in this Agreement.
- D. **Technical Support.** Sensus shall provide Customer the technical support set forth in Exhibit B.
- E. **Project Management.** Project Management of the AMI System is not included in this Agreement.
- F. **Training.** Training on the use of the AMI System is not included in this Agreement.

### 3. Software.

- A. **Software as a Service (SaaS).** Sensus shall provide Customer with Software as a Service, as defined in Exhibit A, only so long as Customer is current in its payments for such services.
- B. **Logic MDMS.** Sensus shall provide Customer with Meter Data Management System (MDMS) software (for up to 35,000 SmartPoint Modules) with up to twenty-four (24) months of hourly data retention for basic reporting and dashboards, route processing, Validation, Estimation, and Editing (VEE), billing export, graphical mapping, alerts and notifications, and querying functionality ("Logic MDMS Software").

### 4. Spectrum

- A. **Definitions in this Section 4.** In this Section 4 only, "Sensus" shall mean Sensus USA Inc. and its wholly owned subsidiary, Sensus Spectrum LLC.
- B. **Spectrum Lease.** Sensus hereby grants to Customer, and Customer accepts, a spectrum manager lease ("Lease") over the frequencies of certain FCC license(s) ("FCC License") solely within Customer's Service Territory. (The frequencies of the FCC License within Customer's geographic Service Territory are called the "Leased Spectrum"). Customer shall pay the Ongoing Fees for use of the Leased Spectrum.
- C. **FCC Forms.** At the Federal Communications Commission (FCC), Sensus will; (1) obtain an FCC Registration Number (FRN) for Customer; (2) submit on behalf of Customer the FCC Form 602 Ownership Disclosure Information if Customer has not already done so; and (3) file a FCC Form 608, notification/application for long-term spectrum manager lease. This Lease becomes effective when the FCC accepts the FCC Form 608.
- D. **Lease Application.** In order to complete the FCC lease application, Customer will promptly:
  - i. Complete and sign the representations in Part 1 of this Agreement such that Customer demonstrates it qualifies for a spectrum lease under FCC rules. Customer's signature will indicate that Customer authorizes Sensus to; (1) obtain an FRN on behalf of Customer; (2) submit the FCC Form 602 Ownership Disclosure Information on behalf of Customer if Customer has not already done so; and (3) file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum lessee.
  - ii. Give Sensus the coordinates of the boundaries of Customer's Service Territory or, alternatively, approve Sensus' estimation of the same.
  - iii. If Customer has not already done so; Customer hereby authorizes Sensus to apply on Customer's behalf and obtain for Customer a Federal Registration Number (FRN, the FCC's unique identifier for each licensee) and shall supply Sensus with Customer's Taxpayer Identification Number (TIN).
  - iv. Provide any other information or other cooperation reasonably necessary for the Parties to perform as set forth herein.
- E. **Permitted Use of Spectrum Lease.** Customer may transmit or receive over the Leased Spectrum only in the Service Territory and only using FlexNet equipment manufactured by Sensus and used in accordance with Sensus' specifications. Customer may use the Leased Spectrum only to read and direct meters in support of Customer's primary utility business or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the Leased Spectrum or from transmitting voice communications over the Leased Spectrum.
- F. **Term of Spectrum Lease.** Unless terminated earlier (because, for example, Customer stops using the FlexNet equipment or because this Agreement terminates or expires for any reason), this Lease will have the same term as the FCC license. If Customer is operating in compliance with this Agreement and is current on any payments owed to Sensus, when the FCC License renews, the Parties will apply to the FCC to renew this Lease.
- G. **Termination of Spectrum Lease.** The Lease will terminate: (a) two months after Customer stops transmitting with FlexNet equipment manufactured by Sensus; (b) upon termination, revocation or expiration of the FCC License; (c) upon Customer's breach of this Agreement; or (d) upon termination or expiration of this Agreement for any reason.
- H. **FCC Compliance.** The following FCC requirements apply
  - i. Pursuant to 47 CFR 1.9040(a):
    - (a) Customer must comply at all times with applicable FCC rules. This Agreement may be revoked by Sensus or the FCC if Customer fails to so comply;
    - (b) If the FCC License is terminated, Customer has no continuing right to use the Leased Spectrum unless otherwise authorized by the FCC;
    - (c) This Agreement is not an assignment, sale or other transfer of the FCC License;
    - (d) This Agreement may not be assigned except upon written consent of Sensus, which consent may be withheld in its discretion; and
    - (e) In any event, Sensus will not consent to an assignment that does not satisfy FCC rules.

- ii. Referencing 47 CFR 1.9010, Sensus retains *de jure* and *de facto* control over the applicable radio facilities, including that,
    - (a) Sensus will be responsible for Customer's compliance with FCC policies and rules. Sensus represents and warrants that it has engineered the FlexNet equipment and accompanying software and other programs to comply with FCC rules. Customer will operate the FlexNet equipment subject to Sensus' supervision and control and solely in accordance with Sensus' specifications. Sensus retains the right to inspect Customer's radio operations hereunder and to terminate this Agreement or take any other necessary steps to resolve a violation of FCC rules, including to order Customer to cease transmission. Sensus will act as spectrum manager in assigning spectrum under the FCC License so as to avoid any harmful interference or other violation of FCC rules. Sensus will be responsible for resolving any interference complaints or other FCC rule violations that may arise; and
    - (b) Sensus will file any necessary FCC forms or applications and Customer agrees to reasonably assist Sensus with such filing by providing any necessary information or other cooperation. Sensus will otherwise interact with the FCC with respect to this Agreement, the FCC License or FlexNet equipment.
  - I. **Interference.** Customer agrees to report to Sensus promptly, and in no event later than 72 hours afterward, any incident related to the Leased Spectrum, including where Customer experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or other government agency regarding radio transmission.
5. **General Terms and Conditions.**
- A. **Intentionally Omitted**
  - B. **Limitation of Liability.**
    - i. Sensus' aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "**Causes of Action**") shall not exceed the greater of: (a) the total amount paid by Customer directly to Sensus under this Agreement; or (b) ten thousand US dollars (USD 10,000.00). This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. As separate and independent limitations on liability, Sensus' liability shall be limited to direct damages. Sensus shall not be liable for: (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by Customer or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (iv) manual meter read costs and expenses; nor (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure. The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.
    - ii. To the maximum extent permitted by law, no Cause of Action may be instituted by Customer against Sensus more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.
  - C. **Termination.** Either party may terminate this Agreement earlier if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party. Upon any expiration or termination of this Agreement, Sensus' and Customer's obligations hereunder shall cease and the software as a service and spectrum Lease shall immediately cease.
  - D. **Force Majeure.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The party affected by the force majeure will take reasonable steps to mitigate the Force Majeure.
  - E. **Intellectual Property.** No Intellectual Property is assigned to Customer hereunder. Sensus shall own or continue to own all Intellectual Property used, created, and/or derived in the course of performing this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Intellectual Property. Customer agrees not to reverse engineer any Equipment purchased or provided hereunder.
  - F. **Confidentiality.** Both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include: (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "**Discloser**" means either party that discloses Confidential Information, and "**Recipient**" means either party that receives it.
  - G. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.
  - H. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent: (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Sensus may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer's consent.
  - I. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Sensus.
  - J. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Delaware. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance or termination ("**Disputes**") shall first be resolved by the Parties attempting mediation in Delaware. If the Dispute is not resolved within sixty (60) days of the commencement of the mediation, it shall be litigated in the state or federal courts located in Delaware. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
  - K. **Restriction on Discovery.** The Parties acknowledge the abundance of documents, data, and other information stored in an electronic manner and the time and costs associated with retrieving relevant electronic data from the Parties during the Discovery portion of a claim. Accordingly, the Parties shall utilize only printed or hard-copy documents, data, and other information in Discovery and shall not use or request electronic or e-Discovery methods for any claim, demand, arbitration or litigation subject to this Agreement. All relevant and unprivileged printed or hard-copy materials shall be subject to Discovery, but neither Party has an obligation to maintain printed or hard-copy files in anticipation of a claim, demand, litigation, or arbitration proceeding.
  - L. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.

- M. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- N. **Four Corners.** This written Agreement, including all of its exhibits, represents the entire understanding between and obligations of the parties and supersedes all prior understandings, agreements, negotiations, and proposals, whether written or oral, formal or informal between the parties. Any additional writings shall not modify any limitations or remedies provided in the Agreement. There are no other terms or conditions, oral, written, electronic or otherwise. There are no implied obligations. All obligations are specifically set forth in this Agreement. Further, there are no representations that induced this Agreement that are not included in it. The ONLY operative provisions are set forth in writing in this Agreement. Without limiting the generality of the foregoing, no purchase order placed by or on behalf of Customer shall alter any of the terms of this Agreement. The parties agree that such documents are for administrative purposes only, even if they have terms and conditions printed on them and even if and when they are accepted and/or processed by Sensus. Any goods, software or services delivered or provided in anticipation of this Agreement (for e.g., as part of a pilot or because this Agreement has not yet been signed but the parties have begun the deployment) under purchase orders placed prior to the execution of this Agreement are governed by this Agreement upon its execution and it replaces and supersedes any such purchase orders.
- O. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies, all of which shall be considered an original for all purposes.
6. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:
- A. **"Affiliate"** of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either: (i) the shares or other equity in such entity; or (ii) the voting rights in such entity.
- B. **"AMI System"** identifies the Sensus FlexNet Advanced Meter Infrastructure System comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, FCC licenses, and other equipment provided to Customer hereunder. The AMI System only includes the foregoing, as provided by Sensus. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
- C. **"Confidential Information"** means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, AMI System performance, AMI System architecture and design, AMI System software, other business and financial information of either party, and all trade secrets of either party.
- D. **"Echo Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station.
- E. **"End User"** means any end user of electricity, water, and/or gas (as applicable) that pays Customer for the consumption of electricity, water, and/or gas, as applicable.
- F. **"Field Devices"** means the meters and SmartPoint Modules.
- G. **"FlexNet Base Station"** identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an Echo Transceiver) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.
- H. **"FlexWare™ Software"** identifies the Sensus proprietary software used in the RNI and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.
- I. **"Harris Software"** means the specific items of software provided by N. Harris Computer Corporation only to the extent Customer: (i) has been provided pricing for that specific item of Harris Software; and (ii) is current in its payments for that specific item of Harris Software.
- J. **"Force Majeure"** means an event beyond a party's reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.
- K. **"In/Out Costs"** means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by Customer in installing, uninstalling and removing goods.
- L. **"Intellectual Property"** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
- M. **"LCM"** identifies the load control modules.
- N. **"Ongoing Fee"** means the annual or monthly fees, as applicable, to be paid by Customer during the Term of this Agreement.
- O. **"Patches"** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software. For clarity, Patches are not Updates or Upgrades.
- P. **"Permitted Use"** means only for reading Customer's meters in the Service Territory. The Permitted Use does not include reading third party meters or reading meters outside the Service Territory.
- Q. **"Release"** means both Updates and Upgrades.
- R. **"Remote Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.
- S. **"RF Field Equipment"** means, collectively, FlexNet Base Stations, Echo Transceivers and Remote Transceivers.
- T. **"RNI"** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules. The RNI hardware specifications will be provided by Sensus upon written request from Customer.
- U. **"Service Territory"** identifies the geographic area where Customer provides electricity, water, and/or gas (as applicable) services to End Users as of the Effective Date. This area will be described in the parties' spectrum lease filing with the FCC.
- V. **"Server Hardware"** means the RNI hardware.
- W. **"SmartPoint™ Modules"** identifies the Sensus transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that take the readings of the meters and transmit those readings by radio frequency to the relevant FlexNet Base Station, Remote Transceiver or Echo Transceiver.
- X. **"Software"** means all the Sensus proprietary software provided pursuant to this Agreement, and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.
- Y. **"TouchCoupler Unit"** identifies an inductive coupler connection from a water register to the SmartPoint Module.
- Z. **"Updates"** means releases of the Software that constitute a minor improvement in functionality.
- AA. **"Upgrades"** means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.
- BB. **"WAN Backhaul"** means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.

**Exhibit A**  
**Software as a Service**

**I. Description of Services**

This exhibit contains the details of the Software as a Service that Sensus shall provide to Customer if both: (i) pricing for Software as a Service has been provided to the Customer; and (ii) the Customer is current in its payments for Software as a Service.

**A. Termination of Software as a Service.** Customer shall have the option at any time after full deployment but before the end of the Term to terminate the Software as a Service by giving Sensus one hundred twenty (120) days prior written notice. Upon delivery of the notice, Customer shall purchase the necessary RNI(s) and shall pay all applicable fees, including any unpaid Software as a Service fees. Such notice, once delivered to Sensus, is irrevocable. Should Customer elect to terminate the Software as a Service, Customer acknowledges that: (a) Customer shall purchase the RNI hardware; (b) Customer will purchase the necessary software license(s); (c) Sensus will cease to provide the Software as a Service.

**B. Software as a Service Definition.**

1. **“Software as a Service”** means only the following services:

- i. Use of RNI hardware, located at Sensus’ or a third party’s data center facility (as determined by Sensus), that is necessary to operate the AMI System.
- ii. Providing Patches, Updates, and Upgrades to latest Sensus FlexWare Software releases.
- iii. Providing remote firmware maintenance for FlexNet Base Stations (Customer must provide IP access to each FlexNet Base Station in order to perform secure shell (SSH) functions).
- iv. Providing certain third party software required to operate the RNI (specifically, Microsoft SQL server, Microsoft Windows Server, Red Hat Linux OS, and other Bundled Software).
- v. Providing secure Web portal access to the managed FlexWare Software application for the Customer (Customer system administrator grants RNI access to authorized Customer personnel as they are added).
- vi. If requested (for an additional fee), submitting a “daily reading file” in standard file format containing hourly consumption reads and all available alarms collected by the AMI System, including exception reports, such as zero consumption reads and non-responding meters (including traceability to the meter location when the meter installer provides the location information).
- vii. 24x7x365 server and FlexNet Base Station monitoring and trouble ticket generation, advanced security monitoring and preventative maintenance monitoring using diagnostic software tools.
- viii. Performing daily off-site vaulting of encrypted backup tapes containing one year of history for auditing purposes.
- ix. Providing telephone support consistent with the Sensus Technical Support as set forth in Exhibit B.
- x. Providing “hot failover” disaster recovery solution within forty-eight (48) hours.

2. **“Software as a Service”** does not include any of the following services:

- i. Normal periodic processing of accounts or readings for Customer’s billing system for billing or other analysis purposes.
- ii. Field labor to troubleshoot any SmartPoint Modules in the field in meter populations that have been previously accepted.
- iii. First response labor to troubleshoot FlexNet Base Station, Echo Transceivers, Remote Transceivers or other field network equipment.
- iv. Parts or labor required to repair damage to any field network equipment that is the result of a Force Majeure event.

If an item is not listed in subparagraphs (1) or (2) above, such item is excluded from the Software as a Service and is subject to additional pricing.

**II. Further Agreements**

**A. System Uptime Rate**

1. Sensus (or its contractor) shall manage and maintain the FlexWare Software application on computers owned or controlled by Sensus (or its contractors) and shall provide Customer access to the managed FlexWare Software application via internet or point to point connection (i.e., Managed-Access use), according to the terms below. Sensus endeavors to maintain an average System Uptime Rate equal to ninety-nine (99.0) per Month (as defined below). The System Uptime Rate shall be calculated as follows:

$$\text{System Uptime Rate} = 100 \times \frac{\text{TMO} - \text{Total Non-Scheduled Downtime minutes in the Month}}{\text{TMO}}$$

2. **Calculations**

- i. **“Targeted Minutes of Operation”** or **“TMO”** means total minutes in the applicable month (“Month”) minus the Scheduled Downtime in the Month.
- ii. **“Scheduled Downtime”** means the number of minutes during the Month, as measured by Sensus, in which access to the FlexWare Software is scheduled to be unavailable for use by Customer due to planned system maintenance. Sensus shall provide Customer notice (via email or otherwise) at least seven (7) days in advance of commencement of the Scheduled Downtime.
- iii. **“Non-Scheduled Downtime”** means the number of minutes during the Month, as measured by Sensus, in which access to FlexWare Software is unavailable for use by Customer due to reasons other than Scheduled Downtime or the Exceptions, as defined below (e.g., due to a need for unplanned maintenance or repair).

3. **Exceptions.** **“Exceptions”** mean the following events:

- i. Force Majeure;
- ii. Emergency Work, as defined below; and
- iii. Lack of Internet Availability, as described below.

4. **Emergency Work.** In the event that Force Majeure, emergencies, dangerous conditions or other exceptional circumstances arise or continue during TMO, Sensus shall be entitled to take any actions that Sensus, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the Managed Systems or the FlexWare Software (**“Emergency Work”**). Such Emergency Work may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the FlexWare Software by the Customer is made available (the **“Managed Systems”**). Sensus shall endeavor to provide advance notice of such Emergency Work to Customer when practicable and possible.

5. **Lack of Internet Availability.** Sensus shall not be responsible for any deterioration of performance attributable to latencies in the public internet or point-to-point network connection operated by a third party. Customer expressly acknowledges and agrees that Sensus does not and cannot control the flow of data to or from Sensus’ networks and other portions of the Internet, and that such flow depends in part on the performance of Internet services provided or

controlled by third parties, and that at times, actions or inactions of such third parties can impair or disrupt data transmitted through, and/or Customer's connections to, the Internet or point-to-point data connection (or portions thereof). Although Sensus will use commercially reasonable efforts to take actions Sensus may deem appropriate to mitigate the effects of any such events, Sensus cannot guarantee that such events will not occur. Accordingly, Sensus disclaims any and all liability resulting from or relating to such events.

**B. Data Center Site-Security.** Although Sensus may modify such security arrangements without consent or notice to Customer, Customer acknowledges the following are the current arrangements regarding physical access to and support of the primary hardware components of the Managed Systems:

1. The computer room(s) in which the hardware is installed is accessible only to authorized individuals.
2. Power infrastructure includes one or more uninterruptible power supply (UPS) devices and diesel generators or other alternative power for back-up electrical power.
3. Air-conditioning facilities (for humidity and temperature controls) are provided in or for such computer room(s) and can be monitored and adjusted for humidity and temperature settings and control. Such air systems are supported by redundant, back-up and/or switch-over environmental units.
4. Such electrical and A/C systems are monitored on an ongoing basis and personnel are available to respond to system emergencies (if any) in real time.
5. Dry pipe pre-action fire detection and suppression systems are provided.
6. Data circuits are available via multiple providers and diverse paths, giving access redundancy.

**C. Responsibilities of Customer**

1. Customer shall promptly pay all Software as a Service fees.
2. Customer may not (i) carelessly, knowingly, intentionally or maliciously threaten, disrupt, harm, abuse or interfere with the FlexWare Software, Managed Systems or any of their functionality, performance, security or integrity, nor attempt to do so; (ii) impersonate any person or entity, including, but not limited to, Sensus, a Sensus employee or another user; or (iii) forge, falsify, disguise or otherwise manipulate any identification information associated with Customer's access to or use of the FlexWare Software application.
3. The provisioning, compatibility, operation, security, support, and maintenance of Customer's hardware and software ("Customer's Systems") is exclusively the responsibility of Customer. Customer is also responsible, in particular, for correctly configuring and maintaining (i) the desktop environment used by Customer to access the FlexWare application managed by Sensus; and (ii) Customer's network router and firewall, if applicable, to allow data to flow between the Customer's Systems and Sensus' Managed Systems in a secure manner via the public Internet.
4. Upon receiving the system administrator account from Sensus, Customer shall create username and passwords for each of Customer's authorized users and complete the applicable Sensus registration process ("Authorized Users"). Such usernames and passwords will allow Authorized Users to access the FlexWare Software application. Customer shall be solely responsible for maintaining the security and confidentiality of each user ID and password pair associated with Customer's account, and Sensus will not be liable for any loss, damage or liability arising from Customer's account or any user ID and password pairs associated with Customer. Customer is fully responsible for all acts and omissions that occur through the use of Customer's account and any user ID and password pairs. Customer agrees (i) not to allow anyone other than the Authorized Users to have any access to, or use of Customer's account or any user ID and password pairs at any time; (ii) to notify Sensus immediately of any actual or suspected unauthorized use of Customer's account or any of such user ID and password pairs, or any other breach or suspected breach of security, restricted use or confidentiality; and (iii) to take the Sensus-recommended steps to log out from and otherwise exit the FlexWare Software application and Managed Systems at the end of each session. Customer agrees that Sensus shall be entitled to rely, without inquiry, on the validity of the user accessing the FlexWare Software application through Customer's account, account ID, usernames or passwords.
5. Customer shall be responsible for the day-to-day operations of the FlexWare Software and AMI System. This includes, without limitation, (i) researching problems with meter reads and system performance, (ii) creating and managing user accounts, (iii) customizing application configurations, (iv) supporting application users, (v) investigating application operational issues, (vi) responding to alarms and notifications, and (vii) performing over-the-air commands (such as firmware updates or configuration changes)

**D. Disaster Recovery.** In the case of a disaster and loss of access to or use of the FlexWare Software application, Sensus shall use commercially reasonable efforts to restore operations at the same location or at a backup location within twenty four (24) hours. Customer acknowledges and agrees that such an event may result in partial or degraded service when restored. The pre-disaster/loss level of service shall be restored as a soon as commercially reasonable.

**If Sensus is providing Customer with a license to use Harris Software, Customer agrees to the following:**

Customer License Agreement

1. No license is given to the Customer for the source code to the Harris Software. The Customer agrees that it will not attempt to derive, or permit or help others to derive the source code relating to the Harris Software or attempt to otherwise convert or alter the Harris Software into human readable code. The Customer further agrees that it will not attempt to duplicate, or permit or help others to duplicate, the source code relating to the Harris Software.
2. The Customer shall have no right to modify the Harris Software supplied by Sensus for Customer's use under this Customer License Agreement without the prior written approval and direction of Sensus and Harris.
3. Customer shall not sublicense or permit the sublicense of any of the rights granted to the Customer related to the Harris Software.
4. The Customer agrees that it will not, except as otherwise expressly provided in this Customer License Agreement or except as dictated by Customer's standard computer system's backup procedures and/or test environments, make or allow others to make copies or reproductions of the Harris Software or other proprietary information in any form.
5. The Customer will ensure that the Universal Copyright Convention symbol and other copyright and proprietary notices of Harris will remain on the Harris Software in machine-readable form.
6. The Customer will take the same care to safeguard the Harris Software as it takes to safeguard its own confidential information and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
7. No third party, other than duly authorized agents or employees of the Customer authorized pursuant to the licenses issued hereunder, shall have access to or use of the Harris Software.
8. To enable Harris to provide effective support, the Customer shall allow Harris to have remote access to the Harris Software and shall permit Harris to use online diagnostics if required during problem diagnosis

## Exhibit B Technical Support

### 1. Introduction

Sensus Technical Services provides utility customers with a single point of contact for Tier 1 support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills are to be forwarded to a senior support engineer or Technical Advisor within the team for further analysis. If Technical Services has exhausted all troubleshooting efforts for the product type, the issue will escalate to the Engineering Support Team. Occasionally, on-site troubleshooting/analysis may be required. The preferred order of on-site support is:

- a) The Customer (for assistance with the easiest and lowest time-consuming activities such as power on/power off).
- b) The local distributor.
- c) Sensus employees or contracted personnel, if required to fulfill a contract commitment.

### 2. Support Categories

- 2.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Sensus AMR, AML, RF Network Equipment, Metering Products and Sensus Lighting Control.
- 2.2. Proactive reporting and resolution of problems.
- 2.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.
- 2.4. Responding to service requests and product changes.
- 2.5. Addressing customer inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

### 3. Support Hours

- 3.1. Standard Support Hours: Toll-free telephone support (1-800-638-3748 option #2) is available Monday thru Friday from 8:00AM EST to 6:00PM EST. After-hours, holiday and weekend support for Severity 1 and Severity 2 issues is available by calling 1-800-638-3748, option #8.

### 4. Support Procedures

- 4.1. Customer identifies an issue or potential problem and calls Technical Services at 1-800-638-3748 Option #2. The Customer Service Associate or Technical Support Engineer will submit a Support ticket.
- 4.2. The Customer Service Associate or Technical Support Engineer will identify the caller name and utility by the assigned software serial number, city, and state in which the call originated. The nature of the problem and severity levels will be agreed upon by both parties (either at the time the issue is entered or prior to upgrading or downgrading an existing issue) using the severity definitions below as a guideline. The severity level is then captured into a support ticket for creation and resolution processing. Any time during the processing of this ticket, if the severity level is changed by Sensus, the customer will be updated.

#### Severity Levels Description:

**Sev1** Customer's production system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention.

Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., FlexWare, Sensus MDM).

**Sev2** Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention.

Examples: Network equipment failure (e.g., FlexNet Echo, FlexNet Remote, Base Station transceiver, or VGB); inoperable reading devices (e.g., AR5500, VXU, VGB, or CommandLink); head end software application has important functionality not working and cannot create export file for billing system operations.

**Sev3** The system is usable and the issue doesn't affect critical overall operation.

Example: Minor network equipment failure (e.g., Echo/Remote false alarms or Base Station transceiver false alarms); head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.

**Sev4** Minor system issues, questions, new features, or enhancement requests to be corrected in future versions.

Examples: Minor system issues, general questions, and "How-To" questions.

- 4.3. The Customer Service Associate or Technical Support Engineer identifies whether or not the customer is on support. If the customer is not on support, the customer is advised of the service options as well as any applicable charges that may be billed.
- 4.4. Calls are placed in a queue from which they are accessible to Technical Support Engineers on a first-come-first-serve basis. A first level Customer Service Associate may assist the customer, depending on the difficulty of the call and the representative's technical knowledge. Technical Support Engineers (Tier 1 support) typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any existing pattern or if the call is a new report. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.
  - a. Technical Services confirms that there is an issue or problem that needs further analysis to determine its cause. The following information must be collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.
  - b. Technical Services will check the internal database and product defect tracking system, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the customer. Once it is confirmed that the issue has been resolved, the ticket is closed.
  - c. If there is no known defect or support that defines the behavior, Technical Services will work with the customer to reproduce the issue. If the issue can be reproduced, either at the customer site or within support center test lab, Technical Services will escalate the ticket for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, the representative will open a Special Investigation RMA through the Support system. If it is determined that a sample is required for further analysis, the customer will be provided with instructions that detail where to send the product sample(s) for a root cause analysis. Once it is determined that the issue cannot be resolved by Tier 1 resources, the ticket will be escalated to Tier 2 support for confirmation/workarounds to resolve immediate issue. Technical Services will immediately contact the customer to advise of the escalation. The response and escalation times are listed in Section 5. At this time, screen shots, log files, configuration files, and database backups will be created and attached to the ticket.

5. **Response and Resolution Targets.**

Sensus Technical Support will make every reasonable effort to meet the following response and resolution targets:

Severity	Standard Target Response	Standard Target Resolution	Resolution (one or more of the following)
1	30 Minutes	Immediately assign trained and qualified Services Staff to correct the error on an expedited basis. Provide ongoing communication on the status of a correction.	<ul style="list-style-type: none"> <li>• Satisfactory workaround is provided.</li> <li>• Program patch is provided.</li> <li>• Fix incorporated into future release.</li> <li>• Fix or workaround incorporated into the Support Knowledge Base.</li> </ul>
2	4 hours	Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur.	<ul style="list-style-type: none"> <li>• Satisfactory workaround is provided.</li> <li>• Program patch is provided.</li> <li>• Fix incorporated into future release.</li> <li>• Fix or workaround incorporated into the Support Knowledge Base.</li> </ul>
3	1 Business Day	90 business days	<ul style="list-style-type: none"> <li>• Answer to question is provided.</li> <li>• Satisfactory workaround is provided.</li> <li>• Fix or workaround incorporated into the Support Knowledge Base.</li> <li>• Fix incorporated into future release.</li> </ul>
4	2 Business Days	12 months	<ul style="list-style-type: none"> <li>• Answer to question is provided.</li> <li>• Fix or workaround incorporated into the Support Knowledge Base.</li> </ul>

6. **Problem Escalation Process.**

- 6.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level of authority.
  - 6.1.1. Severity 1 issues are escalated by Sales or Technical Services to a Supervisor if not resolved within 2 hours; to the Manager level if not resolved within 4 hours; to the Director level if not resolved within the same business day; and to the VP level if not resolved within 24 hours.
  - 6.1.2. A customer may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the Support ticket number and the reason why the issue is being escalated.
  - 6.1.3. In the event that a customer is not satisfied with the level of support or continual problem with their products, they may escalate a given Support ticket to Manager of Technical Services (1-800-638-3748, Option 2).

7. **General Support Provisions and Exclusions.**

- 7.1. A Dell-provided three-year ProSupport hardware service plan plus a 4 hour "Mission Critical" upgrade accompanies the server/system hardware that Sensus procures on behalf of the customer. Sensus does not warrant third party server hardware. The customer may renew the ProSupport service plan directly with Dell. The "Dell Master Services Agreement" and "Pro Support for IT Services Description" documents may be found at [www.dell.com/service](http://www.dell.com/service) contracts.
- 7.2. Sensus procures certain third party software licenses (e.g. Red Hat Enterprise Linux) required to operate the FlexNet-based applications on the Dell hardware. Sensus registers all the applicable third party software licenses in the customer's name and ships all documentation and licensing information to the customer with the server. The customer is responsible for maintaining all third party software licenses.
- 7.3. In the event of a server hardware failure at the customer site, Sensus will provide replacement Sensus proprietary software (e.g., FlexWare) either on digital media or downloadable from an internet site, as necessary. The method of software redistribution is at Sensus' discretion. The customer is responsible for re-installing the replacement software. Sensus installation support is not covered under this standard Technical Support program but may be provided as a fee-based service.
- 7.4. Sensus provides online documentation for Sensus products through the Sensus User Forum (<http://myflexnetsystem.com/Module/User/Login>). All Sensus customers are provided access to this online database, which includes operation, configuration and technical manuals. Sensus also hosts periodic user group teleconferences to facilitate the interchange of product ideas, product enhancements, and overall customer experiences. The customer shall provide names and email accounts to Sensus so Sensus may provide access to the Portal.
- 7.5. Specialized support from Sensus is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific maintenance contract. For example, specialized systems integration services or out of warranty network equipment repair that is not covered under a separate maintenance contract.



# SaaS vs. Own & Operate Model

Presented by Eric Bohannon, Director, Services Marketing

# SaaS vs. Own & Operate Model



- **Define Software as a Service**
- **Benefits of SaaS**
- **Compare responsibilities**

# Software as a Service (SaaS)

- **Sensus owns RNI software and license**
- **Sensus manages, maintains, and monitors software and server hardware**
- **Fees include all hardware and software licenses**
  - System is “Future Proofed” – Includes Software All Upgrades
- **FlexWare software maintenance included**
- **Disaster Recovery included**

# Benefits of SaaS



- **Reduce costs (IT & Operational)**
- **Provide predictable costs for budgetary planning**
- **Reduce risk (system configuration & Disaster Recovery)**
- **Reduce environmental impact (carbon footprint)**
- **Strengthen security of IT systems**
- **Increase availability and uptime**
- **Accelerate time to market with new technologies**
- **Improve operational efficiency by leveraging our NOC**

# Data Center Highlights

- **Physical Security:**
  - 24x7x365 on-site staffed technicians and security personnel with a dedicated guard room protected by ballistics rated glass
  - Electronic badge card key and pin access
  - Motion activated digital security cameras (interior and exterior)
  - Biometric authentication readers on Data Center access doors through a mantrap entrance
- **Fire Detection & Suppression:**
  - Multiple zone dry-pipe pre-action fire suppression system
  - Incipient early warning fire detection system
  - Data Center safe fire extinguishers
- **Environmental Design:**
  - Zoned N +1 design – 900 tons of datacenter cooling
  - Redundant 630 ton EVAPCO Cooling Towers
  - Redundant 450 ton McQuay Chillers
  - DataAire and Stulz CRAC units
- **SAS-70 Type II , SSAE 16 Type 1 Certified**



# Security Highlights

## ■ Secured Architecture

- Each Managed Customer has a Separate Firewalled Network (IP Addresses/VLANs)
- Conducted in Accordance with NIST Security Standards (NERC/CIP Cyber Security certification underway)

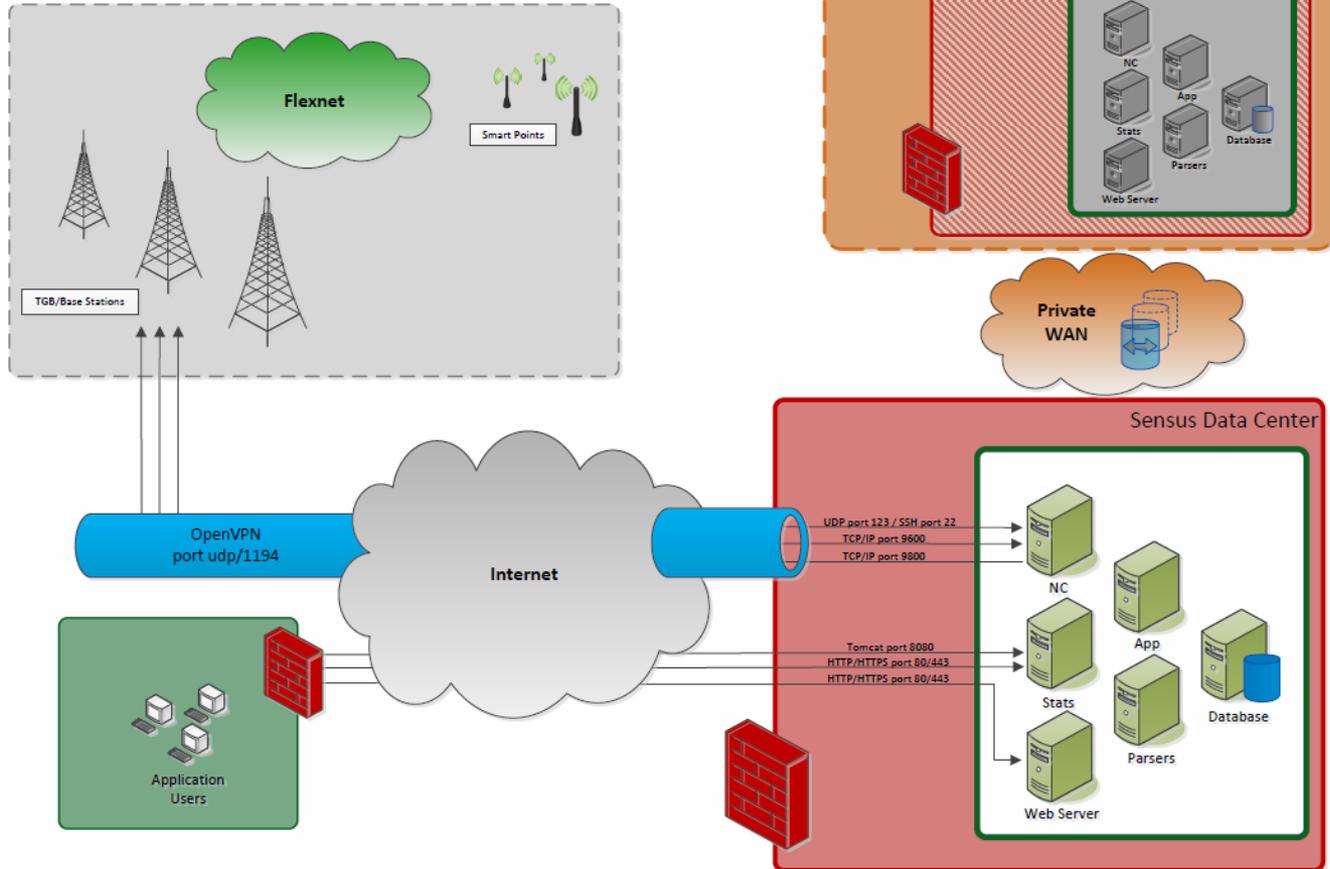
## ■ Internal Security Assessments

- Dedicated Sensus Security Team
  - Responsible for all Data Center security
  - Actively participates/monitors industry regulation/standards regarding security – NERC, FERC, NIST, OpenSG, etc.
- Monthly Vulnerability Scanning
- Patch and Anti-Virus Management

## ■ 3<sup>rd</sup> party Security Assessments

- First and only AMI Provider Internationally Certified in Cyber-Security
- Periodic Penetration Testing (e.g. Rapid-7, Wirehead,..)
- SecureWorks Realtime Firewall, Log and IPS/IDS Monitoring
  - IPS/IDS – Intrusion Prevention System/Intrusion Detection System

# Architectural Diagram



<b>Sensus Metering Systems</b>	<b>Data Center Operations</b>	<b>ENGR:</b>		<b>DATE:</b>	June 9, 2013
		<b>REV:</b>	3.1	<b>SaaS Managed RNI</b>	

# Ownership model of SaaS

	Customer owns	Sensus owns
RNI License		
Connection from TGB to Data Center		
Hardware (servers, storage, etc.)		
Software (OS, 3 <sup>rd</sup> party, RNI)		
Disaster recovery (HW, SW, etc.)		

- Sensus owns & manages the hardware and software required to run the RNI application
- Sensus is responsible for warranty, maintenance, and support of hardware and software components

## Customer Own & Operate

## Software as a Service (SaaS)

### Customer Responsibilities

### Sensus Responsibilities

### Customer Responsibilities

### Sensus Responsibilities

## **NETWORK**

- Configure and manage equipment (non-RNI)
- Configure and manage network addresses
- Configure and manage Virtual Private Networks (VPNs)
- Configure and manage standard time source (NTP or GPS)
- Configure and manage security access points
- Respond to relevant alarms and notifications

- Assist in configuring connection from base stations to licensed RNI server
- Assist in configuring standard time source (NTP or GPS)
- Respond to customer incidents when customer calls technical support

- Configure and manage equipment (non-RNI)
- Configure and manage local area network and addresses

- Configure and manage equipment (non-RNI) in Data Center
- Configure and manage network addresses in Data Center
- Configure and manage Virtual Private Networks (VPNs)
- Configure and manage standard time source (NTP or GPS)
- Configure and manage security access points
- Respond to relevant alarms and notifications

## Customer Own & Operate

## Software as a Service (SaaS)

### Customer Responsibilities

### Sensus Responsibilities

### Customer Responsibilities

### Sensus Responsibilities

## ***STORAGE AREA NETWORK (SAN)***

- Respond to alarms and notifications
- Investigate issues using log files
- Manage vendor if physical storage is off-site
- Configure and verify regular backups are occurring successfully

- None

- None

- Respond to alarms and notifications
- Investigate issues using log files
- Manage vendor if physical storage is off-site
- Configure and verify regular backups are occurring successfully

## Customer Own & Operate

## Software as a Service (SaaS)

### Customer Responsibilities

### Sensus Responsibilities

### Customer Responsibilities

### Sensus Responsibilities

## ***DATABASE***

- Define data retention policy
- Archive relevant data
- Purge old, irrelevant, and excess data
- Monitor space and capacity requirements
- Respond to database alarms and notifications
- Install database software upgrades and patches
- Migrate data during installation and upgrades

- May perform or assist with installation of database patches, updates, and upgrades if Customer pays for service
- Perform standard technical support troubleshooting of RNI application and/or database when Customer calls for assistance

- None

- Define data retention policy
- Archive relevant data
- Purge old, irrelevant, and excess data
- Monitor space and capacity requirements
- Respond to database alarms and notifications
- Install database software upgrades and patches
- Migrate data during installation and upgrades

## Customer Own & Operate

## Software as a Service (SaaS)

### Customer Responsibilities

### Sensus Responsibilities

### Customer Responsibilities

### Sensus Responsibilities

## ***RNI APPLICATION***

- Research significant problems with meter reads and system performance
- Create and manage user accounts
- Customize application configurations
- Support application users
- Investigate application operational issues
- Respond to alarms and notifications
- Install application upgrades and patches
- Perform firmware upgrades over-the-air, or delegate and monitor field personnel for on-site upgrades

- May perform or assist with installation of application patches, updates, and upgrades if Customer pays for service
- Perform standard technical support troubleshooting of application when Customer calls for assistance

- Research significant problems with meter reads and system performance
- Create and manage user accounts
- Customize application configurations
- Support application users
- Investigate application operational issues
- Respond to alarms and notifications
- Perform firmware upgrades over-the-air, or delegate and monitor field personnel for on-site upgrades

- Install RNI application patches, updates, and upgrades when Customer requests per Change Management process
- Perform standard technical support troubleshooting of application when Customer calls for assistance

## Customer Own & Operate

## Software as a Service (SaaS)

### Customer Responsibilities

### Sensus Responsibilities

### Customer Responsibilities

### Sensus Responsibilities

## ***OPERATING SYSTEM and 3<sup>rd</sup> PARTY SOFTWARE***

- Install operating system and other 3<sup>rd</sup> party software patches, updates, and upgrades
- Perform system hardware maintenance, or delegate and monitor maintenance personnel with tasks such as monitor system performance, capacity, and availability

- May perform or assist with installation of system patches, updates, and upgrades if Customer pays for service
- Perform standard technical support troubleshooting of system when Customer calls for assistance

- None

- Install operating system and other 3<sup>rd</sup> party software patches, updates, and upgrades
- Perform system hardware maintenance and monitor system performance, capacity, and availability
- Perform standard technical support troubleshooting of system when Customer calls for assistance

## Customer Own & Operate

## Software as a Service (SaaS)

### Customer Responsibilities

### Sensus Responsibilities

### Customer Responsibilities

### Sensus Responsibilities

## **SECURITY**

- Configure and manage security policies
- Install security-related software and hardware upgrades and patches for operating system, database, and applications
- Respond to alarms and notifications

- May perform or assist with installation of security patches, updates, and upgrades if Customer pays for service
- Perform standard technical support troubleshooting of RNI application and/or database when Customer calls for assistance

- None

- Configure and manage security policies
- Install security-related software and hardware upgrades and patches for operating system, database, and applications
- Respond to alarms and notifications

## Customer Own & Operate

## Software as a Service (SaaS)

### Customer Responsibilities

### Sensus Responsibilities

### Customer Responsibilities

### Sensus Responsibilities

## ***BUSINESS CONTINUITY***

- Develop and implement a disaster recovery plan
- Monitor system performance trends
- Monitor for significant equipment and infrastructure faults
- Identify problems and tasks required to perform required repairs; delegate to appropriate personnel
- Replicate all systems (hardware and software) to a separate location (if available)
- Perform complete system switch over to disaster recovery location (if available)

- May consult with Customer to create a business continuity plan and/or procedures if Customer pays for service
- May assist with switch over of systems to disaster recovery location if Customer pays for service
- Perform standard technical support troubleshooting of system when Customer calls for assistance during a disaster situation

- Develop and implement a disaster recovery plan
- Inform Sensus when to execute and switch over to the disaster recovery environment (execution fee will apply)

- Develop and implement a disaster recovery plan
- Monitor system performance trends
- Monitor for significant equipment and infrastructure faults
- Identify problems and tasks required to perform required repairs; delegate to appropriate personnel
- Replicate all systems (hardware and software) to a separate location
- Perform complete system switch over to disaster recovery environment

# Why Sensus Managed Services?

- **Over 500 unique utility customers**
- **Experts in managing Sensus AMI and DA solutions**
- **Complete and comprehensive team of IT experts**
  - Network, security, database, and system administrators
  - Sensus AMI & DA solution experts

Quarterly Report  
 Garden City Downtown Vision  
 Quarter Ending: 3/31/15

Private Reinvestment	\$353,250.00
Public Reinvestment	\$9,548.47
Volunteers Hours \$\$	\$3,781.32
<b>Total Quarterly Investment</b>	<b>\$366,579.79</b>

FACADE RENOVATIONS			
Name	Address	Amount Invested	Source of Funds
<b>TOTAL</b>		<b>\$0.00</b>	

OTHER BUILDING REHABILITATION PROJECTS AND NEW CONSTRUCTION			
Name	Address	Amount Invested	Source of Funds
Regan & Co. Real Estate	423 N. Main	\$6,250.00	private
The Architect	305 N. Main	\$6,500.00	private
Hutton Construction	116 E. Laurel	\$300,000.00	private
Kinney Glass	409 N. 8th	\$10,000.00	private
Miller Building	109 Grant Ave	\$10,500.00	private
Juarito's Ice Cream Shop	214 S. Main	\$20,000.00	private
<b>TOTAL</b>		<b>\$353,250.00</b>	

BUILDINGS SOLD			
Name	Address	Amount Invested	Source of Funds
<b>TOTAL</b>		<b>\$0.00</b>	

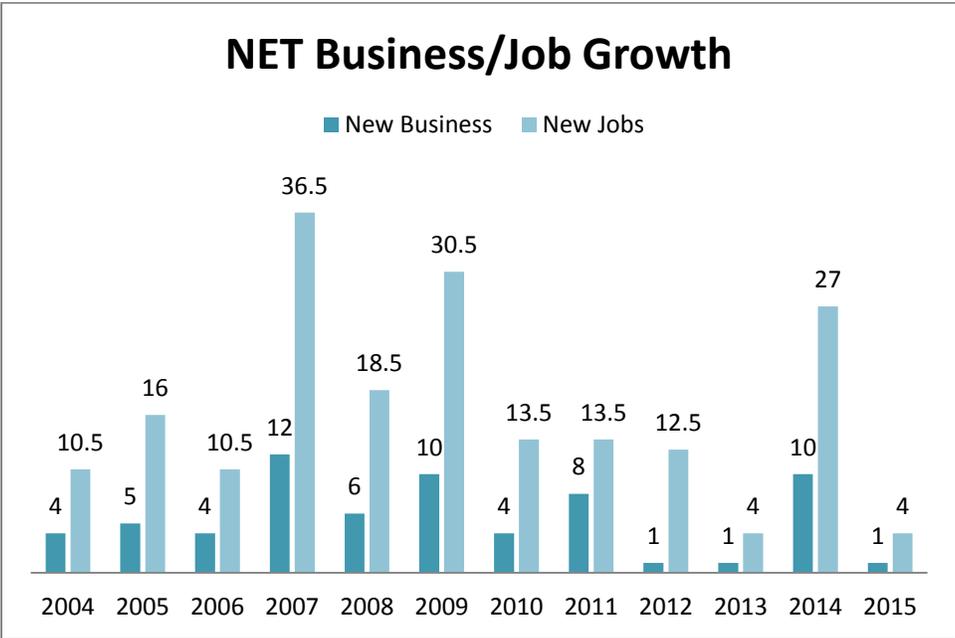
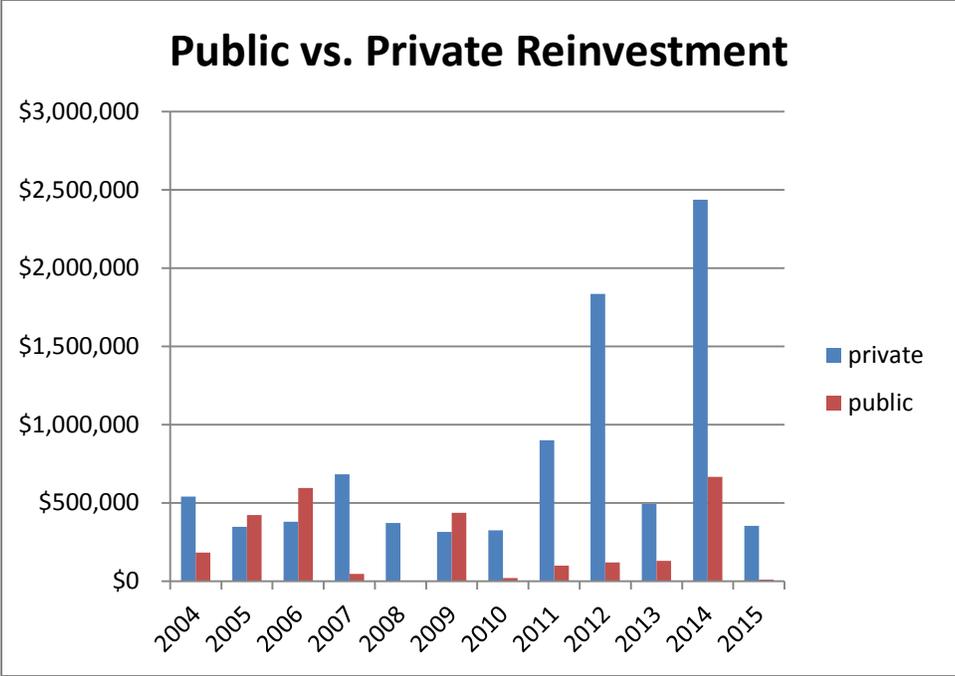
PUBLIC IMPROVEMENTS			
Name	Address	Amount Invested	Source of Funds
City of Garden City Electric Dept	Main St	\$1,200.00	public
City of Garden City Electric Dept	Downtown	\$1,967.50	public
City of Garden City Parks Dept	Downtown	\$3,151.58	public
City of Garden City Parks Dept	Main St	\$275.44	public
City of Garden City Electric Dept	125 W. Pine	\$835.73	public
City of Garden City Electric Dept	125 W. Pine	\$1,280.00	public
City of Garden City Electric Dept	Downtown	\$838.22	public
<b>TOTAL</b>		<b>\$9,548.47</b>	

NEW BUSINESS OPENINGS				
Name of Business	Address	Category	Number of New Jobs	New/Expansion/Relocation
AJ's Graphics	509 N. Main	retail/service	4	expansion/relocation
<b>TOTAL</b>			<b>4</b>	

BUSINESSES LOST				
Name of Business	Address	Category	Number of Jobs Lost	Closed/Relocated out of district
<b>TOTAL</b>			<b>0</b>	

NUMBER OF HOUSING UNITS CREATED		
Address	Upper Stories	Other
<b>TOTAL</b>		<b>0</b>

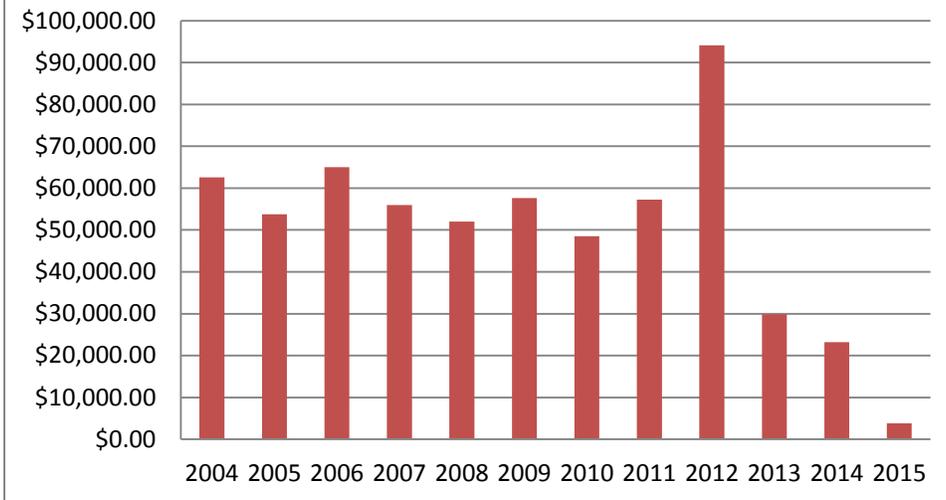
VOLUNTEER HOURS WORKED	
TOTAL HOURS	215.46
VALUE IN \$\$	\$3,781.32



## Volunteer Hours Contributed



## Volunteer Contribution in Dollars



# Consent Agenda

To: City Commission  
 From: Rachelle Powell  
 Date: May 26, 2015  
 RE: Task Order 2 – Taxiway F

**Issue**

Governing Body consideration and approval of Task Order Number 2 between the City of Garden City and HNTB for construction observation services for Airport Improvement Program (AIP) 3-20-0024-37 - Construction of Partial Parallel Taxiway F at Garden City Regional Airport.

**Background**

The City of Garden City entered into a Master Agreement for Professional Services with HNTB on January 21, 2014 and authorized HNTB services for the projects. Task Order Number 1 was approved on May 6, 2014. The Task Order designed Taxiway F, which connects Taxiway C to the end of Runway 12. Task Order Number 1- Amendment 1 was approved on January 20, 2015 and provided design services for the construction of an additional 28’ of concrete for the Aircraft Rescue and Fire Fighting (ARFF) access road. Task Order Number 2 (enclosed) provides construction observation services for the construction of Taxiway F. The FAA requires an independent analysis of the proposed fee. Steve Cottrell, City Engineer conducted the analysis (enclosed) and finds the proposed fee is reasonable for the project.

**Alternatives**

1. Governing Body consideration and approval of Task Order Number 2 between the City of Garden City and HNTB for construction observation services for Airport Improvement Program (AIP) 3-20-0024-37 - Construction of Partial Parallel Taxiway F at Garden City Regional Airport.
2. Governing Body consideration and disapproval of Task Order Number 2 between the City of Garden City and HNTB for construction observation services for Airport Improvement Program (AIP) 3-20-0024-37 - Construction of Partial Parallel Taxiway F at Garden City Regional Airport.
3. Governing Body provide guidance for staff.

**Recommendation**

Governing Body consideration and approval of Task Order Number 2 between the City of Garden City and HNTB for construction observation services for Airport Improvement Program (AIP) 3-20-0024-37 - Construction of Partial Parallel Taxiway F at Garden City Regional Airport.

**Fiscal Note**

The project will be bonded. The proposed FY2015 funding for is as follows:

Construction	\$1,453,572.90
Construction Observation Services	\$ 228,931.00
<b>Total</b>	<b>\$1,682,503.90</b>
<i>Federal Funds 90%</i>	<i>\$1,514,253.51</i>
<i>City Funds 10%</i>	<i>\$ 168,250.39</i>

**TASK ORDER NUMBER 2**  
*Construction Observation Services*  
*Partial Parallel Taxiway F*

This Task Order is made as of \_\_\_\_\_, 2015, under the terms and conditions established in the MASTER AGREEMENT FOR PROFESSIONAL SERVICES, dated January 21, 2014 (the Agreement), between the City of Garden City, Kansas (Owner) and HNTB Corporation (HNTB). This Task Order is made for the following purpose, consistent with the Project defined in the Agreement:

*Provide construction observation services for the construction of Partial Parallel Taxiway F. To assist in the quality assurance monitoring for the project, the following local firm shall serve as subconsultant to HNTB: Terracon Consultants Inc. shall provide material testing services and Aviation Alliance, Inc. shall provide electrical engineering services.*

**Section A. – Scope of Services**

A.1. HNTB shall perform the following Services:

1. Project Management:
  - a. Perform project management; contract administration; Owner and FAA coordination; and sub consultant management of Terracon.
2. Construction Observation Services:
  - a. Prepare Contractor Notice to Proceed Letter
  - b. Prepare Construction Observation Plan
  - c. Review Contractor's furnished safety plan and schedule
  - d. Prepare Contract Documents for Owner, FAA, Contractor, and Engineer
  - e. Provide engineering support throughout construction
  - f. Prepare pre-construction agenda
  - g. Attend and conduct pre-construction conference at GCK
  - h. Prepare and distribute pre-construction conference minutes
  - i. Review shop drawings
  - j. Monitor construction to assure conformance with the plans and specifications
  - k. Conduct progress meetings
  - l. Perform material testing in accordance with project specifications
  - m. Prepare Contractor pay estimates, ECHO Drawdown forms, and SF-271 Request for Reimbursement Forms on a monthly basis
  - n. Prepare change orders
  - o. Review certified payrolls for prevailing wage rates
  - p. Conduct Labor Standard interviews
  - q. Prepare punch lists
  - r. Prepare final inspection agenda
  - s. Conduct final inspection with Owner, FAA, and Contractor
  - t. Prepare and distribute final inspection minutes
3. Project Closeout Services:
  - a. Prepare and submit Record Drawings
  - b. Prepare and distribute Final Project Report
  - c. Update ALP
  - d. AGIS update for new facilities
  - e. Update PCN/ACN and 5100 form

- f. Conduct a project warranty inspection with the Owner, prior to the end of the warranty period
- g. Prepare Final Outlay Report SF-271

A.2. The following Services are not included in this Task Order, but shall be provided as Additional Services if authorized or confirmed in writing by the Owner.

- 1. Update of airport pavement management system report
- 2. Additional project inspection caused by Contractor overrunning the Contract time.

A.3. In conjunction with the performance of the foregoing Services, HNTB shall provide the following submittals/deliverables (Documents) to Owner:

*Part I: Construction Observation Services:*

- 1. Sponsor Certification for Construction Contracts
- 2. Approved Shop Drawings
- 3. Approved Certified Payrolls
- 4. Pay estimates and SF-271 forms (submitted electronically).
- 5. Change Orders
- 6. Sponsor Quarterly Performance Reports (submitted electronically).

*Part II: Project Closeout Services:*

- 1. Project Closeout Report (1-Owner, 1-FAA, 2-HNTB).
- 2. Record Drawings (2-Owner, 1-HNTB)
- 3. Sponsor Certification for Final Acceptance

**Section B. - Schedule**

HNTB shall perform the Services according to the following schedule:

- 1. On-site construction services shall begin upon issuance of Notice-to-Proceed for the Contractor to begin the project. On-site construction services are based on providing full time construction observation services for one hundred and ten (110) calendar days.
- 2. Record Drawings and Project Closeout Report shall be completed within ninety (90) calendar days after final inspection.
- 3. Warranty inspection shall be completed within three hundred and sixty five (365) calendar days after the final inspection.

**Section C. - Compensation**

C.1. For performing the Services identified within **Section A - Scope of Services**, A.1.1. Project Management and A.1.2. Construction Observation Services, the Owner shall pay HNTB an amount for payroll plus an overhead of 144.39% for all office principals and employees engaged directly in the Services, plus a fixed fee, plus Reimbursable Expenses as further defined below and subconsultants fees. The total compensation for A.1.1. and A.1.2. Is not to exceed **\$228,931**, based on the following estimate of costs:

Office Payroll	\$8,220
Office Overhead	\$11,870
Field Payroll	\$52,277
Field Overhead	\$75,483

Reimbursable Expenses	\$22,298
Fixed Fee	\$22,178
Subconsultant Fee (Terracon)	\$24,100
Subconsultant Fee (Aviation Alliance Inc.)	<u>\$12,505</u>
Total Not To Exceed Amount	\$228,931

C.2. For performing the Services identified within **Section A. Scope of Services**, A.1.3. Project Closeout Services, the Owner shall pay HNTB a lump sum amount of **\$25,167**.

HNTB may alter the compensation distribution between individual phases, tasks or work assignments to be consistent with the Services actually rendered, within the total lump sum amount.

C.3. Total compensation for A.1.1., A.1.2., and A.1.3. shall not exceed **\$254,098**.

C.4. Adjustment of the upper limit may be made should HNTB establish and the Owner agree that there has been, or is to be, a material change in the: (a) scope, complexity or character of the Services or the Project; (b) conditions under which the Services are required to be performed, or (c) duration of the services, if a change in the Schedule warrants such adjustment.

C.5. Any services rendered by HNTB beyond those described in **Section A - Scope of Services** shall be compensated on the following basis:

In the event additional project construction observation services are required, cost shall be compensated on a time and materials basis, including overhead rates defined in Section C.1., plus 15% fixed fee based on loaded labor costs, plus expenses for all costs associated with providing construction services beyond the 110 calendar day period.

C.6. HNTB's estimate of the amount that will become payable for Additional Services is only an estimate. If it becomes apparent that this estimated compensation amount will be exceeded, Owner shall agree in writing to additional compensation exceeding said estimated amount.

C.7. Progress Payments: Owner shall make monthly periodic progress payments for Services. The amounts due for Additional Services will also be invoiced monthly. Invoices shall be due and payable upon receipt.

C.8. Reimbursable Expense Definition: Reimbursable expenses include, but are not limited to, transportation, subsistence, reproduction of reports, drawings, specifications, and other Project documents, courier services, materials, supplies, equipment rental and other costs specific to the Project.

C.9. Timing of Services: The total compensation is based on the Services being performed according to the approved schedule and completed within four hundred and seventy five (475) days of the Owner written NTP. Should the time to complete the Services extend beyond this period, HNTB and Owner agree to negotiate an equitable change to the compensation maximum or to provide Additional Services on the basis set forth herein.

**Section D. - Owner's Responsibilities**

Owner shall perform and/or provide the following in a timely manner so as not to delay the Services of HNTB. Unless otherwise provided in this Task Order, Owner shall bear all costs incident to compliance with the following:

- 1. Provide an original executed Task Order.

**Section E. - Other Provisions**

The parties agree to the following provisions with respect to this specific Task Order:

- 1. No other provisions are incorporated.

IN WITNESS WHEREOF, Owner and HNTB have executed this Task Order.

City of Garden City, Kansas  
(Owner)

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

HNTB Corporation  
(HNTB)

Signature  \_\_\_\_\_

Name Kevin Wallace, P.E.

Title Vice President

Date 5/22/15

**ATTACHMENT A  
COST PLUS FIXED PAYMENT  
Garden City Regional Airport  
Partial Parallel Taxiway F**

**1. Direct Salary Costs**

Title	Rate						Hours Totals	Dollars Totals
	Principal in Charge	Project Manager	Senior Inspector	Engineer	Technician	Administration		
<i>Detailed Scope and Fee/Description of Work</i>	\$101.93	\$56.80	\$61.00	\$42.93	\$39.21	\$37.60		

**Project Management**

Project Management		8				4	12	\$605
Monthly Project Review	4	4				4	12	\$785
Workplan Development		1		6			7	\$314
Subconsultant Contracting	2	4		4		2	12	\$678
<b>Subtotal</b>	<b>6</b>	<b>17</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>10</b>	<b>43</b>	<b>\$2,382</b>

**Construction Phase**

Submittal Review				25			25	\$1,073
Construction Observation Plan				8			8	\$343
Requests for Information				16			16	\$687
Engineering Support				16			16	\$687
Engineer Site Visit				16			16	\$687
Payroll Review				0			0	\$0
Pay Estimate Processing				16			16	\$687
Preconstruction Conference		8		8			16	\$831
Progress Meetings				15			15	\$644
Field Inspection (110 calendar days, 5.25 days/week @ 10 hours/day)			825				825	\$50,325
Final Inspection and Punch List			20	12			32	\$1,735
Final Change Order			4	2			6	\$330
Final Pay Estimate				2			2	\$86
<b>Subtotal</b>	<b>0</b>	<b>0</b>	<b>857</b>	<b>136</b>	<b>0</b>	<b>0</b>	<b>993</b>	<b>\$58,115</b>

**Total Direct Salary Costs**

Field CN labor	\$52,277	<b>\$60,498</b>
Office PM labor	\$2,382	
Office CN labor	\$5,838	

**2. Office Labor and General & Administrative Overhead**

Office PM Percentage of Direct Salary Costs	144.39%	\$3,440
Office CN Percentage of Direct Salary Costs	144.39%	\$8,430

**3. Field Labor and General & Administrative Overhead**

Field CN Percentage of Direct Salary Costs	144.39%	\$75,483
--	---------	----------

**4. Subtotal of Items 1, 2, and 3**

**\$147,851**

**5. Fixed Payment (Profit for Labor and Overhead)**

15% **\$22,178**

**6. Direct Nonsalary Expenses**

<b>Transportation</b>				
Company Vehicle	14660	\$0.575 /mile		\$8,430
Flight to GCK	1	\$2,600.00 /flight		\$2,600
<b>Inspector Lodging and Meals</b>				
Per Diem	84	\$129.00 /day		\$10,836
<b>Food</b>				
Meals	8	\$15.00 /meal		\$120
<b>Printing</b>				
8.5x11	180	\$0.07 /page		\$13
11x17	140	\$0.14 /page		\$20
Reports	4	\$50.00 /report		\$200
<b>Other</b>				
Shipping	2	\$40.00 /shipping		\$80
			<b>Total Expense</b>	<b>\$22,298</b>

**7. Subcontract Cost**

Terracon Consultants Inc.	\$24,100
Aviation Alliance Inc.	\$12,505

**8. Total Cost (project management & construction phase)**

(Items 4, 5, 6, & 7)

**\$228,931**

**ATTACHMENT B  
LUMP SUM FEE  
Garden City Regional Airport  
Partial Parallel Taxiway F**

**1. Direct Salary Costs**

<i>Detailed Scope and Fee/Description of Work</i>	Title Rate							Hours Totals	Dollars Totals
	Principal In Charge	Project Manager	Senior Inspector	Senior Engineer	Engineer	Technician	Administration		
	\$101.93	\$56.80	\$61.00	\$62.21	\$42.93	\$39.21	\$37.60		
Overhead	144.39%	144.39%	144.39%	144.39%	144.39%	144.39%	144.39%		
Profit	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%		
Gross Rate	\$ 286.47	\$ 159.64	\$ 171.44	\$ 174.85	\$ 120.65	\$ 110.20	\$ 105.67		
<b><i>Project Closeout Phase</i></b>									
As-Built Record Drawings		2	8		8	12		30	\$3,978
Final Engineer's Report		4			24			28	\$3,534
Update ALP		1			4	4		9	\$1,083
AGIS Update for New Facilities					24			24	\$2,896
Update PCN and 5100 Form				56	12			68	\$11,239
Warranty Inspection					14			14	\$1,689
Subtotal	0	7	8	56	86	16	0	173	\$24,420

**3. Direct Nonsalary Expenses**

Transportation	Company Vehicle	810	\$0.58 /mile	\$466
Food	Meals	2	\$15.00 /meal	\$30
Printing	8.5x11	65	\$0.07 /page	\$5
	11x17	120	\$0.14 /page	\$17
	Reports	3	\$50.00 /report	\$150
Other	Shipping	2	\$40.00 /shipping	\$80
	<b>Total Expense</b>			<b>\$747</b>

**4. Subcontract Cost**

Terracon Consultants Inc.  
Aviation Alliance, Inc.

**5. Total Lump Sum Payment (project closeout phase)** (Items 2, 3, & 4) **\$25,167**

# MEMORANDUM

**TO:** Rachelle Powell, Director of Aviation

**FROM:** Steve Cottrell, City Engineer

**DATE:** 26 May 2015

**RE:** Engineering services (Task Order No. 2) Independent Engineering Cost Analysis: AIP No. 3-20-0037 – T/W F construction phase services

I have evaluated the scope of engineering services and fees for the referenced project. I have prepared an independent cost estimate and find that the fees for construction phase services would be \$312,600.

In my opinion, the proposed fee of \$228,931 for the construction phase services is reasonable for this project.

If additional information is needed, please let me know.



## Engineering Department

Steven F. Cottrell, P.E.  
City Engineer

C.W. Harper, P.E.  
Assistant City Engineer

CITY ADMINISTRATIVE  
CENTER  
301 N. 8<sup>TH</sup>  
P.O. BOX 998  
GARDEN CITY, KS  
67846-0998  
620.276.1130  
FAX 620.276.1137  
[www.garden-city.org](http://www.garden-city.org)

Garden City Regional Airport  
 Design Engineering Fee Analysis  
 Independent cost estimate  
 AIP # 3-20-0024-37  
 TAXIWAY F - CONSTRUCTION PHASE  
 5/26/2015

**DIRECT SALARY COSTS:**

POSITION	ESTIMATED HOURS			TOTAL	RATE/HR	COST
	ADMIN	INSPECTION	CLOSEOUT			
Partner	8	0	2	10	\$ 100.00	\$ 1,000.00
Project Manager	20	24	8	52	\$ 75.00	\$ 3,900.00
Resident engineer	8	900	60	968	\$ 65.00	\$ 62,920.00
Staff Civil Engineer	8	160	80	248	\$ 50.00	\$ 12,400.00
Clerical	10	0	20	30	\$ 40.00	\$ 1,200.00
	54	1084	170	1308		\$ 81,420.00

**OVERHEAD:**

Overhead multiplier                      Total Direct Salary x 165.00%                      **Overhead**                      \$134,343.00

**SUBTOTAL:**

**Total Direct Salary + Overhead                      \$                      215,763.00**

**PROFIT/FIXED FEE:**

Total Direct Salary + Overhead x 15.00%                      **Profit/Fixed Fee                      \$32,364.45**

**Subtotal                      \$248,127.45**

**DIRECT NONSALARY EXPENSES:**

Travel - airfare (R/T)	3.00	1 Trips @	\$1,000.00 / Trip =	\$1,000.00
Travel - Re vehicle	3.00	15000 Miles @	\$0.60 / Mi =	\$9,000.00
Per Diem	3.00	90 Days @	\$125.00 / Day =	\$11,250.00
Computer CADD	20.00	20 Hours @	\$7.00 / Hour =	\$140.00
Computer Eng.	20.00	20 Hours @	\$4.00 / Hour =	\$80.00
Materials and Supplies				\$4,000.00
			<b>Total Out-of-Pocket Expenses</b>	<b>\$24,470.00</b>

**SUB-CONSULTANT COSTS**

Material Testing                      \$ 40,000.00  
**Total Sub-Consultant Costs                      \$ 40,000.00**

<b>TOTAL FEE                      \$ 312,597.45</b>
---



Steven F. Cottrell, PE  
 City Engineer  
 5/26/2015

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into the 14 day of MAY, 2015, by and between CITY OF GARDEN CITY, KANSAS, a municipal corporation, (Lessor), and AIRMD, LLC d/b/a LIFETEAM (Lessee).

### RECITALS

A. Lessor owns the real property described below; and,

B. Lessor and Lessee mutually desire to enter into a written lease agreement specifying the terms, conditions and provisions governing the leasing of the real property by Lessee.

NOW, THEREFORE, in consideration of the premises and the provisions hereinafter set forth, the parties agree as follows:

1. DESCRIPTION OF LEASED PREMISES. Lessor does hereby let and lease to Lessee and Lessee does hereby lease from Lessor the following described real property, to-wit:

Residence commonly referred to as Airport House located at 2214 South A Air Drive, Garden City Regional Airport (GCRA), said residence located east of the main GCRA terminal, leased premises to include front and back yard, together with storage building behind residence (Leased Premises).

2. TERM. The term of this Lease Agreement shall be for a period of five (5) years, from July 1, 2015 to June 30, 2020, effective July 1, 2015, regardless of date of execution or approval by the parties.

3. MAINTENANCE. Lessee shall be responsible for any and all maintenance necessary to keep the Leased Premises in a clean and neat condition. The Leased Premises shall be kept by Lessee in a neat and orderly fashion, including, but not limited to, mowing of grass and control of weeds. Lessor shall be responsible for maintenance, repair, and replacement of all major items on or at the Leased Premises, including but not limited to, plumbing, heating and air conditioning, exterior paint, windows, roof, and carpeting and flooring; provided, however, Lessee shall be solely responsible for any repair or replacement for damage occurring as a result of the negligence, acts, or omissions of Lessee, its family members or guests.

4. RENT. Lessee agrees to pay as rent for the Leased Premises, the sum of One Thousand Dollars (\$1,000.00) per month, payable on or before the 1st day of each month, with such payments to begin July 1, 2015. All rent payments shall be made to the Clerk of the City of Garden City, Kansas.

5. CONDITION OF PREMISES. Lessee has examined and knows the condition of the Leased Premises and accepts the same in its present condition and repair.

6. USE OF PREMISES. Lessee agrees to use the Leased Premises as a residence.

7. RIGHT OF ENTRY. Lessor reserves the right by its designated agents or employees to enter into the Leased Premises, at any reasonable time, subject to prior notice to Lessee, to inspect the Leased Premises.

8. UTILITIES. Lessee shall be responsible for the payment of utility services used on the Leased Premises, including but not limited to electricity, gas, water, telephone, and internet, and Lessee shall indemnify Lessor against any and all liability on such charges. Lessor shall provide water for irrigation of the lawn, at no charge to Lessee.

9. LIENS AND ENCUMBRANCES. Lessee covenants and agrees at all times to keep the Leased Premises free from liens and encumbrances of whatever kind or nature arising from, or predicated upon, materials furnished or work or labor performed upon the Leased Premises at Lessee's request or by Lessee's authority.

10. TAXES. Lessor agrees to pay any and all taxes or special assessments which may be levied or assessed upon the Leased Premises, or upon Lessor's interest in said Leased Premises. Lessee shall be responsible for any and all taxes or assessments against personal property of Lessee on the Leased Premises.

11. CASUALTY INSURANCE. Lessor agrees to keep the Leased Premises insured against loss or damage by fire or other casualties, although Lessee shall not be named as loss payee or insured. Lessee shall be responsible for insurance on Lessee's personal property and any and all contents in the residence or located on the Leased Premises.

12. INDEMNIFICATION. Lessee agrees to indemnify Lessor against, and to hold Lessor harmless from, any and all claims or demands for loss of or damage to property or for the injury or death to any person from any cause whatsoever while in, upon, or about the Leased Premises, during the term of this Lease Agreement, or any extension or renewal thereof.

13. ALTERATIONS. Lessee shall not make any material or substantial alteration or addition to the Leased Premises without the prior written consent of Lessor. All installations, additions, or improvements in or upon the Leased Premises, made by either party, shall become the property of Lessor and shall remain upon the Leased Premises and be surrendered with the Leased Premises as a part thereof, at the expiration or sooner termination of this Lease Agreement.

14. ASSIGNMENT/SUBLETTING. Lessee shall not assign, transfer, pledge, or sublet, the Leased Premises or this Lease Agreement, or any interest therein.

15. SUBORDINATION. Lessee agrees that this Lease Agreement and all provisions thereof shall be subject to subordination of all terms and conditions to instruments and documents which Lessor might require as requested by the United States of America, or the State of Kansas, and this Lease Agreement shall only be of such effect as will not conflict or be inconsistent with the terms and conditions of the instruments or documents to which it is subordinated.

16. DEFAULT. This Lease Agreement is made upon the express condition that if Lessee fails to pay rent after the same shall become due, and such failure shall continue for a period of ten (10) days after written notice from Lessor to Lessee, or if Lessee fails or neglects to perform or observe any of Lessee's other obligations hereunder and such failure and neglect shall continue for thirty (30)

days after written notice to Lessee from Lessor, Lessor at any time thereafter, by written notice to Lessee, may lawfully declare the termination hereof and re-enter the Leased Premises or any part thereof, and further, Lessor shall be entitled to pursue all available legal remedies.

17. DAMAGE BY FIRE OR OTHER CASUALTY. Lessee shall use every precaution against fire and shall, in case of fire or other casualty for which Lessee is not under an obligation to repair, immediately notify Lessor, who shall, unless the building be so damaged that Lessor shall decide not to repair or rebuild, thereupon cause the damage to be promptly repaired. If the Leased Premises are so destroyed or damaged so that Lessor decides not to repair or rebuild, either temporarily or permanently, then the term of this Lease Agreement shall cease as of the date upon which the casualty occurred, with no further obligation of either party hereunder to recognize this Lease Agreement if the building is later rebuilt. If Lessor decides to rebuild or repair, then the rent during the restoration period shall abate in proportion and to the extent the Leased Premises had been rendered untenable by said casualty.

18. SURRENDER. Upon expiration of this Lease Agreement for any reason, whether by reason of expiration of the term hereof or cancellation for default or otherwise, Lessee shall, and hereby covenants and agrees, to peacefully surrender and deliver up possession of the Leased Premises to Lessor, broom-clean and in as good condition or repair as the same was at the inception of this Lease Agreement, reasonable depreciation and damages from the elements excepted.

19. GENERAL COVENANTS.

(a) All notices required or which may be given hereunder shall be considered as properly given if delivered in writing, personally, or sent by certified mail, postage prepaid, addressed as follows:

(1) If to Lessor:           Matthew C. Allen, City Manager  
  301 North Eighth Street  
  P. O. Box 998  
  Garden City, Kansas 67846

(2) If to Lessee:           AirMD, LLC d/b/a LifeTeam  
  516 N. Oliver Road, Hangar J  
  Newton, Kansas 67114

Notices served by mail shall be deemed to be given on the date on which such notice is deposited in the United States mail.

(b) This instrument incorporates all of the obligations, agreements and understandings of the parties hereto, and there are no oral agreements or understandings between the parties hereto concerning the property or any subject covered by this Lease Agreement.

(c) This Lease Agreement may be amended, changed, or modified, only upon the written consent of all the parties.

- (d) This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto, their personal representatives and permitted assigns.
- (e) This Lease Agreement shall be construed in accordance with the laws of the State of Kansas.
- (f) The headings of the paragraphs of this Lease Agreement are for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of any provisions of this Lease Agreement.
- (g) In the event any provision of this Lease Agreement shall be invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or the enforceability of the remaining valid portions hereof be affected thereby.

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

"Lessor"

CITY OF GARDEN CITY, KANSAS

By \_\_\_\_\_  
Janet A. Doll, Mayor

ATTEST:

\_\_\_\_\_  
Celyn N. Hurtado, City Clerk

"Lessee"

AIRMD, LLC, d/b/a LIFETEAM

By Martin S. Sanchez  
Title President : CEO

# ***MEMORANDUM***

**TO:** GOVERNING BODY

**FROM:** Steve Cottrell

**DATE:** 28 May 2015

**RE:** ANNEXATION AGREEMENT

## ISSUE

An annexation agreement with Grace Bible Church, 2595 Jennie Barker Road is presented for Governing Body consideration and approval.

## BACKGROUND

The Church requested annexation because they need to connect to City water. Since the property is not contiguous to the City Limits, annexation would require concurrence of the County Commission. At your meeting on May 5<sup>th</sup>, the Governing Body authorized proceeding with an annexation agreement.

## ALTERNATIVES

- 1) The Governing Body may approve the annexation agreement with the Church which then authorizes connection to the water system.
- 2) The Governing Body may defer action to a later date.

## RECOMMENDATION

Staff recommends authorizing staff to approval of the annexation agreement.

## FISCAL

There is no cost to the City for this action.



### **Engineering Department**

Steven F. Cottrell, P.E.,  
City Engineer

C.W. Harper, P.E.  
Assistant City Engineer

CITY ADMINISTRATIVE  
CENTER  
301 N. 8<sup>TH</sup>  
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GARDEN CITY, KS  
67846-0998  
620.276.1130  
FAX 620.276.1137  
[www.garden-city.org](http://www.garden-city.org)

**AGREEMENT TO PROVIDE MUNICIPAL SERVICES AND CONSENT TO ANNEXATION**

NOW ON this \_\_\_\_ day of \_\_\_\_\_, 2015, this Agreement to Provide Municipal Services and Consent to Annexation (Agreement) entered into by and between the **CITY OF GARDEN CITY, KANSAS**, hereinafter referred to as **CITY**, and **GRACE BIBLE CHURCH OF GARDEN CITY**, hereinafter referred to as **OWNER**, and,

WHEREAS, **OWNER** requests and **CITY** desires to provide the described municipal service(s) to the described real property.

WHEREAS, **CITY** currently provides the municipal electric service to the described real property.

WHEREAS, **OWNER** is the owner of the following described real property an in consideration of the delivery or extension of municipal service(s) by **CITY** to the described real property, owner desires to consent to the annexation of the described real property, to-wit:

**See Exhibit A**

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the parties agree as follows:

1. **CITY** agrees to deliver or extend municipal **water service**, at in-city rates, to the real property, said real property currently lying outside the boundaries of **CITY**.
2. In consideration of the delivery or extension of municipal **water service** to the real property, **OWNER** agrees and consents to the annexation of the real property by **CITY** at a date annexation is desired by **CITY**.
3. The parties understand and agree that the consent given herein pursuant to K.S.A. 12-534 and that such consent shall be deemed to be sufficient consent to an annexation proceeding under K.S.A. 12-520.
4. The parties understand and agree that this Agreement shall be binding upon all heir, executors, administrators, successors, and permitted assigns, and further, that this Agreement shall run with the real property.

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

**CITY OF GARDEN CITY, KANSAS**

\_\_\_\_\_  
Janet A. Doll, Mayor

ATTEST:

\_\_\_\_\_  
Celyn N. Hurtado, City Clerk

GRACE BIBLE CHURCH OF GARDEN CITY

[Signature]  
President

[Signature]  
John Zoschke, Secretary

STATE OF KANSAS )  
 ) ss.  
COUNTY OF FINNEY )

BE IT REMEMBERED, that on the 25 day of MAY, 2015, before me, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_ and **JOHN ZOSCHKE**, who are personally known to me to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same as Mayor of the City of Garden City, Kansas.

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

EDSON MAYARDA  
Notary Public

My Commission Expires:  
02/17/19

STATE OF KANSAS )  
 ) ss.  
COUNTY OF FINNEY )

BE IT REMEMBERED, that on the 25 day of MAY, 2015, before me, a Notary Public in and for the County and State aforesaid, came **Janet A. Doll**, Mayor and **Celyn N. Hurtado**, City Clerk, who are personally known to me to be the same persons who executed the foregoing instrument of writing and duly acknowledged the execution of the same.

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

EDSON MAYARDA  
Notary Public

My Commission Expires:  
02/17/19

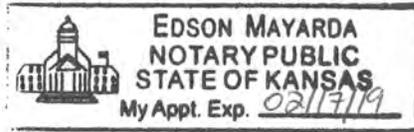
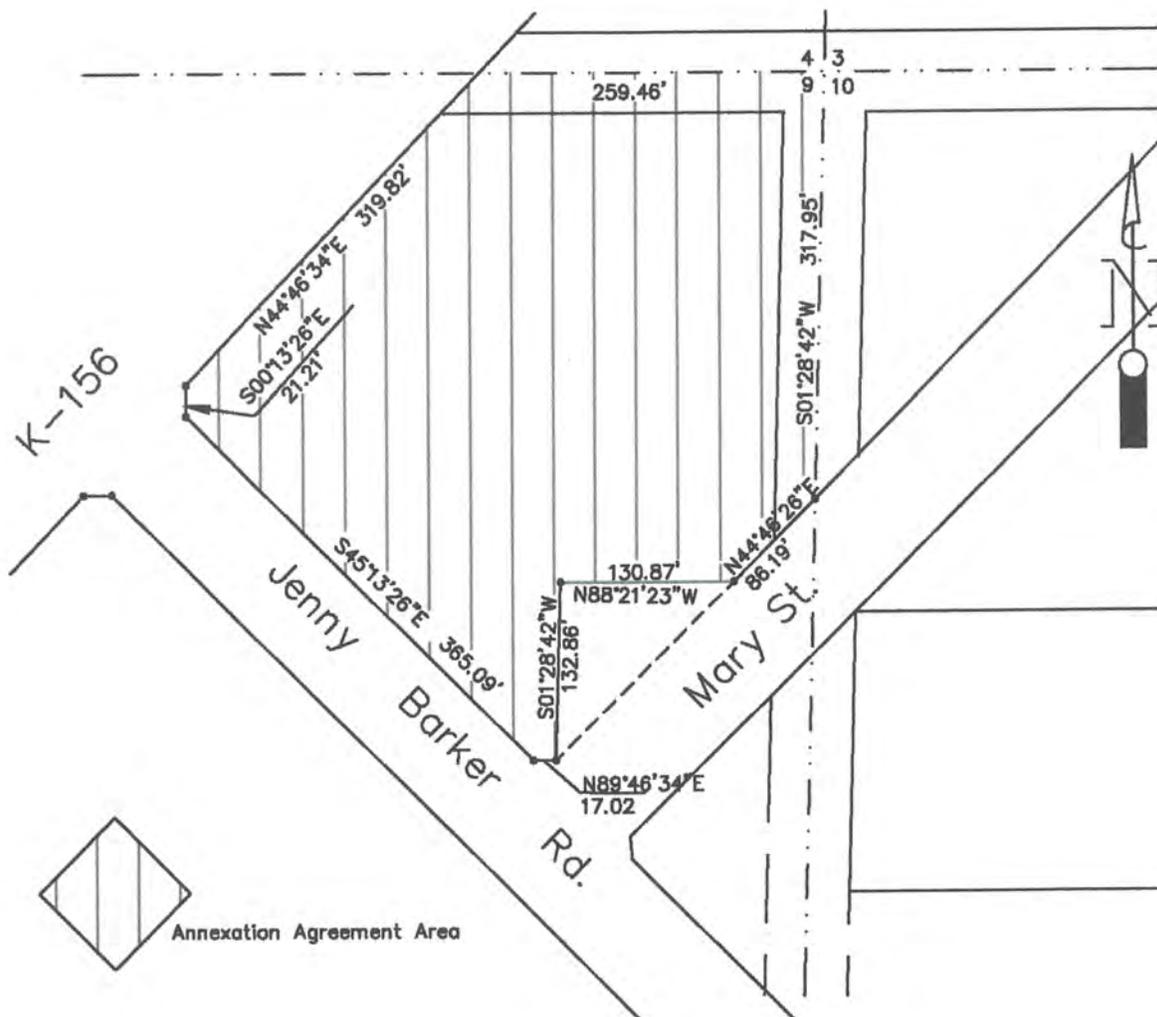


Exhibit A

BEGINNING at the Northeast Corner of Section 9, T24S, R32W, Finney County, Kansas, thence  $S01^{\circ}28'42''W$ , 317.95 feet along the East line of said Section, to the Northwesterly line of Mary Street; thence  $S44^{\circ}46'26''W$ , 86.19 feet; thence  $N88^{\circ}21'23''W$ , 130.87 feet; thence  $S01^{\circ}28'42''W$ , 132.86 feet thence  $N89^{\circ}46'34''W$ , 17.02 feet, to the Northeasterly line of Jennie Barker Road: thence  $N45^{\circ}13'26''W$ , 365.09 feet; thence  $N00^{\circ}13'26''E$ , 21.21 feet, to the Southeasterly line of K-156; thence  $N44^{\circ}46'34''E$ , 319.82 feet, to the North line of said Section; thence East 259.46 feet, along the North line of said Section, to the point of BEGINNING. Said tract containing 3.59 acres, more or less.





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DEPARTMENT**  
SERVING THE  
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AND  
FINNEY COUNTY  
620-276-1170

INSPECTIONS  
620-276-1120  
[inspection@garden-city.org](mailto:inspection@garden-city.org)

CODE  
ENFORCEMENT  
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## MEMORANDUM

**DATE:** June 2, 2015  
**TO:** Mayor & City Commission  
**FROM:** Kaleb Kentner, Planning & Community Development Director  
**cc:** File  
**RE:** 2015 Vegetation Mowing Applicant

---

**Issue:** 2015 Vegetation Mowing Applications for Code Violations

**Background:** The Community Development Department has received an application from Mark A. Schiffelbein for the 2015 vegetation mowing season at the following rates:

Small Lots- \$30/ hour  
Large Lots- \$70/ hour

Lot size is determined by the Code Compliance Officer.

**Alternatives:**

1. City Commission may approve the applicant.
2. City Commission may not approve the applicant.
3. City Commission may take no action.

**Recommendation:** Staff recommends approving Mr. Schiffelbein's application.

**Fiscal Impact:** Fees assessed through the code compliance process cover the cost of contractors. However, if the violator does not pay fees, the City covers the cost of the contractor until the fee is collected through either collections or through specials assessed to the property.



# Memo

To: City Commission  
 From: Kaleb Kentner  
 CC: File  
 Date: May 6, 2015  
 Re: GC2015-28, – Maestas Addition plat

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 FAX 620.276.1173  
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**ISSUE:** Consideration of the Maestas Addition plat

**BACKGROUND:** At the request of Kathie Maestas, c/o Cornerstone Professional Services, the Planning Commission is asked to review and consider the Maestas Addition plat.

This property is located at 114 Bellevue Avenue, and the approximate land area is .79 acres. The current zoning is “R-1” Single Family Residential District. This plat will yield three lots. The lot has an existing nonconforming metal building on it. The proposed plat will increase the degree of nonconformity by decreasing the size of the lot or the area around the nonconforming building. To address this issue, the applicant is planning on converting this building into a home with a garage area. However, since the building does not meet the setback requirements, the applicant will be presenting this case to the Board of Zoning Appeals on June 2, 2015 (GCBZA2015-05) to obtain a variance.

The plat will be required to show the following:

1. The required setback lines for each lot.
2. Easements for utilities. This will include easements for the sewer main and electricity that will supply service to the two lots on 7<sup>th</sup> Street. The developer will be required to add the utility mains to service all lots.

Sidewalks will be required to be installed at the time of the development of the lots. However, to avoid the removal and trimming of the existing evergreen trees, the applicant is requesting a waiver on the north property lines along Bellevue Avenue. (Refer to attached photos.)

The attached plat shows the proposed utility easements. (Please refer to the attached plat and photo showing the utility locations.) A site plan review was conducted May 20, 2015, and no major concerns were brought up at that time; however, we are still waiting for a few responses before a final approval is issued. (Please refer to the attached site plan review comment sheet.) The applicant will be required to meet or exceed the Garden City Zoning and Subdivision Regulations for this development.

**ALTERNATIVES:** The Commission may:

1. Approve the plat as recommended by the Planning Commission
2. Not approve the plat

**RECOMMENDATION:** Staff recommends approval of the plat contingent upon the submitted plat meeting the Garden City Zoning and Subdivision requirements

**PLANNING COMMISSION:** On May 21, 2015, the Planning Commission recommended approval of the plat contingent upon meeting all zoning and subdivision requirements and allowing a waiver on the required sidewalk along the north side of the property that abuts Bellevue Avenue.

Present- 6 Yea vote- 6 Nay vote- 0



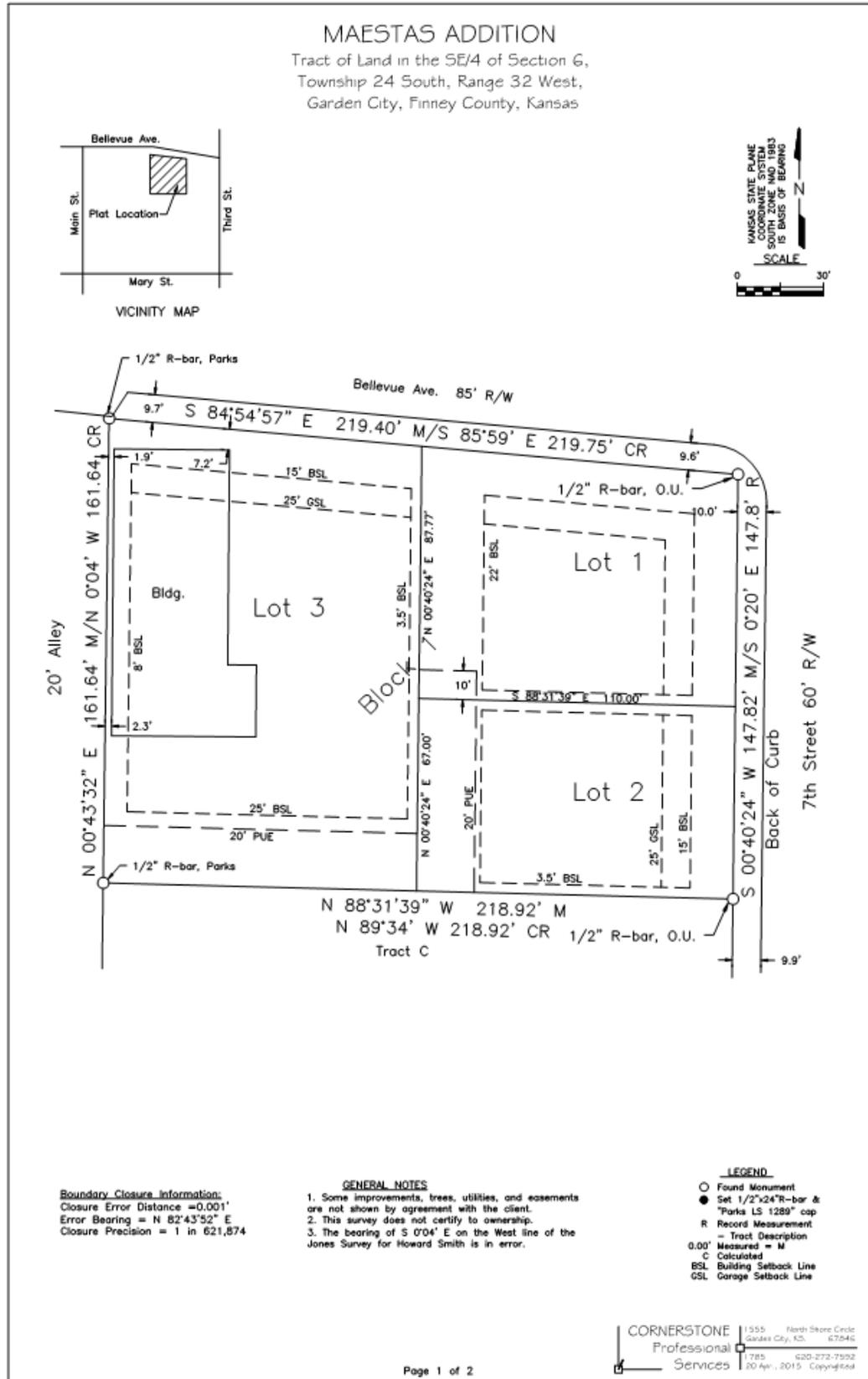
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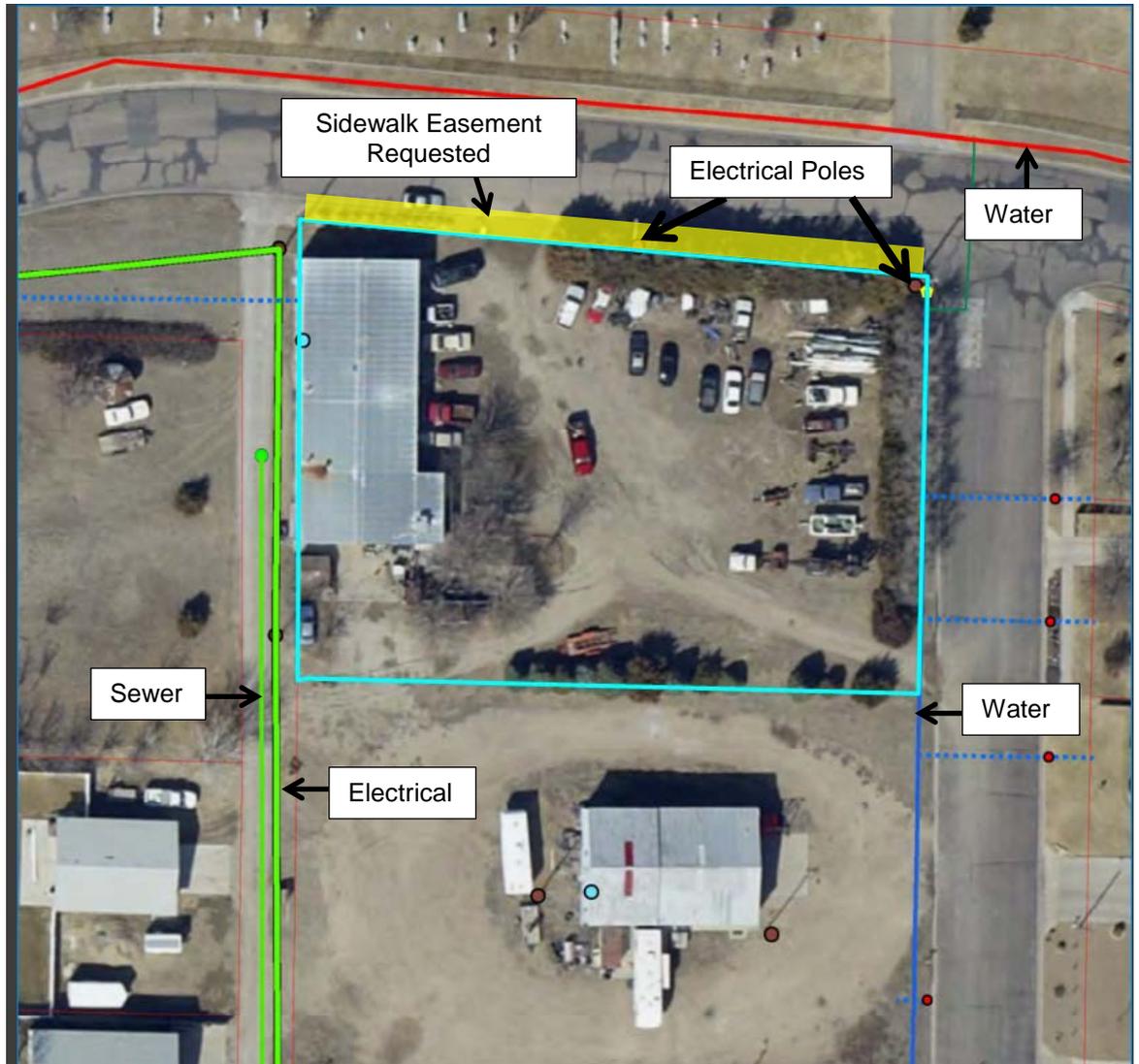
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Site Plan Review Comments

**APPROVED**

GCSP15-26, *Maestas Addition*  
114 E. Bellevue, Garden City, KS

**GENERAL INFORMATION**

Revision Date:	5/20/2015	Site Plan Status:	<b>APPROVED</b>
Original Review Date:	4/29/2015	Jurisdiction:	Garden City
Owner:	SCI Investments, LLC	Phone:	620-272-7592
Architect / Engineer:	Ken Parks	Contact Info:	1555 North Shore Circle
Requested Action:	Approve site plan		
Purpose:	For a plat		
Location address:	114 E. Bellevue		

**REVIEW RESULTS:**

1. This property is a nonconforming property due to the large building located on the property. This case will need to be taken to the Board of Zoning Appeals to get approval of this plat that will increase the degree of this nonconformance by decreasing the property size.

**ISSUE ADDRESSED, WILL BE PRESENTED TO BZA ON JUNE 2, 2015, THANK YOU**

*** FOR OFFICE USE ONLY ***	
Status of Site Plan:	<b>APPROVED</b>
Date:	5/20/2015
Name & Title of Authorizing Official:	Carol Davidson, Asst. Plan. and Comm. Dev. Director
Signature:	<i>Carol David</i>



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114 E. BELLEVUE  
TREES ON PROPERTY





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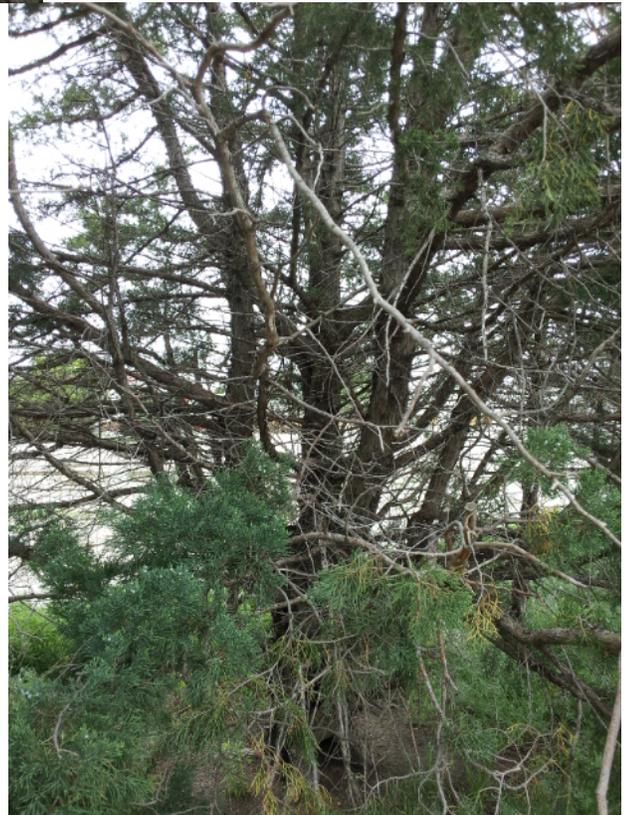
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114 E. BELLEVUE  
BRANCHING OF THE  
TREES



# Other Entities Minutes

**Garden City Recreation Commission  
Minutes  
Monday, April 20, 2015  
2925 E Mary St, Maintenance Building**

**I. Call Meeting to Order**

Chairperson Marcus Ramos called the meeting to order at 5:15pm at 2925 E Mary St. GCREC Board Members present were Anna Urrutia, Jamie Warren, Myca Bunch and Alyssa Benavidez. GCREC Staff present were Superintendent John Washington, Sports Director Jared Rutti, Arts and Theater Director Brian Seagraves and Finance Director Terri Hahn. Board Member Marcus Ramos left at 6:33pm. Vice Chair Alyssa Benavidez took over the meeting.

**II. Approval of Agenda**

Motion by Jamie Warren to approve the agenda, seconded by Alyssa Benavidez. Motion carried with all in favor.

**III. Consent Agenda**

**The following shall stand approved/accepted as presented unless action is taken to remove an item from the consent agenda.**

- a. Minutes of Regular Meeting March 30, 2015**
- b. Financial Reports for March 2015**
- c. Staff Reports April 2015**
- d. Participation Reports**

Motion by Jamie Warren to approve the consent agenda with the following changes to the April 20, 2015 minutes, which were: incorrect spelling of Myca Brunch to Myca Bunch.

VI. New Business, a) Board Member Jamie Warren also made a motion to approval for the Finance Director to destroy records following policy without Board approval. Motion died due to lack of a second motion. On Recreation Policy Article 10 Retention of Records and Documents, Records may not be destroyed without prior approval obtained from the Recreation Commission.

The corrected April 20, 2015 Minutes should read: Board Member Jamie Warren also made a motion for approval for the Finance Director to destroy records following policy without Board approval. Motion was seconded by Myca Bunch. Motion carried with all in favor.

VI New Business, c) Motion by Anna Urrutia to approve the 2015 Fixed Asset List removal, seconded by Jamie Warren. Motion carried with all in favor.

The corrected April 20, 2015 Minutes should read: Motion by Anna Urrutia to approve the 2015 Fixed Asset List removal, seconded by Myca Bunch. Motion carried with all in favor. The motion was seconded by Myca Bunch. Motion carried with all in favor.

**IV. Superintendent Report**

- a. Fansler Field turf is being evaluated along with Cleaver Field. Staff is looking at what it will take to our non-traffic areas of converting areas over to either buffalo and/or Bermuda grass.** – John explained about the City of Garden City and the GCREC are using test plots to test buffalo and/or Bermuda grass.
- b. Garden City Wind Opening Night May 19<sup>th</sup> at 6:30pm. Tryouts begin on May 9<sup>th</sup> with Spring Training featured May 10<sup>th</sup> at Clint Lightner Field. Visit them on Facebook for**

**player information and special events.** – John handed out a schedule for the Garden City Wind for home games. Can get full schedule and tickets on line.

- c. **Billboard Ad sales are going great. Only four (4) spots remaining** – John explained that he has four (4) spots remaining on the billboard ads. He is looking at food services for these ads. Garden City High School students are doing the signs.
- d. **Big Pool Upgrades** – down to crunch time. They are working on the joints. Are still trying for May23rd opening.

**V. New Business**

- a) **Brian Seagraves will facilitate final approval from the GCRC Board for the State Theater form Duane West. Pursuant to 12-1928-1.** - Arts and Theater Director Brian Seagraves explained to the GCRC Board that Duane West offered to buy the State Theater from the City of Garden City and then gift it to the Garden City Recreation Commission...

GCRC Board Member Myca Bunch is appalled over the way information was given out to the GCRC Board. Not being informed about the issue. Was not given a copy of the RFP that was given to the City Commissioners. Where is the money coming from for the construction and when is going to begin?

Brian and John both said that the RFP was from the past times that the City of Garden City has tried to give the State Theater to the GREC. The City Commissions did what the different groups requested, decided on who will get the building, which was having Duane West buy the building. Brian said that the City will pay for \$50,000 plus possibly \$10,000 towards lifesaving construction. Check with City to see if they will still do the lifesaving construction of \$10,000.

John also said that Randy Grisell sent him an email that there needs to be a current appraisal done on the State Theater, possible cost of \$500 give or take.

Motion by Jamie Warren to accept Duane West gift of the State Theater and for renovation to begin in 2017, with the City of Garden City \$50,000 and \$10,000 constructions. The motion was seconded by Alyssa Benavidez.

Vote: Approval 3 – Jamie Warren, Anna Urrutia, Alyssa Benavidez  
Oppose 1 – Myca Bunch

**VI. Old Business**

- VII. Executive Session – Recreation Board will go into executive session at 5:30pm for the purpose for discussing personnel, contract and/or real property. The Recreation Board will reconvene into open session at 6pm.**

Motion by Myca Bunch to go into executive session for one (1) hour for the purpose of discussing real property. The motion was seconded by Anna Urrutia. Motion carried with all in favor.

Went into executive session at 5:16pm.

Motion by Myca Bunch to come out of executive session at 5:47pm, seconded by Alyssa Benavidez. Motion carried with all in favor.

No Action Taken.

**Garden City Recreation Commission Questions and Comments**

**VIII. Adjournment**

Motion by Anna Urrutia to adjourn the meeting. Seconded by Jamie Warren. The meeting adjourned at 7:09pm.

Terri Hahn  
Secretary

Approved 05/29/2015



# Garden City Recreation

310 N. 6<sup>th</sup>, Garden City, Kansas 67846 – Phone: 620-276-1200 Fax: 620-276-1203 – email: [gcrec@garden-city.org](mailto:gcrec@garden-city.org)

## REVISED AGENDA

Rescheduled Regular Meeting  
Friday, May 29, 2015 @ 12pm., Noon  
2925 E. Mary Street

- 
- I. **Call Meeting to Order**
  - II. **Approval of Agenda**
  - III. **Consent Agenda**

The following shall stand approved and/or accepted as presented unless action is taken to remove an item from the consent agenda.

    - a. Minutes of Regular Meeting for April 2015
    - b. Financial Reports for April 2015
    - c. Staff Reports
    - d. Participation Reports April 2015
  - IV. **Superintendents Report**
    - a. Big Pool Opening
    - b. Parrot Cove Indoor Waterpark Update
    - c. 2015 SWKR Golf Tournament Dodge City, KS (August 16, 2015 @ 9am)
    - d.
  - V. **New Business**
    1. 2016 Budget Review
    2. Superintendent is asking for approval to remove the North Building at 2925.5 E. Mary Street from the lease agreement.
    3. Approval to change on 2015 Recreation Commission Meetings Calendar, Monday, July 13<sup>th</sup> Special Meeting/Budget Hearing Meeting moved to Thursday, July 16<sup>th</sup> at 12:00pm (Noon).
  - VI. **Old Business**
    - a.
  - VII. **Executive Session** – Recreation Board will go into executive session at \_\_\_\_ for the purpose of discussing Real Property, Personnel and/or Contractual Obligations. The Recreation Board will reconvene into open session at \_\_\_\_ Upon Request by the Superintendent or a Board Member.
  - VIII. **Garden City Recreation Commission Questions & Comments**
  - IX. **Adjournment**

### Next Meeting

*Regular Meeting - Budget Approved/published June 29, 2015 @ 5:15*  
*Special Meeting - Budget Hearing/Certified July 16<sup>th</sup>, 2015 @ 12:00 (Noon)*  
*Regular Meeting July 27, 2015 @ 5:15*  
*Location – 2925 E. Mary Street*

**Garden City Police Department**  
**Police Citizen's Advisory Board Meeting**  
**April 21, 2015**

**Present:** Sergeant Andrew Roush; Connie Bonwell; Mellaina Johnson; Vinh Nguyen; Charles Allen; Stan Kennedy; Lupe Carrasco, Administrative Assistant.

**Not Present:** James R. Hawkins, Chief of Police; Cindy Hernandez; Brandon Neeb; Mellaina Johnson; Mel Galvez; Helen Batchelder; Alicia Weber.

The meeting convened at 1730.

Sergeant Roush led a review of the monthly activity reports.

Sergeant Roush updated the Police Citizen's Advisory Board members on current events in the City of Garden City.

The concealed-carry permit will not be necessary as of June in Kansas.

Sergeant Roush stated five new officers started their employment with the Garden City Police Department and there is currently one Patrol vacancy.

Sergeant Roush stated bicycle training will be held soon to re-certify officers.

Sergeant Roush explained the laws of arrest involving officers.

Stan Kennedy stated Garden City Police Department SWAT Team held a presentation for a Holcomb High School Law Class and the students enjoyed the demonstration.

The meeting adjourned at 1811.