

1. No Agenda

There is no agenda available for this meeting. Please review the minutes.

1.I. Minutes

Documents:

[CITY COUNCIL MINUTES 05-11-2021.PDF](#)

1.I.i. Meeting Materials

Documents:

[COUNCIL PACKET 05-11-2021.PDF](#)

MINUTES OF THE MEETING OF THE CITY COUNCIL
CITY OF CARTHAGE, MISSOURI
May 11, 2021

The Carthage City Council met in regular session on the above date in City Hall Council Chambers at 6:30 P.M. with Mayor Dan Rife presiding. Fire Chief Roger Williams gave the invocation and Police Chief Greg Dagnan led the flag salute.

The following Council Members answered roll call: Ray West, David Armstrong, Ceri Otero, Craig Diggs, Alan Snow, Seth Thompson, Ed Barlow, Juan Topete and Robin Harrison. Council Member Mike Daugherty was absent. City Administrator Tom Short and City Attorney Nate Dally were also present.

The following Department Heads were present: Police Chief Greg Dagnan, Fire Chief Roger Williams, Public Works Director Zeb Carney, Parks & Recreation Director Mark Peterson and City Clerk Traci Cox.

Mr. Armstrong made a motion, seconded by Mr. Snow, to approve the minutes of the April 27, 2021 Council Meeting. Motion carried unanimously.

Mayor Rife presented a proclamation on May 6 for National Day of Prayer.

During Citizen Participation period: CVB Director Callie Myers updated the council on tourism and communications projects. Mrs. Myers reported there had been a dramatic spike in Route 66 visitors. The CVB has received \$160,839 in marketing grants. They are also working to expand events at Food Truck Friday.

Mr. Snow reported the Budget Ways & Means Committee met on May 3 to complete the budget perfection process. The Committee met again on May 10 to approve Council Bills for the CWEP rate adjustment, the contracts with the CVB, the contract with the Over 60 Center and adoption of the Annual Operating and Capital Budget for FY 2022.

Ms. Otero reported the Committee on Insurance, Audit and Claims met on this date and approved the claims. The Assistant City Administrator position was discussed. A committee consisting of Ms. Otero, Mayor Rife, Mr. Short and Chief Dagnan was formed to develop a job description that best meets the needs of the city. Property and casualty quotes are due May 21.

Mr. Barlow reported that the Public Safety Committee is between meetings. The next meeting is scheduled for May 17.

Mr. Topete reported that the Public Services Committee is between meetings. The next meeting is scheduled for May 18.

Mr. Armstrong reported the Public Works Committee met on May 4. Adoption of the 2018 International Fire Code was discussed. The TAP Grant for Phase 5 of the sidewalk improvements on River Street from Fairview to Airport Drive was approved and appears

in C.B. 21-20. A Grizzly Mosquito Sprayer was declared surplus and appears in Resolution 1927. The committee will be accessing bridges in need of repair at the next meeting.

Special Committee and Board Liaison reports were given by Mr. West for the Jasper County Commissioners, the Library Board, and the Over 60 Center, Ms. Otero for the HSTCC and the Carthage Humane Society, Mr. Barlow for the Planning, Zoning & Historical Commission, and Mr. Armstrong for the Civil War Museum.

Mayor Rife reported on the resignation of Judge Pete Lasley effective June 13. Mayor Rife thanked Judge Lasley for his contribution to the Carthage Municipal Court. A committee will be developed to provide information on the upcoming use tax election.

During reports of Council Members, Mr. Armstrong discussed the functions of the Public Works Committee as it related to health matters and streets. He also proposed the formation of a Leadership Committee composed of the Chair of each Standing Committee to meet on a permanent schedule to discuss the long-term strategies and the vision of the city.

Public Works Director Zeb Carney reported the Railroad is in town doing repairs. Schreiber has closed on the property and all documentation has been recorded. River Street bridge replacement should be completed around the end of May.

Parks and Recreation Director Mark Peterson thanked the CVB for expanding Food Truck Friday events. The Civil War Museum ranked high on the Parks Master Plan survey and Mr. Peterson is working with Mrs. Myers to determine ways to increase attendance and showcase the museum.

City Administrator Tom Short reported on the following: Council Bills that came out of the Budget Ways and Means Committee, sales tax revenues, continued discussions regarding a contract with Vision Carthage, discussions on a Social Media Policy, issuance of guidelines for expending ARP funds, the closing of Powers Museum, continued interest in development at Myers Park, a GRO meeting, cessation of weekly Covid calls, meetings regarding the Assistant City Administrator position, increase in the state fuel tax, a Lime Scooter presentation, and a possible grant for training the Planning & Zoning Board.

The Committee on Claims filed a report in the amount of \$2,755,770.48 against the following funds: General Revenue \$220,797.90, Public Health \$14,175.02, Lodging \$9,537.36, Parks/Stormwater \$11,246.20, Fire Protection \$41,067.64, Golf \$2,068.09, Capital Improvements \$118,927.37, Parks & Recreation \$90.44, Myers Park \$14,384.00, Public Facilities \$11,309.50, Library \$50,000.00, Payroll \$262,166.96 and Carthage Water & Electric \$2,000,000.00. Ms. Otero made a motion, seconded by Mr. Armstrong to accept the report and allow the claims. Motion carried.

Under old business, C.B. 21-19 – An Ordinance authorizing the Mayor to execute an Agreement between the City of Carthage and the Carthage Humane Society for animal

control services for the City of Carthage was placed on second reading followed by a roll call vote of 8 yeas and 1 nay. Ayes: Armstrong, Barlow, Diggs, Harrison, Otero, Snow, Thompson and Topete. Nay: West. The Council Bill was approved and numbered Ordinance 21-20.

Under new business, C.B. 21-20 – An Ordinance authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and the Missouri Highway and Transportation Commission providing for a Transportation Alternatives Funds Program Agreement ((TAP-1601(704)) for ADA compliant sidewalks along River Street from Fairview Avenue to Airport Drive, as authorized by the United States Congress, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 with funds to be used for transportation alternatives activities was placed on first reading with no action taken.

C.B. 21-21 – An Ordinance authorizing a special use permit for the operation of a carnival to be located at the Fair Acres Sports Complex (East George Phelps Blvd.) in conjunction with the 2021 Carthage Maple Leaf Parade in the City of Carthage, Jasper County, Missouri was placed on first reading with no action taken.

Mr. Armstrong made a motion, seconded by Mr. Snow, to approve Resolution 1927 – A Resolution approving the declaration as surplus to the City's needs and authorizing the disposition of a 2002 Clarke Grizzly ULV Mosquito Sprayer (Serial # 01609; ID Tag 316). Resolution stands adopted.

During closing comments, Mr. Topete thanked the department leaders and city staff for making the council look good.

Mrs. Harrison made a motion, seconded by Ms. Otero, to adjourn the regular session of the Council Meeting. Motion carried and meeting adjourned at 7:28 p.m.

Dan Rife, Mayor

Traci Cox, City Clerk

MINUTES OF THE MEETING OF THE CITY COUNCIL
CITY OF CARTHAGE, MISSOURI
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During reports of Council Members, Mr. Armstrong discussed the functions of the Public Works Committee as it related to health matters and streets. He also proposed the formation of a Leadership Committee composed of the Chair of each Standing Committee to meet on a permanent schedule to discuss the long-term strategies and the vision of the city. Mr. Snow questioned if the City had any control over the parking signs and mask mandate at the Carthage Public Library.

Public Works Director Zeb Carney reported the Railroad is in town doing repairs. Schreiber has closed on the property and all documentation has been recorded. River Street bridge replacement should be completed around the end of May.

Parks and Recreation Director Mark Peterson thanked the CVB for expanding Food Truck Friday events. The Civil War Museum ranked high on the Parks Master Plan survey and Mr. Peterson is working with Mrs. Myers to determine ways to increase attendance and showcase the museum.

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During closing comments, Mr. Topete thanked the department leaders and city staff for making the council look good.

Mrs. Harrison made a motion, seconded by Ms. Otero, to adjourn the regular session of the Council Meeting. Motion carried and meeting adjourned at 7:28 p.m.

Dan Rife, Mayor

Traci Cox, City Clerk

**COUNCIL AGENDA
CITY OF CARTHAGE, MISSOURI
TUESDAY, MAY 11, 2021
6:30 P.M. – COUNCIL CHAMBERS**

1. Call to Order
2. Invocation
3. Pledge of Allegiance to Flag
4. Calling of the Roll
5. Reading and Consideration of Minutes of Previous Meeting
6. Presentations/Proclamations

1. National Day of Prayer Proclamation

7. Public Comments

(Each person addressing the Council shall state their name and address or the organization or firm represented and is limited to no more than five (5) minutes. The time may be extended by the chair if deemed necessary. Once a person has had their say on a particular issue they are not permitted to once again speak on the issue unless called to answer any further questions by the Council or Chair)

8. Reports of Standing Committees
9. Reports from Special Committees and Board Liaisons
10. Report of the Mayor

11. Reports/Remarks of Councilmembers

(Each Councilmember is limited to no more than two (2) minutes. The time may be extended by the Chair if deemed necessary. Once a Councilmember has had their say on a particular issue they are not permitted to once again speak on the issue unless permitted by the Chair)

12. Administrative Reports
13. Report of Claims Presented Against the City
14. Public Hearings
15. Old Business

1. **C.B. 21-19** – An Ordinance authorizing the Mayor to execute an Agreement between the City of Carthage and the Carthage Humane Society for animal control services for the City of Carthage. (Budget Ways & Means)

16. New Business

1. **C.B. 21-20** – An Ordinance authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and the Missouri Highway and Transportation Commission providing for a Transportation Alternatives Funds Program Agreement ((TAP-1601(704)) for ADA compliant sidewalks along River Street from Fairview Avenue to Airport Drive, as authorized by the United States Congress, in Fixing America's Surface Transportation Act (FAST); 23

U.S.C. §101, §106 and §213; SAFETEA-LU §1404 with funds to be used for transportation alternatives activities. (Public Works Committee)

2. **C. B. 21-21** – An Ordinance authorizing a special use permit for the operation of a carnival to be located at the Fair Acres Sports Complex (East George Phelps Blvd.) in conjunction with the 2020 Carthage Maple Leaf Parade in the City of Carthage, Jasper County, Missouri. (Planning & Zoning Commission)

17. Mayor's Appointments

18. Resolutions

1. **Resolution 1927** – A Resolution approving the declaration as surplus to the City's needs and authorizing the disposition of a 2002 Clarke Grizzly ULV Mosquito Sprayer (Serial # 01609; ID Tag 316).

19. Closing Comments

20. Executive Session

21. Adjournment

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 (VOICE) OR 1-800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HOURS PRIOR TO MEETING

MINUTES OF THE MEETING OF THE CITY COUNCIL
CITY OF CARTHAGE, MISSOURI
April 27, 2021

The Carthage City Council met in regular session on the above date in City Hall Council Chambers at 6:30 P.M. with Mayor Dan Rife presiding. Fire Chief Roger Williams gave the invocation and Police Chief Greg Dagnan led the flag salute.

The following Council Members answered roll call: Robin Harrison, Ray West, David Armstrong, Mike Daugherty, Ceri Otero, Craig Diggs, Alan Snow, Seth Thompson, Ed Barlow and Juan Topete, City Administrator Tom Short and City Attorney Nate Dally were also present.

The following Department Heads were present: Police Chief Greg Dagnan, Fire Chief Roger Williams, Public Works Director Zeb Carney, Parks & Recreation Director Mark Peterson and City Clerk Traci Cox.

Mr. Daugherty made a motion, seconded by Mr. Snow, to approve the minutes of the April 13, 2021 Council Meeting. Motion carried unanimously.

No citizens were present during the Citizen Participation period.

Mr. Snow reported the Budget Ways & Means Committee met on April 19-21 to review the budget for Fiscal Year 2022. The committee ran out of time to complete discussion of the budget perfection, so a special meeting will be held on May 3 at 6:00 p.m.

Ms. Otero reported the Committee on Insurance, Audit and Claims met on this date and approved the claims. Job descriptions for an Assistant City Administrator and a Police Department Team Policing/Training Officer were reviewed. Ms. Otero made a motion, seconded by Mr. Armstrong, to approve the Team Policing/Training Officer position. Motion carried. The Assistant to the City Administrator job description is not ready for approval as details are still being worked out. The Committee did approve requesting the Budget Committee appropriate sufficient funds in the FY 2022 Budget for the position within the salary range of Grade Q.

Mr. Barlow reported that the Public Safety Committee is between meetings. The next meeting is scheduled for May 17.

Mr. Topete reported that the Public Services Committee is between meetings. The next meeting is scheduled for May 18.

Mr. Armstrong reported the Public Works Committee is between meetings with the next meeting scheduled for May 4.

Special Committee and Board Liaison reports were given by Ms. Otero for the Humane Society, Mr. Diggs for the Arbor Day presentation, and Mr. Armstrong for the Civil War Museum.

Mayor Rife reported on being approached by a 2nd Grade Teacher for a class that was in the park on a field trip requesting the city staff that was present to introduce themselves and discuss their responsibilities with the city.

During reports of Council Members, Ms. Otero discussed the Arbor Day Celebration at Columbian, Mr. Topete thanked the board leaders, department heads and staff for their involvement and hard work.

Police Chief Greg Dagnan reported the 2022 Marian Days festivities have been cancelled.

Public Works Director Zeb Carney reported the Fairview crossings have been repaired by the railroad.

Parks and Recreation Director Mark Peterson thanked Ms. Otero and Mr. Diggs for attending the Arbor Day Event.

City Administrator Tom Short reported on the following: budget hearings, Special Budget Meeting scheduled for May 3, a meeting with Visit Carthage, Assistant City Administrator job description, hiring a consultant regarding the ARP funds, current interest in possible development at Myers Park, and the contract with Carthage Humane Society and their financials.

The Committee on Claims filed a report in the amount of \$817,736.96 against the following funds: General Revenue \$57,476.67, Public Health \$134,008.94, Public Safety \$1,395.00, Parks/Stormwater \$257,066.34, Fire Protection \$233.81, Golf \$3,373.22, Capital Improvements \$72,831.95 and Payroll \$291,351.03. Ms. Otero made a motion, seconded by Mr. Armstrong to accept the report and allow the claims. Motion carried.

Under old business, C.B. 21-17 – An Ordinance authorizing the Mayor to execute a Contract between the City of Carthage and Sprouls Construction, LLC for storm water improvements in the Phelps subdivision was placed on second reading followed by a roll call vote of 10 yeas and 0 nays. Ayes: Armstrong, Barlow, Daugherty, Diggs, Harrison, Otero, Snow, Thompson, Topete, and West. The Council Bill was approved and numbered Ordinance 21-18.

C.B. 21-18 – An Ordinance rezoning certain property located at 1306 West Central Avenue (Boggess and Graul Addition, Lot # 29), in the City of Carthage, Missouri from District A, 'Residential' to District E, 'General Business' as requested by Connie Lynn Hobson-Grinstead was placed on second reading followed by a roll call vote of 10 yeas and 0 nays. Ayes: Armstrong, Barlow, Daugherty, Diggs, Harrison, Otero, Snow, Thompson, Topete, and West. The Council Bill was approved and numbered Ordinance 21-19.

Under new business, C.B. 21-19 – An Ordinance authorizing the Mayor to execute an Agreement between the City of Carthage and the Carthage Humane Society for animal control services for the City of Carthage was placed on first reading. Mr. Barlow made a motion, seconded by Mr. Diggs, to strike “in a timely manner” from Item #13. Motion failed 4-6. Nay votes were cast by Armstrong, Daugherty, Harrison, Otero, Snow and Topete.

Mr. Daugherty made a motion, seconded by Ms. Otero, to approve the Mayor’s appointment of Tymon Bay to the Police and Fire Pension Committee until November 2022. Motion Carried.

During closing comments, Mr. West and Mr. Topete thanked staff for their hard work, Mr. Snow thanked Mr. Thompson for his presentation to the GRO Committee, and Mr. Barlow thanked Chief Williams for the good weather report.

Mr. Topete made a motion, seconded by Mr. Daugherty to adjourn the regular session of the Council Meeting. Motion carried and meeting adjourned at 7:11 p.m.

Dan Rife, Mayor

Traci Cox, City Clerk

***PRESENTATIONS/
PROCLAMATIONS***

PROCLAMATION

WHEREAS, the first Thursday in May, 2021 A.D. has been designated National Day of Prayer, and

WHEREAS, the theme for 2021 is "Love, Life, and Liberty", and

WHEREAS, the work of several churches of the area has greatly enriched and strengthened the civic bonds and served the spiritual and physical needs of our community, and

WHEREAS, "in agreement with the Carthage Ministerial Alliance, we decree that Jesus is Lord over the City of Carthage, Missouri", and

NOW, THEREFORE, I, Dan Rife, Mayor of Carthage, Missouri, declare the day of May 6, 2021 as

NATIONAL DAY OF PRAYER

in the City of Carthage. I encourage all citizens of our fair city to recognize the work of the Ministerial Alliance and congregations which have contributed so much to the well-being of our community.

A handwritten signature in black ink, appearing to read "Dan Rife", written over a horizontal line.

Dan Rife
Mayor

***PUBLIC
HEARINGS***

***OLD
BUSINESS***

COUNCIL BILL NO. 21-19

ORDINANCE NO. _____

An Ordinance authorizing the Mayor to execute an Agreement between the City of Carthage and the Carthage Humane Society for animal control services for the City of Carthage.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CARTHAGE, JASPER COUNTY, MISSOURI as follows:

SECTION I: The Mayor of the City of Carthage is hereby authorized to enter into an agreement with the Carthage Humane Society for animal control for the fiscal year 2021-2022, a copy of which is agreement is attached hereto and incorporated herein as if set out in full.

SECTION II: This ordinance shall take effect and be in force from and after its passage and approval.

PASSED AND APPROVED THIS _____ DAY OF _____, 2021.

Dan Rife, Mayor

ATTEST:

Traci Cox, City Clerk

Sponsored by: Budget Committee



CONTRACT

THIS AGREEMENT entered into this _____ day of _____ 20____, by and between the City of Carthage hereinafter referred to as "Government" and the **Carthage Humane Society, Inc.**, a corporation organized under the laws of the State of Missouri, hereinafter referred to as "CHS".

WITNESSETH:

WHEREAS, CHS operates an animal shelter at which it receives and cares for animals; and adopts animals; and

WHEREAS, the Government may, in the enforcement of its duties with respect to animal control in its jurisdiction through an animal control officer, law enforcement officer, or health official, from time-to-time pick up various small animals which must be sheltered, fed, and rehomed; and

WHEREAS, residents of the Government bring small animals to CHS or to the Government for transport to the CHS, and CHS provides care for these animals for the benefit of Government.

WHEREAS, the CHS and Government desire to enter into an agreement of mutual benefit.

NOW, THEREFORE, in exchange of the premises contained herein and in good and valuable consideration exchanged between CHS and Government, the parties hereto agree to the following:

1. CHS agrees to receive at its Shelter all live dogs or cats found within Government's jurisdiction, which are delivered to and by any employee of Government, from and after the effective date of this Contract; and to shelter, feed, and rehome said animals as provided for in this Contract. CHS reserves the right to refuse animals due to overcrowding, as defined by the Department of Agriculture housing standards, or other emergency including but not limited to communicable disease outbreak or loss of heating/cooling during extreme weather conditions as defined by Department of Agriculture temperature standards. All rules or regulations of the Department of Agriculture must be followed at all times.

2. CHS shall keep and maintain its Shelter in a clean, sanitary condition at all times. It shall properly care for and protect and harbor all animals delivered to it as herein provided in a humane and decent manner. All animals delivered to CHS by Government shall be kept and sheltered in accordance with policies set by CHS per Department of Agriculture guidelines.

3. Animals quarantined for rabies/bite hold shall be sheltered by CHS or at a veterinary hospital and subsequently transferred to CHS and shall be kept for a period of time as determined by CHS, but not less than seven (7) days. Said rabies suspect animals shall be released only after payment of veterinary and/or confinement fees at CHS upon authorization by Government. CHS shall be compensated at the rate of Fifteen and 0/100 (\$15.00) dollars per day of confinement. Further, Government shall reimburse CHS the cost of preparation of the specimen for rabies examination, delivery of any said specimen to a Health Department courier or to the Missouri

Department of Health, in an amount not to exceed Twenty-six dollars and 87/100 (\$26.87) dollars per specimen. In addition, Government shall reimburse CHS for animals confined by Government pending court cases, owner arrested or owner hospitalized shall be billed Fifteen and 00/100 (\$15.00) dollars a day to be billed monthly with regular monthly invoice to Government. In addition, in the event CHS incurs any veterinary costs due to an injured or sick quarantined animal delivered by Government, CHS shall bill the cost of such veterinary care to the Government to be billed monthly with regular monthly invoice to Government.

4. CHS shall make every reasonable effort to determine the ownership of all animals delivered to its Shelter under the terms hereof and shall further make every reasonable effort to inform the owners of said animals of the fact that their animal is in the custody and the conditions that need to meet to regain custody of such animals.

5. CHS shall keep a daily log, in mutual agreed format, of each animal delivered to and by the Government under the terms of this Agreement, and each animal shall be identified on such log by some descriptive means and the disposition of such animal shall be recorded so that all times the parties shall have and maintain a record of all animals received and the disposition thereof. Said log shall be open to the inspection by Government at all reasonable times.

6. CHS will not accept ownership of injured or ill animals, except with prior approval. CHS will not accept ownership of deceased animals.

7. CHS will not accept stray animals from citizens of Government unless brought to CHS by a Government Animal Control Officer or other authorized agent, or unless Government authorized agent gives prior approval for the citizen to relinquish such animal. CHS will bill the Government monthly for any additional services provided herein in sufficient detail so that Government may verify charges.

8. Any dog that the Government has classified as a "dangerous" dog, or deemed a "potentially dangerous dog", may not be brought to the CHS Shelter. The Government cannot bring any cat classified and behaving as feral to the CHS Shelter.

9. In consideration of the services to be rendered hereunder to the Government, the Government agrees to pay CHS the yearly sum of Thirty-six thousand and 00/100 (\$36,000.00) dollars, appropriated by the annual budget of the Government, which shall be paid in monthly payments of three- thousand and 00/100 (\$3000.00) dollars per month during the time that this agreement is in force and effect. This sum of thirty-six thousand and 00/100 (\$36,000.00) dollars, for the service as described herein, is with a maximum of three- hundred and sixty (360) animals per year. Any animals, dog or cat, the Government delivers to CHS for care in excess of three hundred and sixty (360) will be charged at a rate of eighty-five dollars (\$85.00) per animal.

10. CHS agrees that the Shelter facility shall be maintained in accordance with reasonable standards adopted by and under the direction of the Carthage Humane Society Board of Directors. CHS shall operate the Shelter and provide care for all animals in compliance with all State and Federal regulations applicable to such facility. CHS shall make the Shelter facilities available during regular business hours for inspection by Government and/or its designee to monitor compliance with this Agreement. CHS agrees that it will provide to the Government, if requested, in a timely manner, any copies of inspections of the Shelter completed by any regulatory authority having jurisdiction over the facility.

11. CHS agrees to receive at its Shelter on Mondays, 8:00 am through 12:00 pm CST, and Tuesday through Saturday 9:00 am through 4:00 pm CST all live dogs and cats as set forth in this Agreement. CHS agrees to shelter, feed, and care for said animals, without charges to the Government, for any routine animal care services that may be incurred by CHS in providing the services set forth herein. All dogs and cats, upon intake, will receive core vaccinations as required by the Missouri Department of Agriculture, additionally all animals will be spayed or neutered after a minimum Seven (7) day hold and prior to being adopted.

12. Termination of the Agreement may occur prior to the date agreed upon by the parties herein in the following manner;

a. Either party, at any time, upon one hundred and eighty (180) days written notice, may terminate this Agreement.

b. If either Party fails to comply with the terms of this Agreement, the Parties may terminate this Agreement by providing ten (10) days written notice of their intent to terminate and specify the event of default. In the event the default is not cured within thirty (30) days, the Party shall be entitled to terminate this Agreement. The Government shall be liable only for costs incurred to and until the effective date of termination.

13. CHS agrees to provide the Government with written quarterly financial statements in a timely manner.

14. This Agreement may be amended at any time by writing approved by CHS and the Government.

15. This Agreement shall be binding upon the parties' successors and assigns.

16. This Agreement shall be renewed for successive fiscal years unless terminated in writing, by either party, or at least thirty (30) days prior to the beginning of any calendar year.

17. The Government will appoint a City Liaison from the City Council to attend all meetings of the CHS Board. The Liaison will serve as a channel for communication between CHS and the Government to provide input to the work of CHS when necessary; and communicates CHS's needs and preferences to the Government.

Signed on this _____ day of _____ 20____

By: _____
Government Signature

Government Printed Name

ATTEST:

City Clerk

By:

Carthage Humane Society Signature

Carthage Humane Society Printed Name

***NEW
BUSINESS***

COUNCIL BILL NO. 21-20

ORDINANCE NO. _____

An Ordinance authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and the Missouri Highway and Transportation Commission providing for a Transportation Alternatives Funds Program Agreement ((TAP-1601(704)) for ADA compliant sidewalks along River Street from Fairview Avenue to Airport Drive, as authorized by the United States Congress, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 with funds to be used for transportation alternatives activities.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CARTHAGE, JASPER COUNTY, MISSOURI as follows:

SECTION I: The Mayor of the City of Carthage is hereby authorized to execute on behalf of the City of Carthage, Missouri an Agreement with the Missouri Highway and Transportation Commission providing for a Municipal Agreement for TAP-1601(704) for ADA compliant sidewalks along River Street from Fairview Avenue to Airport Drive, as authorized by the United States Congress, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 with funds to be used for transportation alternatives activities, a true copy of which is attached hereto and incorporated herein as if set out in full.

SECTION II: This ordinance shall take effect and be in force from and after its passage and approval.

PASSED AND APPROVED THIS _____ DAY OF _____, 2021.

Dan Rife, Mayor

ATTEST:

Traci Cox, City Clerk

Sponsored by: Public Works Committee

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 03/17 (MWH)
Modified:

CFDA Number: 20.205
CFDA Title: Highway Planning and Construction
Award name/number: TAP – 1601(704)
Award Year: 2021
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ALTERNATIVES FUNDS
PROGRAM AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Carthage (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 funds to be used for transportation alternatives activities. The purpose of this Agreement is to grant the use of such transportation enhancement funds to the City.

(2) LOCATION: The transportation alternatives funds which are the subject of this Agreement are for the project at the following location: ADA compliant sidewalks along River Street from Fairview Avenue to Airport Drive

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments

made to the City from future payments to the City. The City may not be eligible for future Transportation Alternatives Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's Southwest District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The

City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement. If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 64 percent not to exceed \$285,468.09. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not

be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business

enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) OMB AUDIT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by City on _____(DATE)

Executed by Commission on _____(DATE)

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF CARTHAGE

Title _____

By _____
Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

Exhibit A - Location of Project



Exhibit B – Project Schedule

Project Description: TAP-1601(704), River Street, from Fairview Avenue to Airport Drive

Task	Date
Date funding is made available or allocated to recipient	Apr 2021
Solicitation for Professional Engineering Services (advertised)	May 2021
Engineering Services Contract Approved	Oct 2021
Conceptual Study (if applicable)	
Preliminary and Right-of-Way Plans Submittal (if Applicable)	Apr 2022
Plans, Specifications & Estimate (PS&E) Submittal	Oct 2022
Plans, Specifications & Estimate (PS&E) Approval	Dec 2022
Advertisement for Letting	Jan 2023
Bid Opening	Feb 2023
Construction Contract Award or Planning Study completed (REQUIRED)	Mar 2023

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

Exhibit C

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

Exhibit C

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

Exhibit C

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

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will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

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will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

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VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

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"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

Exhibit C

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

Exhibit C

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Exhibit C

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

COUNCIL BILL NO. 21-21

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A SPECIAL USE PERMIT FOR THE OPERATION OF A CARNIVAL TO BE LOCATED AT THE FAIR ACRES SPORTS COMPLEX (EAST GEORGE PHELPS BLVD.) IN CONJUNCTION WITH THE 2020 CARTHAGE MAPLE LEAF PARADE IN THE CITY OF CARTHAGE, JASPER COUNTY, MISSOURI.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CARTHAGE, JASPER COUNTY, MISSOURI as follows:

SECTION I: A public hearing was held by the Planning, Zoning and Historic Preservation Commission May 03, 2021. The Commission determined that a Special Use Permit will conform to the intent and purpose of the Code of Carthage, that neighboring property will not be unnecessarily injured and that substantial justice will be done.

SECTION II: The Commission has recommended, and the City Council does hereby grant and issue a Special Use Permit for the operation of a Carnival in conjunction with the Carthage Maple Leaf Parade from Wednesday October 13, 2021 through Saturday October 16, 2021, located on real estate described as:

CAR MISC S1/2 SW EX RDS & EX COM SW COR SW SW N 58.78' E 30.01' N 324.18' E 15.01' TO POB E 400.19' S 337.97' W 307.93' N 45 DEG W 130.32' N 243.88' TO POB.

Commonly known as The Fair Acres Sports Complex, East George Phelps Blvd., City of Carthage, Jasper County, Missouri.

SECTION III: Said Special Use Permit is granted in accordance with Chapter 25-251 (1) of the Code of the City of Carthage. Said Special Use Permit granted under this section shall automatically terminate at the conclusion of the 2020 Maple Leaf activities. Failure to purchase a merchants license or business license, for those businesses required to purchase such a license, shall also be prima facia evidence of cessation of the permitted use.

SECTION IV: This Ordinance shall take effect and be in force from and after its passage and approval.

PASSED AND APPROVED THIS _____ DAY OF _____, 2021.

ATTEST:

Dan Rife, MAYOR

Traci Cox, CITY CLERK

Sponsored by: Planning & Zoning Commission

***MAYOR'S
APPOINTMENTS***

RESOLUTIONS

RESOLUTION NO. 1927

A RESOLUTION APPROVING THE DECLARATION AS SURPLUS TO THE CITY'S NEEDS AND AUTHORIZING THE DISPOSITION OF A 2002 CLARKE GRIZZLY ULV MOSQUITO SPRAYER (SERIAL # 01609; ID TAG 316).

WHEREAS, City Department Heads exercise direct supervision over inventories of supplies, and the sale, trade, or disposition of surplus supplies and equipment belonging to the City; and

WHEREAS, the Purchasing Officer, is responsible (with Council approval) for the disposition or sale of salvage, obsolete, or surplus materials, to prevent deterioration and value loss of no longer used materials, and to reduce storage costs; and

WHEREAS, the Public Work Director has discussed, and the Public Works Committee recommends, declaring the above listed equipment as obsolete and surplus to the City's needs for consideration by the full City Council of declaring such items as surplus and obsolete.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CARTHAGE, JASPER COUNTY, MISSOURI, THE MAYOR CONCURRING HEREIN, AS FOLLOWS:

That the aforesaid **2002 CLARKE GRIZZLY ULV MOSQUITO SPRAYER (SERIAL # 01609; ID TAG 316)** is determined and declared to be obsolete and surplus to the City's needs and is hereby authorized for disposition via donation to another local government.

PASSED AND APPROVED THIS _____ DAY OF _____, 2021.

Dan Rife, Mayor

ATTEST:

Traci Cox, City Clerk

Sponsor: Public Works Committee

***MINUTES
STANDING
COMMITTEES***

COMMITTEE ON INSURANCE/AUDIT AND CLAIMS
TUESDAY, APRIL 27, 2021
5:00 p.m.

COMMITTEE MEMBERS PRESENT: Ceri Otero, David Armstrong and Craig Diggs. Robin Harrison was absent.

OTHER COUNCIL MEMBERS: Mayor Dan Rife and Ed Barlow

OTHERS PRESENT: City Administrator Tom Short, City Clerk Traci Cox, Police Chief Greg Dagnan, Parks & Recreation Director Mark Peterson

Chair Ceri Otero called the meeting to order at 5:00 P.M.

OLD BUSINESS:

Approval of minutes from previous meeting: On a motion by Mr. Diggs, the minutes of the April 13, 2021 meeting were approved 4-0.

Review and approval of the Claims Report: The Committee discussed items regarding the Claims Report. Mr. Armstrong moved to approve the claims. Motion carried 4-0.

NEW BUSINESS:

1. Consider and Discuss Job Description for Team Policing/Training Officer.

Chief Dagnan discussed the need for creating the new position and job duties. Mr. Armstrong made a motion to approve the job description and forward to council. Motion carried.

Robin Harrison arrived at 5:08 p.m.

2. Consider and Discuss Job Description for Assistant to the City Administrator.

Mr. Short explained the position would assist the City Administrator and assume some of the duties of the City Administrator going forward. Ms. Otero had drafted a memo describing her approach to creating the position and discussed the need for succession planning. She suggested changing the title to Assistant City Administrator, assign the salary to Grade Q, change the FLSA status to exempt and change the supervision to the Mayor and Council. Mr. Short explained an ordinance would need to be approved by council to adopt the new position. Mr. Armstrong discussed the need to continue to develop the job description from draft to fruition by following the guidelines of temporarily promoting an employee as described in the Personnel Policy Manual Section 3.06 (5). Mr. Diggs discussed the growth in the community and the need for succession planning to protect the city by placing someone in the position to gain knowledge. Since the council doesn't really know what the job requirements will be, he felt it could be beneficial for the temporary promotion. Mayor Rife felt more time was needed to determine chain of command and whether to proceed with a temporary promotion or passage of an Ordinance to create a permanent position. The FY 2022 Budget is scheduled for perfection at the May 10 Budget Ways & Means Committee meeting, therefore the committee felt the FY 2022 Budget should include wages for the position placed within Grade Q. Points would need to be assessed by HR to

determine proper placement. Mr. Diggs moved to request the Budget Ways and Means Committee increase appropriations for the position in the FY 2022 Budget to allow for a salary within Grade Q. Motion carried.

3. **Staff Reports:** Ms. Cox reported she had spoken with a few banks regarding CD interest rates and would be moving funds to CD's since they are drawing a higher interest rate than MOSIP.

ADJOURNMENT: Mrs. Harrison made a motion to adjourn at 6:12 PM Motion carried 4-0.

Traci Cox

SPECIAL BUDGET WAYS & MEANS COMMITTEE
MONDAY, MAY 3, 2021 5:30 P.M.
CITY HALL COUNCIL CHAMBERS

MEMBERS PRESENT: Alan Snow, Ed Barlow and Ray West. Juan Topete was absent.

OTHERS PRESENT: Mayor Dan Rife, City Administrator Tom Short, Fire Chief Roger Williams, Parks & Recreation Director Mark Peterson, City Clerk Traci Cox, IT Administrator Kevin Kinsey, Assistant Police Chief Bill Hawkins, Council Members Seth Thompson, David Armstrong, and Craig Diggs, Chuck Bryant and Lora Phelps.

Mr. Snow called the meeting to order at 5:30 P.M.

OLD BUSINESS:

1. **Approval of minutes from previous meeting:** Mr. West made a motion to approve the minutes for the April 21 Budget Hearing. Motion carried 3-0.
2. **Consider and discuss perfection of Fiscal 2022 Annual Operating and Capital Budget:**

The lodging tax contract and communications contract with the CVB were discussed. The lodging tax contract is a pass-through contract and the communications contract for \$60,000 will be split with CWEP. Mr. Barlow moved to approve the contracts and forward to council for approval. Motion carried 3-0.

The contract with the Over 60 Center is the same as in years past. Mr. West moved to forward the contract to council for approval. Motion carried 3-0.

Mr. Barlow moved to table the contract with Vision Carthage. Motion carried 3-0.

Mr. Short discussed the request from CIAC to amend the salaries in General Administration. An additional \$26,346 would be necessary to move the Assistant City Administrator position from Grade M to Grade Q. Mr. Barlow moved to increase the General Administration Salaries by \$26,346. Motion carried 3-0.

Mr. Barlow moved to forward the General Fund revenue projections to council for approval. Motion carried 3-0.

Mr. West moved to forward the General Fund expenditures to council for approval. Motion carried 3-0.

Mr. Barlow moved to increase the Public Health Fund revenues an additional \$3,929 to reflect additional funds from the Region M Grant. Motion carried 3-0.

Mr. Barlow moved to forward revenue projections for the special funds to council for approval. Motion carried. 3-0.

With projected expenditures in Myers Park Fund, it would create a deficit of approximately \$94,000. Mr. Short discussed the need to reduce the expenditure or transfer funds to Myers Park so a deficit is not created. Mr. West moved to amend the expenses requested for the Garrison Avenue Construction from Fairlawn to Airport Drive project from \$515,000 to \$420,000. Motion carried 3-0.

Mr. Barlow moved to forward the special fund expenditure requests to council for approval. Motion carried 3-0.

Mr. Snow discussed the rate adjustments included in the CWEP budget. The overall increase for an average user is \$6.40 per month. Mr. West moved to forward the rate increases to council for approval. Motion carried 3-0.

Mr. Barlow moved to forward the CWEP budget to council for approval. Motion carried 3-0.

NEW BUSINESS:

1. **Staff Reports:** Mr. Short discussed funds the city will receive from the American Rescue Program. The city is estimated to receive \$2.7 million. Staff have begun discussions on how to use the funds. A separate budget process will be used to determine the allocation of the funds.
2. **Other Business** None.

ADJOURNMENT: The meeting adjourned at 6:29 P.M. on motion by Mr. Barlow.

Respectfully submitted,
Traci Cox

PUBLIC WORKS COMMITTEE

Public Works Department 623 E 7th Carthage MO 64836
Tele: (417) 237-7010 Fax: (417) 237-7011

"America's Maple Leaf City"



5-04-21 PUBLIC WORKS COMMITTEE MEETING MINUTES

Committee Members present: David Armstrong, Ray West, Craig Diggs, Mike Daugherty

Staff Members present: Tom Short, City Administrator, Zeb Carney, Director, and Marcia Weng, Public Works Secretary

Citizens: None

The Public Works Committee meeting was called to order at 5:30 p.m. by Chairman David Armstrong.

A motion was made by Mike Daugherty to accept the minutes from the April 6, 2021 Committee meeting. All ayes, motion passed.

Citizen Participation: None.

Old Business: None.

New Business: First item of business was to discuss and consider the adoption of the 2018 International Fire Code. Zeb pointed out the city was deleting the sections on Mobile Food Trucks and Fireworks Stands due to city ordinances already being in place. Mike Daugherty made a motion to take the revised 2018 International Fire Code to council. All ayes, motion carried.

Second item of business was to discuss the TAP agreement for Phase 5, which is the City Sidewalks from the intersections of River and Fairview to Airport Drive on the East side of the street. Grant funds will be used for the approximately \$465,000.00 project. Craig Diggs made a motion to forward the agreement to council for a Council Bill. All ayes, motion carried.

Third item of business was a Resolution for declaring a Grizzly Mosquito Sprayer as surplus and to allow the sprayer to be donated to a local city. The sprayer will be sent to Diamond for use. Mike Daugherty made a motion to declare the sprayer surplus. All ayes, motion carried.

Other Business: None.

Staff Reports:

Zeb reported on the following:

- They are setting the deck on the bridge on River Street. Zeb had pictures for viewing.
- Schreibers closed on their property purchase today. They have picked up their Phase I building permit and paid their plan review fees. They only need to get their Land Disturbance permit.
- Scooter's is coming into Carthage. It will be located at the intersection of Central and Baker on the southwest corner.

- Zeb and Josiah Bayless concocted an emulsified slurry mix and sealed some spots on the North Garrison bridges today. If it holds up, we may be able to get Blevins to help us cover the bridges. This could buy us another 3 years of use. The committee members would like to take a bridge tour before we do anything.
- Schuber Mitchell is getting geared up to start on the Creekside addition. It is out south of the Chapel Estates.
- Zeb and Julie met with 2 developers out of Oklahoma City who are interested in a parcel of land out by Carthage Ford. There is a 20 acre parcel up front, with an 80 acre parcel in back. They are talking about something commercial on the 20 acres with residential going in on the 80 acres.
- Anderson Engineering has been working on our ESRI and has greatly improved maps of our utility lines and services. We do have 2020 Aerial Photography but it hasn't been loaded yet.
- Stan Schmidt has sold his building south of Hardee's. It has been sold to a franchised food service with retail as part of their business.
- They are in the works for 9 individual homes to be put in Rollins Creek.
- The north Tech Center is going to be totally remodeled.

Tom reported on the following:

- Talked to MoDOT about donating the signal at Russell Smith Way and Fir Road. They wouldn't agree to it.
- There is a meeting with MoDOT regarding the drive entrance for the new Pete's on Wednesday.
- Powers Museum is donating their building to the school system.
- ARA money should be coming out in June. There are several ideas for use of the money.
- The TAC committee meeting is May 19th in Carthage.

David Armstrong would like to see the Public Works Committee tackle some more issues regarding the Historical District. Also, he would like to have a comprehensive overview of the city's plans for the future. Where we are in regards to the last plans and where we are headed. He would also like to look into the committee on streets and alleys and reassess the functions of this committee.

Mike Daugherty made a motion to adjourn the meeting at 6:55 p.m. All ayes, motion carried.

***MINUTES
SPECIAL
COMMITTEES
AND BOARDS***

Draft Copy of Minutes Subject to Approval at The Next Meeting

Planning, Zoning, and Historic Preservation Commission
Meeting 3 May 2021

The Planning, Zoning, and Historic Preservation Commission consists of eleven members: Chairman Harry Rogers, Vice Chairman Abi Almandinger, Bill Barksdale, Jim Swatsenbarg, Jim Hunter, and Mark Elliff. Non-Voting Members include Mayor Dan Rife, City Administrator Tom Short and Council Member Liaison Ed Barlow. Staff includes Public Works Director Zeb Carney. There is currently one vacancy on the board.

The May meeting was held in City Council Chambers.

Commission Members Present: Harry Rogers, Abi Almandinger, Jim Swatsenbarg, Jim Hunter, Zeb Carney, Mayor Rife, Tom Short, Ed Barlow, and Mark Elliff.

Also, present: Julie Tilley, Dave Armstrong.

A quorum was present.

Chairman Harry Rogers called the meeting to order at 5:30 p.m.

First order of business involved the minutes of the April 2021 meeting. Minutes were available for review in the packet prior to the meeting. A motion to approve the minutes as written was made by Abi Almandinger and was seconded by Mark Elliff. On a voice vote, all ayes, the motion passed.

Second order of business involved a Special Use Permit request. The request is for the use of Fair Acres Parking Lot east of the YMCA from the Carthage Chamber of Commerce for the Maple Leaf Festival. The Carnival will be returning for this year's event and have used this lot since 2016. Dates of use will be October 10, 2021 through October 17, 2021. A motion to approve the Special Use Permit was made by Jim Swatsenbarg and was seconded by Abi Almandinger. On a voice vote, 4 ayes and one abstention by Mr. Elliff, the motion passed.

Mr. Swatsenbarg asked that on the next meeting's agenda the selection of Officers be added as normally officer changes are made every two years. Chairman Rogers said it would be added.

There were no further items on the agenda.

The next meeting will be June 7, 2021.

Abi Almandinger made a motion to adjourn. That motion was seconded by Jim Hunter. Motion passed and the meeting adjourned.

Respectfully submitted,
Mark Elliff

Minutes
Carthage Tree Board

May 4, 2021
4:00 pm.
Parks Department Office

Tree Board Members Present: Noah Smith, Renae Brownfield, Robert Balek

Members Absent: Bryan Stringer, Jory Mertins

Non-Members Present: Kailey Williams, Jon Skinner, Brian Bradley

The meeting was called to order at 4:01 pm

Renae Brownfield made a motion to accept the minutes from the previous meeting.

Motion passed.

1. Consider and Discuss the June meeting at Fair Acres.

On June 1, Tree Board members will meet at the Parks Department shop at the Fair Acres Sports Complex at 5:45 pm. Volunteers will meet on the west side of the parking lot located by the Fair Acres bus. Mulch will already be there. An event will be created on Facebook a few days before to encourage community involvement. A rain day has been set for a week out on June 8 if inclement weather occurs. Banners are going to be hung on the fences for public awareness.

2. Consider and Discuss a recap of the 2021 Arbor Day event.

Arbor Day 2021 at Columbian Elementary school went great. The tree planted in front of the school is still in good condition. Jon Skinner gave a presentation and then handed out seedlings to each student to take home and plant independently. A demonstration of how to plant a tree was successful.

Meeting Adjourned at 4:55 pm.

***AGENDAS
STANDING
COMMITTEES***

--NOTICE OF MEETING--

SPECIAL BUDGET WAYS & MEANS COMMITTEE

MONDAY, MAY 03, 2021

6:00 P.M.

SECOND FLOOR CONFERENCE ROOM, CITY HALL

326 GRANT ST., CARTHAGE, MISSOURI

--TENTATIVE AGENDA--

OLD BUSINESS

1. Consideration and approval of minutes from previous meeting.
2. Consider and discuss perfection of City's Annual Operating and Capital Budget for Fiscal 2022.

CITIZENS PARTICIPATION

(Citizens wishing to address the Council or Committee should notify the City in advance, and provide the item they wish to address in written format at least 24 hours prior to the meeting to staff@carthagemo.gov. Residents who do not have internet service may call the Clerk's office at 417-237-7000.)

NEW BUSINESS

1. Staff Reports.
2. Other Business.

ADJOURNMENT

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 (VOICE) OF 1-800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HOURS PRIOR TO MEETING.

POSTED: _____

BY: _____

--NOTICE OF MEETING--
PUBLIC WORKS COMMITTEE
May 4, 2021
5:30 PM
CITY HALL
326 GRANT STREET
2ND FLOOR CONFERENCE ROOM

-- AGENDA--

OLD BUSINESS

1. Consideration and approval of minutes from previous meeting

CITIZENS PARTICIPATION

None.

NEW BUSINESS

1. Consider and discuss the 2018 International Fire Code.
2. Consider and discuss the TAP Agreement for City Sidewalks from the intersection of River and Fairview to Airport Drive.
3. Discuss and declare as surplus a Mosquito Sprayer (2002 Clarke Grizzly ULV).

OTHER BUSINESS

1. None.

STAFF REPORTS - Zeb Carney & Tom Short

ADJOURNMENT

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 (VOICE) OR 1-800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HOURS PRIOR TO MEETING.

POSTED: 4/30/2021

BY: Marcia Weng

--NOTICE OF MEETING--

BUDGET WAYS & MEANS COMMITTEE

MONDAY, MAY 10, 2021

5:30 P.M.

**COUNCIL CHAMBERS, CITY HALL
326 GRANT ST., CARTHAGE, MISSOURI**

--TENTATIVE AGENDA--

OLD BUSINESS

1. Consideration and approval of minutes from previous meeting.

CITIZENS PARTICIPATION

(Citizens wishing to address the Council or Committee should notify the City in advance, and provide the item they wish to address in written format at least 24 hours prior to the meeting to staff@carthagemo.gov. Residents who do not have internet service may call the Clerk's office at 417-237-7000.)

NEW BUSINESS

1. Consider & discuss a Council Bill authorizing utility rate adjustments for electric, water and wastewater services as recommended by the Carthage Water & Electric Plant Board for Fiscal year 2022.
2. Consider & discuss a Council Bill authorizing the Mayor to sign an Agreement with the Carthage Convention and Visitors Bureau for tourism services for the City of Carthage for fiscal year 2022.
3. Consider & discuss a Council Bill authorizing the Mayor to sign an agreement with The Carthage CVB for communication enhancements for the City of Carthage for Fiscal year 2022.
4. Consider & discuss a Council Bill authorizing Mayor to execute a contract between the City of Carthage and the Carthage Over 60 Center Inc., for services for fiscal 2021 - 2022.
5. Consider & discuss a Council Bill authorizing adopting the City of Carthage's Annual Operating and Capital Budget for the year ending June 30, 2022.
6. Staff Reports.
7. Other Business.

ADJOURNMENT

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 (VOICE) OF 1-800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HOURS PRIOR TO MEETING.

POSTED: _____

BY: _____

COMMITTEE ON INSURANCE/AUDIT AND CLAIMS
May 11, 2021
5:00 PM
Carthage City Hall Council Chambers

Old Business

1. Consideration and Approval of Minutes from Previous Meeting
2. Review and Approval of the Claims Report
3. Consider and Discuss Assistant City Administrator position.

Citizens Participation

(Citizens wishing to speak should notify Department Head or Committee Chair in advance)

New Business

1. Staff Reports

Adjournment

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 (VOICE) OR 1-800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HOURS PRIOR TO MEETING.

Posted _____

*AGENDAS
SPECIAL
COMMITTEES
AND BOARDS*

John Bartosh
Presiding Commissioner

Tom Flanigan
Eastern District Commissioner

Darieux K. Adams
Western District Commissioner

JASPER COUNTY COMMISSION



302 S. Main ST
Carthage, MO 64836

Carthage: 417-358-0421
Joplin: 417-625-4350

Toll Free: 800-404-0421
Fax: 417+358-0483

COMMISSION AGENDA

MAY 4, 2021

9:00 A.M.

JASPER COUNTY COURTHOUSE ROOM 101

1. CALL TO ORDER
 - PRAYER
 - PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. APPROVAL OF MINUTES
4. PRESENTATIONS
5. REPORTS AND COMMUNICATIONS
6. ELECTED OFFICIALS/CITIZENS REQUESTS
7. COMMISSIONER'S REPORTS
8. UNFINISHED BUSINESS
9. NEW BUSINESS
10. PUBLIC HEARINGS

PUBLIC PARTICIPATION FROM AUDIENCE WHEN ADDRESSED YOU WILL BE ALLOWED THREE MINUTES TO SPEAK.

ELECTED OFFICIALS/CITIZENS WISHING TO BE HEARD UNDER ELECTED OFFICIALS/CITIZENS REQUEST MUST REQUEST TO SPEAK TO COMMISSION BY 4:00 P.M. ON THE FRIDAY PRIOR TO THE COMMISSION MEETING ON TUESDAY. CITIZENS SPEAKING TIME WILL BE LIMITED TO FIVE MINUTES.

THE NEWS MEDIA MAY OBTAIN COPIES OF THIS NOTICE BY CONTACTING:
COMMISSION OFFICE, 302 S. MAIN, COURTHOUSE, ROOM 101, CARTHAGE 417-358-0421

NOTICE POSTED APRIL 30, 2021 AT 4:00 P.M.

(RSMO 610.020)

CARTHAGE TREE BOARD
TUESDAY May 4, 2021
4:00 P.M.
CARTHAGE PARK DEPARTMENT
MUNICIPAL PARK

TENTATIVE AGENDA

1. Consider and Discuss recap of 2021 Arbor Day event.
2. Consider and discuss June meeting at Fair Acres.

ADJOURNMENT

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 OR 1 800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HRS PRIOR TO THE MEETING.

POSTED:

BY:

John Bartosh
Presiding Commissioner

Tom Flanigan
Eastern District Commissioner

Daricus K. Adams
Western District Commissioner

JASPER COUNTY COMMISSION



302 S. Main ST
Carthage, MO 64836

Carthage: 417-358-0421
Joplin: 417-625-4350

Toll Free: 800-404-0421
Fax: 417-358-0483

COMMISSION AGENDA

MAY 11, 2021

9:00 A.M.

JASPER COUNTY COURTHOUSE ROOM 101

1. CALL TO ORDER
 - PRAYER
 - PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. APPROVAL OF MINUTES
4. PRESENTATIONS
5. REPORTS AND COMMUNICATIONS
6. ELECTED OFFICIALS/CITIZENS REQUESTS
 - **County Clerk-Annual Report on Polling Locations**
7. COMMISSIONER'S REPORTS
8. UNFINISHED BUSINESS
9. NEW BUSINESS
10. PUBLIC HEARINGS

PUBLIC PARTICIPATION FROM AUDIENCE WHEN ADDRESSED YOU WILL BE ALLOWED THREE MINUTES TO SPEAK.

ELECTED OFFICIALS/CITIZENS WISHING TO BE HEARD UNDER ELECTED OFFICIALS/CITIZENS REQUEST MUST REQUEST TO SPEAK TO COMMISSION BY 4:00 P.M. ON THE FRIDAY PRIOR TO THE COMMISSION MEETING ON TUESDAY. CITIZENS SPEAKING TIME WILL BE LIMITED TO FIVE MINUTES.

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NOTICE POSTED MAY 6, 2021 AT 4:00 P.M.

(RSMO 610.020)

CORRESPONDENCE

Social Media And The First Amendment, Missouri Sunshine Law, And Records Retention



"A fundamental First Amendment principle is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more."¹ "While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace – the 'vast democratic forums of the internet' in general, and social media in particular."² The internet has changed the way people communicate with each other and how they conduct business, including local governments. While the internet has provided greater transparency and greater public participation, it has also generated a number of questions to consider when public officials and employees utilize this tool.

When the city uses the internet, including social media platforms such as Twitter, Facebook and Instagram, to post about official city business, has the city created a public forum?

It depends. A public forum means that the particular place, event or platform is open to all to present their views. If a forum is truly a public forum, the government generally cannot regulate the speech that takes place there or discriminate between the speakers based on their viewpoints. "To determine whether a public forum has been created, courts look 'to the policy and practice of the government,' as well as 'the nature of the property and its compatibility with expressive activity to discern the government's

intent."³ "Opening an instrumentality of communication 'for indiscriminate use by the general public creates a public forum.'⁴ In general, if the city is using social media platforms to disseminate information only, then more than likely the city has not created a public forum. However, if the city allows for interaction on the social media platform, then it may have created either a public forum or a limited public forum.

Can elected officials block accounts?

It depends. If the social media account is a personal account, as further explained below, then the elected official can more than likely block the account. However, if the account is a forum "public or otherwise – viewpoint discrimination is not

permitted by the government.⁵ Keep in mind that “[r]eplying, retweeting and liking are all expressive conduct that blocking inhibits. Replying and retweeting are messages that a user broadcasts, and, as such, undeniably are speech. Liking a tweet conveys approval or acknowledgment of a tweet and is, therefore, a symbolic message with expressive content.”⁶

Are elected officials’ personal social media platforms a public forum?

They could be. Courts have concluded that although forum analysis does not apply as a whole to the social media platform, it does apply to the “interactive space” in which other users may directly interact with the content of the message.⁷ The courts will look at “how the official describes and uses the account; to whom features of the account are made available; and how others, including government officials and agencies, regard and treat the account.”⁸ If the elected official has a personal social media account where no government business is discussed, access to the account is limited and others view the account as a personal account, then more than likely the court would find that the personal account is a private account. As a practical matter, if the elected official wishes to communicate by social media to constituents about government business, then the elected official should create a separate social media account specifically for government business.

Note that on Jan. 27, 2021, the 8th Circuit Court of Appeals in *Campbell v. Reisch*, determined that Representative Reisch did not act under color of state law because she runs her Twitter account in a private capacity, namely, as a campaigner for political office.⁹ Running for public office is not a state action; it is a private activity. The Court did recognize that personal accounts can morph into public forums; however,



in this case, the Court determined that the tweets made after she was elected did not alter the account as such tweets were too similar to her pre-election tweets. Therefore, because the Court determined that the Twitter account was a private account, Representative Reisch could control who posts on her Twitter page.

If the elected official creates a social media account for government business, what does that mean?

It means that the elected official cannot engage in viewpoint discrimination that results in the intentional, targeted expulsion of individuals from the social media forum as it violates the Free Speech Clause of the First Amendment.



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Can cities discipline employees for posts they make on social media?

Yes, but in order to determine whether an employee should be disciplined, the city would need to balance its interest as an employer to manage the affairs of the city against the first amendment rights of the employee. Specifically, “the Government, as an employer, must have wide discretion and control over the management of its personnel and internal affairs.”¹⁰ In situations on whether to discipline an employee for posts made on social media, the city must balance the right of the employee to speak as a private citizen upon matters of public concern against the interest of the city in ensuring its efficient operation.¹¹ “Whether an employee’s speech addresses a matter of public concern must be determined by the content, form and context of a given statement, as revealed by the whole record.”¹²

Cities can also discipline employees for (1) violating the employer's social media policy, as long as the social media policy does not prohibit protected activities, prohibit speech that is a matter of public concern, or prohibit political or other protected speech; and (2) excessive use of social media during work hours.

What should be included in a city social media policy?¹³

If a city is going to use social media as a platform to interact with the public, then the city should have a social media policy. Some things to consider when drafting a social media policy are:

- Include a purpose statement explaining the purpose of the city's social media platform (i.e., obtain and convey useful information in an expedient manner, etc.) and whether there are any limitations to the interactive component of the social media platform.
- Decide who has the authority to open a social media account on the city's behalf. This person, in most cases, must agree to some type of terms of use agreement in order to open the social media account.
- Appoint an administrator (or team) to oversee and supervise the social media platform. The administrator (or team members) needs to be trained in the terms of the policy and social media laws. Further, any usernames and passwords should only be known by the administrator (or team members). Passwords should be updated when anyone who has access to the site leaves the city or no longer needs access.
- Identify the owner of the social media account and to whom its contents belong.
- Include a statement to address who is making the comments on behalf of the city, which department the person commenting works for, and provide context to images, audio and video, if necessary. If certain types of comments are not permitted, the policy should state what is not permitted. Be careful. It is probably safe to exclude discriminatory content, threats, content that violates copyright or trademark laws, and any content that violates federal, state or local laws.
- A disclaimer should be included that any comment posted by a member of the public is not the opinion of the government.
- A disclaimer should be included that any comment posted may be subject to disclosure under the Missouri Sunshine Law, as well as subject to Missouri Record Retention laws.
- A disclaimer that reserves the right of the administrator (or team member) to remove content that violates the policy or applicable law. If content is removed for violation of the policy or applicable law, then the city should follow the policy diligently.

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- Waiver of liability statement to protect the city from various types of lawsuits such as: defamation, invasion of privacy, breach of contract, violations of due process, etc.
- Lastly, make sure that the comment policy is posted to the social media site or a link to the policy is posted and an acknowledgement statement that the commentor understands and accepts the city's terms of use of the social media platform.

What should be included in an employee usage policy?¹⁴

Social media has become a way of life for most people. The city should have a social media policy that addresses employee usage. Some things that the employee usage policy should address are:

- Determine if social media in the workplace is allowed, prohibited or monitored;
- If social media is allowed, a statement that there is no expectation of privacy while using the city's internet or equipment;
- Personal Accounts – employees should not use their personal accounts to conduct city business (note: this should apply to elected officials as well). If an employee does use their personal accounts to conduct city business, then the records generated must be maintained pursuant to Missouri Record Retention laws, may be subject to Missouri's Sunshine Law, and are considered discoverable information in case of litigation. Further, employees who identify themselves as employees of a particular government should post a disclaimer that any postings or blogs are solely the opinions of the employee and not the employer;
- Include a confidentiality statement that employees are to protect confidential and sensitive government information;
- Avoid overbroad policies as such policies may prohibit employees from speaking on matters of public concern;¹⁵
- Consider whether employees may use city logos, uniforms or equipment in their private posts;
- Enforce social media policy consistently;
- Have social media administrator train employees on the policy; and
- Have employees sign an acknowledgment that they have read the employee usage policy and that they received training for the same.

Are the contents of a city Facebook page public records?

To understand how Missouri's Sunshine law affects Facebook accounts, one needs to understand how Facebook works. When you post a picture on Facebook, it is uploaded to Facebook's servers. Though you see it on your screen, the data is not stored on your computer. This is important because,



in Missouri, records are public if they are retained by a governmental body. In other states, the open records laws are largely based on the purpose of the record, not the possession of it. In Missouri, if you store a picture of your cat on your city computer, that picture is a public record and subject to the Sunshine Law.

The Sunshine Law does not require a city to retain records that are governed by Missouri's Record Retention law.¹⁶ Missouri's Records Retention law has a different definition of what is a record. Under that definition, a record is something "made or received pursuant to law or in connection with the transaction of official business."¹⁷ In addition, the Records Retention law does not carry a penalty for its violation.

If a city puts content on Facebook, the original content is still held by the city, so it is a record both under the Sunshine Law and the Records Retention law. The Facebook page itself is not in the possession of the city, so it is not subject to the Sunshine Law. But since it was created to transact public business, it is subject to the Records Retention law. Likewise, comments posted on a city's Facebook page by the general public have never been in the possession of the city. But, they may be considered the transaction of public business.

Capturing Facebook pages, indeed any internet page is problematic. Facebook provides an "Archive" feature that saves material, but still, such material is retained on the Facebook servers. It is possible to manually download pages, comments and images. However, content is constantly changing. If someone posts a comment, they may take it down shortly thereafter. There is software that can constantly archive material, but it can make having a Facebook page prohibitively expensive for small cities.

Can comments be deleted from a city Facebook page? Must they be archived?

It depends on how the page was created and what rules it operates under. The safest advice is not to allow any public comments on a city page. In this way, the page remains an instrument purely for speech by the city and is not a public forum. If comments are allowed, then rules can be established as to what sort of comments are allowed. These must not discriminate between viewpoints. So you could not have a rule that prohibits saying bad things about the city. However, you



can limit the comments to certain topics. You should also have a policy about how long such comments will be retained on the page.

The Missouri Secretary of State takes the position that all postings on government-created sites are public records and therefore should be retained.¹⁸ Therefore, under that analysis, the comments should be retained. As discussed above this can be difficult. If as the Secretary of State recommends, posts are archived locally, then they clearly are subject to the Sunshine Law.

If comments are going to be allowed, the city should establish rules of conduct. What can and cannot be said, again, without discriminating based on viewpoint. Without such a policy, there is very little ability to regulate the comments. Specific and direct threats against person and property can be removed. But comments that are less specific generally cannot. Obscene language can be removed, but since most social media providers already prohibit that, the best course of action is to report the comment to them.

Are Zoom meetings public records, and must they be recorded?

In the last year, more and more public bodies have turned to holding virtual meetings using software such as Zoom, Facebook Live, Go-to-Meeting or Microsoft Teams. Each of these applications have the ability to record the meeting. Some, such as Facebook Live, may be recording it without your knowledge. Under the Sunshine Law, if such meetings are recorded and saved by the city, they may be requested to be disclosed.¹⁹ However the Sunshine Law never requires a city to create a record, so the Sunshine Law does not require such meetings to be recorded. Likewise, the Records Retention law does not require a record to be created, but if it is it should be retained.

Can the public record electronic meetings?

Most applications allow the host (that is the city) to decide if participants can use the record feature on the application. The

Sunshine Law specifically provides that “A public body shall allow for the recording by audiotape, videotape, or other electronic means of any open meeting.”²⁰ Although this has never been applied to this sort of recording, reading the statute literally and construing it in favor of openness, such recording should be allowed upon request. 🌱

Jennifer Baird is a partner with Lauber Municipal Law, LLC, and practices in the areas of general municipal law, personnel, planning and development, and economic development. She serves as the city attorney for multiple Missouri cities. Jennifer can be reached at (816) 525-7881, or via email at jbaird@laubermunicipal.com.

Nathan Nickolaus is an attorney with Lauber Municipal Law, LLC. Mr. Nickolaus received his B.A., 1985, from Westminster College and J.D., 1988, from the University of Missouri-Columbia, and a Masters of Public Administration from Indiana State University in 2016. He is the former city counselor for Jefferson City. He is the former general counsel for the Missouri Department of Economic Development. He is a 2012 recipient of the Lou Czech Award.

Endnotes: Due to print space restrictions, endnotes are available by request. Contact MML at (573) 635-9134 or info@mocities.com to request this article with full endnotes.



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"Rosenberg's Rules of Order"

(Simple Rules of Parliamentary Procedure for the 21st Century)

Introduction

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules - "Robert's Rules of Order" - which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time, and for another purpose. If one is chairing or running a Parliament, then "Robert's Rules of Order" is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of, say, a 5-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of "Rosenberg's Rules of Order."

What follows is my version of the rules of parliamentary procedure, based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars: (1) Rules should establish order. The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings. (2) Rules should be clear. Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate. (3) Rules should be user friendly. That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process. (4) Rules should enforce the will of the majority while protecting the rights of the minority. The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, and fully participate in the process.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the Chair of the body who is charged with applying the rules in the conduct of the meeting. The Chair should be well versed in those rules. The Chair, for all intents and purposes, makes the final ruling on the rules every time the Chair states an action. In fact, all decisions by the Chair are final unless overruled by the body itself.

Since the Chair runs the conduct of the meeting, it is usual courtesy for the Chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the Chair should not participate in the debate or discussion. To the contrary, the Chair as a member of the body has the full right to participate in the debate, discussion and decision-making of the body. What the Chair should do, however, is strive to be the last to speak at the discussion and debate stage, and the Chair should not make or second a motion unless the Chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. And each agenda item can be handled by the Chair in the following basic format:

First, the Chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The Chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the Chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the Chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the Chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the Chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the Chair may limit the time of public speakers. At the conclusion of the public comments, the Chair should announce that public input has concluded (or the public hearing as the case may be is closed).

Fifth, the Chair should invite a motion. The Chair should announce the name of the member of the body who makes the motion.

Sixth, the Chair should determine if any member of the body wishes to second the motion. The Chair should announce the name of the member of the body who seconds the motion. (It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the Chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the Chair.)

Seventh, if the motion is made and seconded, the Chair should make sure everyone understands the motion. This is done in one of three ways: (1) The Chair can ask the maker of the motion to repeat it. (2) The Chair can repeat the motion. (3) The Chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the Chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the Chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the Chair takes a vote. Simply asking for the "ayes", and then asking for the "nays" normally does this. If members of the body do not vote, then they "abstain". Unless the rules of the body provide otherwise (or unless a super-majority is required as delineated later in these rules) then a simple majority determines whether the motion passes or is defeated.

Tenth, the Chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the Chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days notice for all future meetings of this body."

Motions in General

Motions are the vehicles for decision-making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the Chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member's desired approach with the words: "I move" So, a typical motion might be: "I move that we give 10-day's notice in the future for all our meetings."

The Chair usually initiates the motion by either (1) Inviting the members of the body to make a motion. "A motion at this time would be in order." (2) Suggesting a motion to the members of the body. "A motion would be in order that we give 10-day's notice in the future for all our meetings." (3) Making the motion. As noted, the Chair has every right as a member of the body to make a motion, but should normally do so only if the Chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a 5-member committee to plan and put on our annual fundraiser."

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion which is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

"Motions to amend" and "substitute motions" are often confused. But they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a "motion to amend" or a "substitute motion" is left to the chair. So that if a member makes what that member calls a "motion to amend", but the Chair determines that it is really a "substitute motion", then the Chair's designation governs.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The Chair can reject a fourth motion until the Chair has dealt with the three that are on the floor and has resolved them.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed first on the last motion that is made. So, for example, assume the first motion is a basic "motion to have a 5-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a 5-member committee to plan and put

on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows:

First, the Chair would deal with the third (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion passed, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) failed then the Chair would proceed to consideration of the second (now, the last) motion on the floor, the motion to amend.

Second, if the substitute motion failed, the Chair would now deal with the second (now, the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be 5 members or 10 members). If the motion to amend passed the Chair would now move to consider the main motion (the first motion) as amended. If the motion to amend failed the Chair would now move to consider the main motion (the first motion) in its original format, not amended.

Third, the Chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (5-member committee), or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the Chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the Chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the Chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

A motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on "hold". The motion can contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the Chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a 2/3 vote of the body. Note: that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the motion to limit debate requires a 2/3 vote of the body. A similar motion is a **motion to object to consideration of an item.** This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a 2/3 vote.

Majority and Super-Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a 7-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which, effectively, cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a 2/3 majority (a super-majority) to pass:

Motion to limit debate. Whether a member says "I move the previous question" or "I move the question" or "I call the question" or "I move to limit debate", it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a 2/3 vote to pass.

Motion to close nominations. When choosing officers of the body (like the Chair) nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers; and it requires a 2/3 vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled, or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a 2/3 vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a 2/3 vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate, perhaps disagreement and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to a re-opener if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider. First, is timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and by a 2/3 majority, can allow a motion to reconsider to be made at another time.) Second, a motion to reconsider can only be made by certain members of the body. Accordingly, a motion to reconsider can only be made by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she can make the motion to reconsider (any other member of the body may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again. That would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is then in order. The matter can be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the Chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor; and it is always best for every speaker to be first recognized by the Chair before proceeding to speak.

The Chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The Chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the Chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is "no." There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "point of privilege." The Chair would then ask the interrupter to "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "point of order." Again, the Chair would ask the interrupter to "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the Chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the Chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the Chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the Chair discovers that the agenda has not been followed, the Chair simply reminds the body to return to the agenda item properly before them. If the Chair fails to do so, the Chair's determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the Chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the Chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.