City of Carthage, Missouri

CITY COUNCIL

February 27, 2024 - 6:30 PM
CITY HALL COUNCIL CHAMBERS

AGENDA

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**
    1. Approval of February 13, 2024 Minutes
6. **Presentations/Proclamations**
    1. Leanna Canfield - Vision Carthage
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**
    1. Agendas and Minutes of Standing Committees
9. **Reports from Special Committees and Board Liaisons**
    1. Agendas and Minutes of Special Committees
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**
    1. City Administrator's Report
13. **Report of Claims Presented Against the City**
    1. Motion and a second to approve the Claims
14. **Public Hearings**
15. **Old Business**
    1. C.B. 24-06 -- An Ordinance authorizing the Mayor to enter into a contract with Sprouls Construction, Inc. of Lamar, Missouri, for a box culvert replacement on West Chestnut in the amount of $231,476.70, in the City of Carthage, Missouri

2. C.B. 24-07 -- An Ordinance of the City of Carthage, Missouri authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and Zanevan Engineering, LLC for construction inspection services on the I-49 Interchange Project, in the City of Carthage, Missouri.
3. C.B. 24-08 -- An Ordinance of the City of Carthage, Missouri authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and Zanevan Engineering, LLC for construction inspection services on the 3rd Street Bridge Project, in the City of Carthage, Missouri.
4. C.B. 24-09 -- An Ordinance amending the Annual Operating and Capital Budget of the City of Carthage for Fiscal Year 2023 - 2024 for specified funds (General Fund, Fire Protection Tax Fund, Use Tax Fund and Public Safety Fund).
5. C.B. 24-10 -- An Ordinance authorizing the Mayor to enter into a contract with 360 Fire Protection in the amount of $10,687.25 for updating the fire system at City Hall, in the City of Carthage, Missouri.
6. C.B. 24-11 -- An Ordinance authorizing the Mayor to execute a contract between the City of Carthage and MODOT for installation and maintenance of lighting on HH Highway in the City of Carthage, Missouri.

16. New Business

1. C.B. 24-13 -- An Emergency Ordinance authorizing the Mayor to enter into an Agreement with the Carthage R-9 School System granting the School System the privilege to utilize the Carl Lewton Stadium from February 15, 2024 to May 31, 2024, for the Carthage R-9 baseball program and to be considered an emergency ordinance due to unforeseen circumstances which delay could hinder the effective delivery of municipal services.
2. C.B. 24-14 -- An Ordinance authorizing the Mayor to enter into a contract with Elements Construction Concepts of Joplin, Missouri for Restroom Facilities for City Parks -- Phase 2 for the amount of Two Hundred Thirty Thousand Three Hundred Forty Dollars and 00/100 ($230,340.00), in the City of Carthage, Missouri
3. C.B. 24-15 -- An Ordinance authorizing the Mayor to enter into a contract with Elements Construction Concepts of Joplin, Missouri for Dog Park Sidewalks at Municipal Park for the amount of Forty-Three Thousand Four Hundred Sixty Dollars and 00/100 ($43,460.00), in the City of Carthage, Missouri
4. C.B. 24-16 -- An Ordinance authorizing the Mayor to enter into an Agreement with Carthage Youth Softball League for non-exclusive use of the softball fields at Fair Acres Sports Complex during the summer of 2024, in the City of Carthage, Missouri
5. C.B. 24-17 -- An Ordinance authorizing the Mayor to execute a Lease Purchase Agreement with Bank of America for a Ferrara Heavy Duty Fire Engine, in the City of Carthage, Missouri.

17. Mayor’s Appointments

18. Resolutions

1. Resolution 2026 -- A Resolution providing for the formal acceptance of a donation to the City of Carthage's Parks & Recreation Department by the City Council of the City of Carthage, Missouri pursuant to City policy.

2. Resolution 2027 -- A Resolution providing for the formal acceptance of a donation to the City of Carthage's Parks & Recreation Department by the City Council of the City of Carthage, Missouri pursuant to City Policy
3. Resolution 2028 -- A Resolution providing for the formal acceptance of a donation to the City of Carthage's Police Department by the City Council of the City of Carthage, Missouri pursuant to City policy.
4. Resolution 2029 -- A Resolution of the City of Carthage, Missouri, confirming the Planning and Zoning declaration of the "Walk This Way" sidewalks as blighted, in the City of Carthage, Missouri.

19. Closing Comments

20. Executive Session

1. **CLOSED SESSION**: ACCORDING TO SECTION 610.021 (2), THE AGENDA INCLUDES THE POSSIBILITY OF A VOTE TO CLOSE PART OF THE MEETING TO DISCUSS LEASING, PURCHASE OR SALE OF REAL ESTATE BY A PUBLIC GOVERNMENTAL BODY WHERE PUBLIC KNOWLEDGE OF THE TRANSACTION MIGHT ADVERSELY AFFECT THE LEGAL CONSIDERATION THEREFOR.
2. **CLOSED SESSION:** ACCORDING TO SECTION 610.021 (12), THE AGENDA INCLUDES THE POSSIBILITY OF A VOTE TO CLOSE PART OF THE MEETING TO DISCUSS SEALED PROPOSALS AND RELATED DOCUMENTS OR ANY DOCUMENTS RELATED TO A NEGOTIATED CONTRACT UNTIL A CONTRACT IS EXECUTED, OR ALL PROPOSALS ARE REJECTED

21. Adjournment

1. Additional Packet Correspondence

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

City of Carthage, Missouri

CITY COUNCIL

February 13, 2024 - 6:30 PM
CITY HALL COUNCIL CHAMBERS

MINUTES

The Carthage City Council met in regular session on the above date in the Council Chambers at 06:30 PM with Mayor Dan Rife presiding.

Fire Chief Ryan Huntley gave the invocation. Police Chief Bill Hawkins led the flag salute.

The following Council Members answered roll call: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey. City Administrator Greg Dagnan and City Attorney Nate Dally were also present.

The following Department Heads were present: Police Chief Bill Hawkins, Fire Chief Ryan Huntley, Parks & Recreation Director Abi Almandinger, IT Administrator Michael Keith, Assistant City Administrator Traci Cox, and City Clerk Miranda Deal. Public Works Director Zeb Carney was absent.

Mr. Elliff made a motion, seconded by Mr. Armstrong, to approve the minutes of the January 23, 2024, Council Meeting and Closed Session meeting. Motion carried unanimously.

During Citizen's Participation, Julie Reams with the Chamber of Commerce gave her quarterly update on things that the Chamber has been doing. She touched on a variety of events that have been taking place or are set to take place. She mentioned that there is the Chamber Business Expo happening in March, the Chamber Banquet will be in June, and plans are starting for the 58th Annual Maple Leaf Parade. She also mentioned that she is working on hosting a Candidate Forum for the April election. She encouraged everyone to attend the variety of meetings and events that the Chamber has including young professionals, Chamber coffees, After Hours, and Ribbon Cuttings.

Joel Terry, 2219 Alison, spoke on the Mayor's comment from the previous meeting regarding topics that are repeatedly brought up. He also made comments regarding the document sent to the State Auditor that was 2000 pages.

Mr. Snow reported that the Budget Ways & Means Committee met on February 12. The committee heard 5 year capital plans from Administration and IT. There is a Resolution on the agenda to add funds to a few line items that the committee approved. He stated that the committee also heard from the Chair of the Humane Society Board, they are asking the City for an increase in the contract amount for next fiscal year. The next meeting date is to be determined, as there are scheduling conflicts with the regularly scheduled date.

Ms. Blair reported the Committee on Insurance, Audit and Claims met on this day and approved the claims. She reported that the committee tabled the wellness packet discussion until HR Coordinator Michael Miller could be in attendance to discuss the changes for this year. They also heard staff reports from Ms. Cox regarding the Cleargov budget process, and a potential upgrade to the current financial system. Ms. Deal reported that business licenses were due and that she hopes to have an update at the next meeting. The next meeting is scheduled for February 27.

Mr. Elliff reported the Public Safety Committee is between meetings with the next meeting scheduled for February 26 due to the City holiday on February 19.

Ms. Ensor reported the Public Services Committee is between meetings with the next meeting scheduled for February 20.

Mr. Armstrong reported the Public Works Committee met on February 6 and that there are several items on the agenda from this committee. There are Council Bills selecting Zanevan Engineering as the inspector on the 3rd street bridge and I-49 projects. There is also a contract with Sprouls for the West Chestnut box culvert replacement, which is also part of the budget adjustment, there was not enough money allocated for that project. He reported that the committee also heard the 5 year capital plan for Public Works, Public Health, and the Street Department. The next meeting is scheduled for March 5.

Special Committee and Board Liaison Reports were given by Mr. Elliff for Jasper County Commission and Planning, Zoning, and Historic Preservation, Mr. Snow for CW&EP salary study committee, and Ms. Ensor for the Library Board.

Mayor Rife reported that there was a group of 2nd graders who visited City Hall last week to learn about local government. He also reported on the closing of the land for the industrial park and the start of the budget process that will be over the next several months.

During Remarks from Council Members, Ms. Ensor thanked Julie Reams for all of her hard work and dedication at the Chamber. Mr. Taylor reminded everyone of the swap meet that is happening this weekend at Memorial Hall, he encouraged everyone to attend. Mr. Armstrong reported that he received a call from a citizen about the North Garrison bridges that are heavily deteriorating. He reminded everyone that the dangers of those bridges are real and they will be shut down by the State and some point. The weight limit has been lowered to 5 tons to try and help reduce the speed of deterioration, but it will still need repairs. He believes that the City needs to move past the minor conflicts that are currently dividing the City and work together to come up with a plan to fix the bridges. Mr. Elliff wanted to congratulate the staff for the clean audit report that was received by the auditors at the last Insurance, Audit, and Claims meeting. Ms. Cossey addressed Mr. Armstrong about his comments and asked how the conflicts going on are preventing the City from fixing the bridges.

City Attorney Nate Dally reported that he has been working with Zeb on getting the lot located next to the YMCA and new car wash, deeded over to the City from Jasper County. He also addressed the North Garrison bridges and stated that there may be more things that can be done to help keep heavy traffic off those bridges, but he will have to talk to Zeb. He reported that he reached back out to the State Auditor's Office to see if they have had a chance to review the documents that were sent, they stated they were still working on it. He also reported that the City received the closing letter from the Attorney General's office today that states they do not find that the City was in violation of the sunshine law.

Parks and Recreation Director Abi Almandinger reported that the tree inventory grant on the agenda will be a wonderful thing to have completed, as it has not been done in many years. The Rock Stadium renovations are still going on in preparation for high school baseball season. The classes at Memorial Hall are going well, the sushi class for this weekend is sold out, but another class has been added for March. She also reminded everyone of the swap meet on Saturday at Memorial Hall from 8-2.

Assistant City Administrator Traci Cox reported that the sales tax for February 2024 was $256,342.86, which is up 6% from February of 2023. The use tax has exceeded the budgeted amount and is just over one million dollars, it came in at 187,515.90 for February 2024. She reported that the specific departments will only receive the use tax funds for a few months in the new fiscal year before it starts going into the general fund. She also reported that we received an grant to help update the City's IT infrastructure. It was $140,000.00 and it is an 80/20 grant. The marijuana tax for the month was $15,518.00, she feels that it will hover around $15,000 per month.

City Administrator Greg Dagnan reported that a lot of what he was going to report had already been covered. He did want to point out that the letter from the Attorney General was dated for January 16, but the City just received it earlier that day. The IT grant will help greatly with cybersecurity, and he explained the purpose of the budget adjustment resolution.

The Committee on Claims filed a report in the amount of $5,643,411.51 against the following funds: General Revenue $766,025.78, Public Health $1,103.69, Lodging $3,577.82, Parks/Stormwater $48,560.68, Golf $43,421.19, Capital Improvements $12,641.07, Parks and Recreation $1,229.76, Use Tax $56,751.08, Library $25,000.00, Payroll $685,100.44, and Carthage Water and Electric $4,000,000.00. Ms. Blair made a motion, seconded by Ms. Heckmaster, to accept the report and allow the claims. Motion carried.

Under Old Business, C.B. 24-01 -- An Ordinance authorizing the Mayor to enter into a contract between the City of Carthage and Radmacher Brothers Excavation for the interchange improvement at the intersection on I-49 and Dr. Russell Smith Way in the amount of $2,659,341.10 was placed on second reading followed by a roll call vote of 10 yeas and 0 nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey. The Council Bill was approved and numbered Ordinance 24-03.

C.B. 24-02 – An Ordinance of the City of Carthage, Missouri authorizing the Mayor to execute a Contract between the City of Carthage, Missouri and Missouri Department of Transportation for sidewalk improvements, Airport Drive and Fairview Avenue/Route E – 571 to River Street/River Street to Pearl Street, pursuant to TAP 1601(706) was placed on second reading followed by a roll call vote of 10 yeas and 0 nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey. The Council Bill was approved and numbered Ordinance 24-04.

C.B. 24-03 -- An Ordinance authorizing the Mayor to grant an Easement of Property owned by the City of Carthage in Municipal Park, to Spire Missouri, Inc. to construct, operate and maintain a gas distribution system consisting of mains, piping, valves, service connections, appurtenances and above ground structures was placed on second reading followed by a roll call vote of 10 yeas and 0 nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey. The Council Bill was approved and numbered Ordinance 24-05.

C.B. 24-04 -- An Ordinance authorizing the Mayor to enter into a participation agreement with Sysco Inc, to provide food services, for the City of Carthage, Missouri was placed on second reading followed by a roll call vote of 10 yeas and 0 nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey. The Council Bill was approved and numbered Ordinance 24-06.

C.B. 24-05 -- An Ordinance authorizing the Mayor to enter into an agreement with the Missouri Department of Conservation for a Community Forestry Cost Share Grant, for updates to tree inventory, in the City of Carthage, Missouri was placed on second reading followed by a roll call vote of 10 yeas and 0 nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey. The Council Bill was approved and numbered Ordinance 24-07

Under New Business, C.B. 24-06 -- An Ordinance authorizing the Mayor to enter into a contract with Sprouls Construction, Inc. of Lamar, Missouri, for a box culvert replacement on West Chestnut in the amount of $231,476.70, in the City of Carthage, Missouri was placed on first reading with no action taken.

C.B. 24-07 -- An Ordinance of the City of Carthage, Missouri authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and Zanevan Engineering, LLC for construction inspection services on the I-49 Interchange Project, in the City of Carthage, Missouri was placed on first reading with no action taken.

C.B. 24-08 -- An Ordinance of the City of Carthage, Missouri authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and Zanevan Engineering, LLC for construction inspection services on the 3rd Street Bridge Project, in the City of Carthage, Missouri was placed on first reading with no action taken.

C.B. 24-09 -- An Ordinance amending the Annual Operating and Capital Budget of the City of Carthage for Fiscal Year 2023 - 2024 for specified funds (General Fund, Fire Protection Tax Fund, Use Tax Fund and Public Safety Fund) was placed on first reading with no action taken.

C.B. 24-10 -- An Ordinance authorizing the Mayor to enter into a contract with 360 Fire Protection in the amount of $10,687.25 for updating the fire system at City Hall, in the City of Carthage, Missouri was placed on first reading with no action taken.

C.B. 24-11 -- An Ordinance authorizing the Mayor to execute a contract between the City of Carthage and MODOT for installation and maintenance of lighting on HH Highway in the City of Carthage, Missouri was placed on first reading with no action taken.

Mr. Elliff made a motion, seconded by Mr. Armstrong, to approve Resolution 2025 – A Resolution authorizing a supplemental budget adjustment to the Golf Fund and Use Tax Fund for Fiscal Year 2023-2024. Resolution 2025 was adopted after a roll call vote of 10 yeas and 0 nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey.

During closing comments, Mr. Snow said he was hopeful for an early spring after the groundhog saw his shadow. Ms. Cossey wanted to also thank Julie Reams for her presentation and all of her work since the Chamber is only a 2-person office. She also reminded everyone of the election coming up in April and that she hopes that everyone who is able to vote, will get out and do so. Ms. Ensor welcomed Ms. Deal back from her maternity leave and hoped all was well with the new baby.

Ms. Blair made a motion, seconded by Mr. Snow, to close the meeting according to section 610.021 (1), the agenda includes the possibility of a vote to close part of the meeting to discuss legal actions, causes of action or litigation involving a public governmental body or its representatives and its attorneys AND according to Section 610.021 (2) the Agenda includes the possibility of a vote to close part of the meeting to discuss leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor, followed by a roll call vote of 10 yeas and no nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff and Tiffany Cossey. Motion carried at 7:28 p.m.

There was a short recess before the closed session started. Council went into closed session at 7:39 p.m.

CLOSED SESSION

Mr. Elliff made a motion, seconded by Mr. Armstrong, to return to the regular session of the Council Meeting at 8:23 p.m. followed by a roll call vote of 10 yeas and no nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey. Motion carried.

Ms. Blair made a motion, seconded by Ms. Ensor, to adjourn the regular session of the Council Meeting. Motion carried and meeting adjourned at 8:24 p.m.

CLOSED SESSION
MINUTES OF THE MEETING OF THE CITY COUNCIL
CITY OF CARTHAGE, MISSOURI
February 13, 2024

The Carthage City Council met in closed session on the above date in City Hall Council Chambers at 6:30 p.m. with Mayor Dan Rife presiding.

Ms. Blair made a motion, seconded by Mr. Snow, to close the meeting according to section 610.021 (1), the agenda includes the possibility of a vote to close part of the meeting to discuss legal actions, causes of action or litigation involving a public governmental body or its representatives and its attorneys AND according to Section 610.021 (2) the Agenda includes the possibility of a vote to close part of the meeting to discuss leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor, followed by a roll call vote of 10 yeas and no nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff and Tiffany Cossey. Motion carried at 7:28 p.m.

The following Council Members answered roll call: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey.

City Administrator Greg Dagnan, City Attorney Nate Dally, Police Chief Bill Hawkins, Parks and Recreation Director Abi Almandinger, IT Administrator Michael Keith, Assistant City Administrator Traci Cox, and City Clerk Miranda Deal were also present.

Mr. Dally informed the Council about a lawsuit that is pending against the City regarding police department evidence.

Mr. Dally requested permission from the Council to file a suit regarding a contract that was not legally entered into.

*****Redacted information according to RSMo 610.021 (1)

[redacted]

[redacted]

Mr. Dally spoke to the Council about a piece of property that Carthage Water and Electric would like to purchase.

****Redacted information according to RSMo 610.021 (2)

[redacted]

Mr. Elliff made a motion, seconded by Mr. Armstrong, to return to the regular session of the Council Meeting at 8:23 p.m. followed by a roll call vote of 10 yeas and no nays. Ayes: Brandi Ensor, Chris Taylor, Trudy Blankenship, David Armstrong, Robin Blair, Terri Heckmaster, Jeff Hole, Alan Snow, Mark Elliff, and Tiffany Cossey. Motion carried.

Respectfully submitted,

Miranda Deal
City Clerk

City of Carthage, Missouri
COMMITTEE ON INSURANCE/AUDIT AND CLAIMS

February 13, 2024 - 5:30 PM
CITY HALL COUNCIL CHAMBERS

MINUTES

1. Call to Order

MEMBERS PRESENT: Robin Blair, Tiffany Cossey, Terri Heckmaster, Christopher Taylor

OTHER COUNCIL MEMBERS: Mayor Dan Rife, David Armstrong, Mark Elliff

STAFF PRESENT: City Administrator Greg Dagnan, Assistant City Administrator Traci Cox and City Clerk Miranda Deal,

Chair Robin Blair called the meeting to order at 5:31 P.M.

2. Old Business

1. Approval of January 23, 2024 Minutes

ACTION:	Motion to accept/approve item 2.1. by Tiffany Cossey Motion passed with a 4:0
AYES:	Robin Blair, Tiffany Cossey, Terri Heckmaster, Christopher Taylor

2. Review & Approval of the Claims Report

ACTION:	Motion to accept/approve item 2.2. by Tiffany Cossey Motion passed with a 4:0
AYES:	Robin Blair, Tiffany Cossey, Terri Heckmaster, Christopher Taylor

3. Citizens Participation

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

4. New Business

1. Consider and Discuss City of Carthage Wellness Packet

ACTION:	Motion to table until february 27, 2024 item 4.1. by Christopher Taylor Motion passed with a 4:0
AYES:	Robin Blair, Tiffany Cossey, Terri Heckmaster, Christopher Taylor

2. Staff Reports

Ms. Cox reported that she has been working with Cleargov on the budget and that the capital budget will be open soon for department heads to enter their capital items. She also reported that she is looking at upgrading the current financial system that is used at City Hall. Currently, Incode 9 is being used, she is looking at upgrading to Incode 9 with the cloud.

Ms. Deal reported that license renewals are due the 15th and that she hopes to have an update on those numbers for the next meeting.

Mr. Dagnan reported that the department heads are taking their capital items to their committees for input. He reminded the committee that just because the other committees approve capital lists, doesn't mean that it makes it into the budget. He also reminded the committee that if any department is wanting to add a new position in the next fiscal year, this is the committee that will approve adding the position to the pay scale. He expects one or two departments to ask for additional personnel for the next fiscal year.

5. Adjournment

ACTION:	Motion to adjourn at 5:36 P.M. by Tiffany Cossey Motion passed with a 4:0
AYES:	Robin Blair, Tiffany Cossey, Terri Heckmaster, Christopher Taylor

City of Carthage, Missouri

BUDGET WAYS & MEANS COMMITTEE

February 12, 2024 - 5:30 PM
CITY HALL COUNCIL CHAMBERS

MINUTES

1. Call to Order

MEMBERS PRESENT: Mark Elliff, Alan Snow, David Armstrong

OTHER COUNCIL MEMBERS: Terri Heckmaster

STAFF PRESENT: City Administrator Greg Dagnan, Assistant City Administrator Traci Cox, Admin Assistant Dorothy Weber, IT Director Michael Keith and Police Chief Bill Hawkins

Chairman Snow called the meeting to order at 5:31 PM

2. Old Business

1. Approval of January 8, 2024 Minutes

ACTION:	Motion by Mr. Elliff to approve January 8, 2024 minutes Motion with a 3:0
AYES:	Mark Elliff, David Armstrong, Alan Snow
NOES:	None
ABSTAIN:	None

3. Citizens Participation

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

4. New Business

1. Placer AI Live Demo

Placer AI gave a 30-minute demo of their product. Mr. Dagnan spoke after the demo about how Placer AI takes the guess work out of tourism. Mr. Dagnan stated that the program costs $19,000.00 a year. He then discussed whether it would be included in the 24/25 budget or the 25/26 budget. Mr. Dagnan stated that as of right now the $19,000.00 is not in tourism's budget, so the funds would have to come out of the general fund. He then stated that the ads could be covered by state grants, but the grants will not cover the software. Mr. Armstrong asked if the different departments that use it would split the cost. Mr. Snow asked if there was a possibility of receiving more DMO money from the data gathered by this software. Mr. Dagnan stated that the cost could be split up. Mr. Armstrong stated that the data received from using the program would be helpful when applying for other grants. Ms. Cox stated that splitting the cost would not make much difference because all of the money would come from the general fund. Mr. Elliff asked about similar products that might be less expensive and Mr. Dagnan stated that they have been looked into, but they are inferior to Placer AI. Mr. Snow asked about using the data to see what places people were visiting when they left Carthage. Mr. Snow asked for a show of hands of who would like to see it in next years budget. Mr. Armstrong, Mr. Elliff and Mr. Snow were all in agreement. Mr. Dagnan stated that it would also be a great tool to find out about how many people stayed in Carthage hotels. Mr. Armstrong also suggested using the program for Line R data.

2. Consider and Discuss a Financial Allocation for the Humane Society

Nancy Corley spoke about the current contract with the City of Carthage and the positive relationship between the two. She stated that the city has a stray animal problem and that currently the annex portion of the kennels needs a new roof, so that space is currently not usable. Ms. Corley stated that there has been some fund-raising, but that doesn't help with the current level of animals at the current level of support. She stated that 87% of the strays come from within the city limits but only 27% of the funding comes from the City. Nancy stated that because of the minimum wage going up and inflation, that they've had a strain on their budget. She stated that every intake costs $75.00 up front and $24.00 per day per animal. Ms. Corley said that it was her desire to do the best job that they could while also being fiscally responsible. She stated that the largest expense is payroll. The humane society has several fundraisers planned for the near future, and they have also applied for grants. Mr. Elliff asked where their largest source of funding comes from and Ms. Corley said that a few trusts have allocated funds to the humane society. Ms. Corley stated that currently they run at a $15,000 - $20,000 deficit per month. Mr. Snow asked if the humane society offered pet owner education for responsible pet ownership. Ms. Corley stated that they offer a limited amount. Ms. Corley spoke about trying to raise a committee of volunteers to help with those things. Mr. Elliff asked if it was still a no-kill shelter and Ms. Corley stated that they do not kill for space. Ms. Corley expressed her desire to implement a catch-neuter-release program. Ms. Corley also stated that the humane society partners with Colorado and Wisconsin for dogs. She stated that they take maybe 50 per year. Mr. Dagnan stated that we're in a crisis and suggested changes to the ordinances to make more responsible pet owners. Ms. Corley expressed her appreciation for Chief Hawkins and CPD.

3. Consider and Discuss a Budget Adjustment Resolution for Golf and Public Works.

Ms. Cox stated that the budget adjustments had gone to the Public Services committee and passed. Public Services approved an additional $50,000 for the golf pro shop and that takes their fund up to $120,000. Ms. Cox then stated that a vehicle for Public Works has become available for purchase with Use Tax. Ms. Cox stated that there was an error in estimating the budget for the W. Chestnut project and that she's currently getting that in-line. Mr. Snow asked about the inventory tracking at the pro shop. Ms. Cox stated that golf currently has that in place.

ACTION:	Motion to forward to Council by Mr. Armstrong Motion with a 3:0
AYES:	David Armstrong, Mark Elliff, Alan Snow

NOES: None
ABSTAIN: None

4. Consider and Discuss Five Year Capital Plan

Michael Keith spoke about IT's 5-year plan. He stated that the current life cycle of the City's computers are on a 5-year rotation. 1/5 of the City's computers get replaced every year. Mr. Keith stated that the amounts listed on his plan are the current market prices. He stated that there is a projected 3% increase in the coming years. Mr. Keith stated that a big increase is due to AI. He then talked about the printer upgrade project. He stated that 6 new printers were necessary for the upcoming year. Mr. Keith stated that the City was awarded an 80/20 IT grant in the sum of $114,000. He stated that the purpose was to radically change the City's IT infrastructure and data storage capacity. Mr. Keith reviewed the final stages of the Police and Fire project. He stated that Public Works would like access control points put in that are similar to the ones installed in City Hall. Mr. Keith expressed his desire to eventually integrate access control points across the City. He then spoke about the addition of a police CAD terminal. The police currently have one but they need two. Mr. Keith then spoke about his second year plan and the addition of a dispatch computer for PD and a security test and assessment for the entire city. Mr. Snow asked about the police and fire data terminals cycle and Mr. Keith stated that they are on a 7-year cycle. Mr. Keith talked about the City's partnership with Stronghold Data. He stated that they played an integral part in getting the City up to par, and they also helped in obtaining the grant. Mr. Keith stated that the 5-year plan will change and be updated as needed. Ms. Cox spoke about a security breach that Stronghold caught immediately. Mr. Snow asked if the contract with Stronghold was for one year and Ms. Cox stated that it was but that they were in talks to extend it to three years.

Mr. Dagnan spoke about council chambers furniture, City Hall paint, and future years vehicle purchases in the 5 year Capital budget. He also stated that he has asked all departments to put HVAC in their budget plans until they've all been replaced. Mr. Dagnan spoke about the artwork and artifacts and that he would like to install a security system to ensure their safety. Mr. Armstrong asked if the painting were insured and Mr. Dagnan stated that they are. Mr. Elliff expressed his concerns about a fire suppression system getting the paintings and asked about a barrier being put in place. Mr. Dagnan stated that he would like an alarm with cameras installed. Mr. Armstrong stated that he would like all the paintings and artifacts protected from the fire suppression system.

5. Staff Reports

Mr. Dagnan spoke about upgrading to Incode 9. He stated that it is a cloud based operating system that would cost an additional $5,000. Mr. Dagnan stated that Mr. Dally has sent a demand letter to OpenGov. He then stated that ClearGov will only be used for budgeting.

Ms. Cox spoke about AI reporting and that Incode 9 would increase monthly expense. Mr. Elliff asked about Incode working with ClearGov. Ms. Cox stated that they work together and that ClearGov is the better option. She then stated that the budget committee would be given a log in to it.

Mr. Dagnan spoke about upgrading the mircofilm to digital and that the cost would be around $2000.

Ms. Cox stated that the sales tax is up from last year at this time and that it is on track with the budgeted total. She stated that the use tax is higher than projected and that the marijuana tax revenue was $15,518.98 for the month. Mr. Elliff asked about the biggest entity for use tax and Ms. Cox stated industry. Mr. Snow asked about City investments and Ms. Cox stated that she renewed a CD @ 5.25%.
Mr. Dagnan talked about use tax being used by department heads and that he's currently working on a use tax report for the community. He stated that in 2024 the use tax will start to go into the general fund.
Mr. Dagnan stated that the department heads are reviewing their 5-year personnel plan and that salaries may need to be adjusted after a review (not a salary study). Ms. Cox stated that the indicator for COLA is 3.2%.
Mr. Snow asked about the other departments 5 year capitals and Mr. Dagnan stated that they're currently working on them. He stated that they're all reasonable but that there will probably be cuts.
Mr. Snow asked about the swimming pool and if Parks will be using use tax or MBH. Mr. Armstrong stated that he would like to use the MBH in the way it was meant to be used when set up.
Mr. Armstrong expressed his desire to make the Humane Society a high priority but that he is concerned about the public health funds. He stated that he does not want to compromise the recycling center or the mosquito program or the leaf collection program.
Mr. Dagnan stated that Region M uses Carthage as an example for other towns building recycling centers.
Mr. Elliff complimented Ms. Cox and Mr. Dagnan on the city's clean audit.
Mr. Armstrong asked if the city had received Carthage Water and Electrics financials. Ms. Cox stated that they haven't received anything. Mr. Armstrong stated that he wants Carthage Water and Electric to follow the ordinances and produce the financials the way the ordinances state.
Mr. Elliff asked if the city was responsible for paying the electricity for the lights on Hazel and Grand. Mr. Dagnan said that the city is responsible for those bills.
Mr. Snow moved the next Budget Ways and Means committee meeting from March 11th 2024 to March 7th 2024 in council chambers due to scheduling conflicts.

5. Adjournment

ACTION:	Motion to adjourn by Chairman Snow at 7:14 PM
	Motion 3:0
AYES:	Alan Snow, Mark Elliff, Dave Armstrong
NOES:	None
ABSTAIN:	None

City of Carthage, Missouri

PUBLIC SERVICES COMMITTEE

February 20, 2024 - 5:30 PM
CITY HALL COUNCIL CHAMBERS

AGENDA

1. **Call to Order**
2. **Old Business**
    1. Approval of Previous Minutes.
3. **Citizen Participation**
    (Citizens wishing to address the Council or Committee should notify the City in advance and provide the item they want to address in written format at least 24 hours before the meeting. Please call Angie Judd at the Parks & Recreation office at 417-237-7035, or email a.judd@carthagemo.gov.)
4. **New Business**
    1. Consider & Discuss Tropix Snow Cones in the Park.
    2. Consider & Discuss 2024 Hispanic Heritage Celebration.
    3. Consider & Discuss Farmers Market in Central Park.
    4. Consider & Discuss Carthage Community Earth Day Celebration.
    5. Consider & Discuss Marble Slab Donation to Carthage Parks & Recreation.
    6. Consider & Discuss Donation to Carthage Little League by Housh Family.
    7. Consider & Discuss MOU with Carthage R9.
    8. Consider & Discuss Request for Proposal for Restroom Facilities for City Parks, Phase 2.
    9. Consider & Discuss Carthage Youth Softball Contract.
    10. Consider & Discuss Request for Proposal for Dog Park Sidewalk.
    11. Consider & Discuss Revision of Sponsorship Policy.
    12. Consider & Discuss Bids for Victorian Trash Can Cages.
    13. Consider & Discuss Reallocation of Recreation Funds.
    14. Consider & Discuss Budget Adjustment for Allocation of Civic Enhancement Funds.
    15. Consider & Discuss Five Year Capital Plan.
5. **Staff Reports**
6. **Other Business**
7. **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

City of Carthage, Missouri

PUBLIC SERVICES COMMITTEE

February 20, 2024 - 5:30 PM
CITY HALL COUNCIL CHAMBERS

MINUTES

1. Call to Order

2. Old Business

1. Approval of Previous Minutes.

ACTION:	Motion to item 2.1. by Trudy Blankenship; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

3. Citizen Participation

(Citizens wishing to address the Council or Committee should notify the City in advance and provide the item they want to address in written format at least 24 hours before the meeting. Please call Angie Judd at the Parks & Recreation office at 417-237-7035, or email a.judd@carthagemo.gov.)

4. New Business

1. Consider & Discuss Tropix Snow Cones in the Park.

Ms. Almandinger introduced Becky Freeman with Tropix Snow Cones. Ms. Freeman stated that this is the same request as last year and the only change is adding Carthage Soccer Academy events to the dates. Ms. Heckmaster motioned to allow Tropix Snow Cones in the parks for the dates requested.

ACTION:	Motion to item 4.1. by Terri Heckmaster; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

2. Consider & Discuss 2024 Hispanic Heritage Celebration.

Ms. Almandinger introduced Maria Sanchez with Hispanic Connection to speak about the Fourth Annual Hispanic Heritage Celebration. Ms. Sanchez explained that this is the fourth annual Hispanic Celebration and she stated that it is going to be the same as last year. Mr. Hole motioned to approve use of Central Park on September 28th from 12:00 PM to 11:00 PM.

ACTION:	Motion to item 4.2. by Jeff Hole; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

3. Consider & Discuss Farmers Market in Central Park.

Ms. Almandinger brought forward a request for Carthage Farmers Market 2024 to include use of the West and North sides of Central Park every Wednesday and Saturday between 8 AM and 1 AM from April 6th, 2024 to November 30th, 2024. Ms. Blankenship motioned to allow use of Central Park on dates provided.

ACTION:	Motion to item 4.3. by Trudy Blankenship; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

4. Consider & Discuss Carthage Community Earth Day Celebration.

Ms. Almandinger introduced Julie Reams from the Chamber of Commerce to speak about Community Earth Day. Ms. Reams stated that this will be the second annual Community Earth Day Celebration and is requesting to use Central Park on Saturday, April 20th from 10:00 AM to 2:00 PM. Ms. Reams stated that there will be one food truck and this will be an informational and hands on event for the community. Ms. Heckmaster motioned to allow use of Central Park on Saturday, April 20th from 10:00 AM to 2:00 PM.

ACTION:	Motion to item 4.4. by Terri Heckmaster; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

5. Consider & Discuss Marble Slab Donation to Carthage Parks & Recreation.

Ms. Almandinger stated that we have been working to have consistent signage across all parks and are in the process of sending out a Request for Proposal to have a mason build signs for all the parks. The Pat and Carolyn Phelps family has donated 20 marble slabs to be used for park signage. Ms. Blankenship motioned to accept a donation of 20 marble slabs from Pat and Carolyn Phelps family to be used exclusively for the creation of park signage.

ACTION:	Motion to item 4.5. by Trudy Blankenship; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

6. Consider & Discuss Donation to Carthage Little League by Housh Family.

Ms. Almandinger stated that Little Leage received a donation in the amount of $925 from the Housh family in memory of Jerad Housh. Mr. Hole motioned to accept the donation of $925 in memory of Jerad Housh to be used exclusively for Little League.

ACTION:	Motion to item 4.6. by Jeff Hole; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

7. Consider & Discuss MOU with Carthage R9.

Ms. Almandinger stated that the Parks Department and Street Department have been renovating Carl Lewton Stadium. The school has been preparing the field for the high school baseball team to use for the 2024 season. She brought forward a Memorandum of Understanding that has been signed by the Carthage R-9 school board to be approved by Council. Ms. Blankenship motioned to enter into a Memorandum of Understanding with Carthage R-9 for the 2024 baseball season to be forwarded to Council.

ACTION:	Motion to item 4.7. by Trudy Blankenship; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

8. Consider & Discuss Request for Proposal for Restroom Facilities for City Parks, Phase 2.

Ms. Almandinger stated that there have been recurring issues with the existing Central and Municipal restrooms as well as a lack of appropriate restroom facilities at Fair Acres. She stated that with remaining funds allotted for the new park restroom facilities, there was a Request for Proposal for Phase 2 Restrooms to include Central and Municipal park renovations and new restroom facilities at Fair Acres. Two bids were received, one from Elements Constructions Concepts in the amount of $230,340.00 and Sprouls Construction Inc in the amount of $404,995.00. It was recommended by the City Engineer to accept the low bid from Elements Constructions Concepts. Ms. Heckmaster motioned to accept the lowest bid of $230,340.00 from Elements Constructions Concepts to renovate existing facilities at Central and Municipal and new restroom facilities at Fair Acres.

ACTION:	Motion to item 4.8. by Terri Heckmaster; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

9. Consider & Discuss Carthage Youth Softball Contract.

Ms. Almandinger brought forward a contract with Carthage Youth Softball for the 2024 season. She stated that the only difference from the previous year's contract were some edits to maintenance responsibilities. Mr. Hole motioned to accept and forward the contract with Carthage Youth Softball for the 2024 season to Council.

ACTION:	Motion to item 4.9. by Jeff Hole; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

10. Consider & Discuss Request for Proposal for Dog Park Sidewalk.

Ms. Almandinger brought forward a bid for Dog Park sidewalk from Elements Construction Concepts in the amount $43,460.00. Ms. Heckmaster motioned to accept the bid of $43,460.00 from Elements Construction Concepts for the Dog Park sidewalk.

ACTION:	Motion to item 4.10. by Terri Heckmaster; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

11. Consider & Discuss Revision of Sponsorship Policy.

Ms. Almandinger spoke about a revision to the Sponsorship policy. She stated that now that tourism is seeking sponsorships, we would like to add a clause to include the Tourism Director. Ms. Blankenship motioned to approve revision to the Sponsorship policy.

ACTION:	Motion to item 4.11. by Trudy Blankenship; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

12. Consider & Discuss Bids for Victorian Trash Can Cages.

Ms. Almandinger stated that we would like to improve the appearance of the trash cans in the parks. We have allotted funds to replace the trash cans and have determined that purchasing cages to mimic what is currently at Central Park is more cost-effective. We plan to purchase up to 20 cages. There was a Request for Proposal for Victorian trash can cages. We received two bids, one from Mid-Land Enterprises for the amount of $1,609 per cage up to 20 cages and one from Parkside Machine in the amount of $2,289.65 per cage up to 20 cages. Ms. Heckmaster motioned to accept the bid for up to 20 Victorian trash can cages in the amount of $1,609.00 per cage from Mid-Land Enterprises.

ACTION:	Motion to item 4.12. by Terri Heckmaster; second by None; Motion with a 4:0

AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

13. Consider & Discuss Reallocation of Recreation Funds.

Ms. Almandinger introduced Chelsea Cholley, Parks and Recreation Events Coordinator, to speak about the reallocation of funds. Ms. Cholley noted that while $25,000 had been earmarked for recreation expenses, it was deemed necessary to reallocate these funds to more specific expense accounts. Ms. Cholley emphasized that this marks the first year of Parks and Recreation's Little League program and as we have progressed through registrations, we have identified more precise funding requirements. Ms. Cholley explained the proposal to reallocate the funds. Mr. Hole motioned to approve the reallocation of funds.

ACTION:	Motion to item 4.13. by Jeff Hole; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

14. Consider & Discuss Budget Adjustment for Allocation of Civic Enhancement Funds.

Ms. Almandinger brought forth a budget adjustment for the allocation of Civic Enhancement Funds. The Civic Enhancement Fund holds donations for specific items. Ms. Almandinger requested use of the funds for repairs to Kellogg Lake fountain and South roundabout improvements. Ms. Blankenship motioned to approve the allocation of Civic Enhancement funds and forward to the Budget Committee.

ACTION:	Motion to item 4.14. by Trudy Blankenship; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

15. Consider & Discuss Five Year Capital Plan.

Ms. Almandinger presented her Five Year Capital Plan from the following funds:

- Use Tax
- Parks / Stormwater
- Capital Outlay
- Golf Fund Balance

She reminded the committee that these items were based on the guidelines and recommendations of the community in the 2021 Parks Master Plan and the strategic planning meeting the committee had several months ago.

5. Staff Reports

Ms. Almandinger stated that the Street Department has done a fabulous job on the concrete work at Carl Lewton Stadium in preparation for the 2024 Tigers Baseball season. Ms. Almandinger stated that Little League baseball registration has begun and we have held one in-person registration night. Ms. Almandinger stated that Memorial Hall programming and classes are doing really well. Ms. Almandinger stated that the Dog Park is waiting for a gate access and camera quote to protect the safety of the dogs that will be using the facilities. Ms. Almandinger stated that all the bathrooms should be completed and ready to open this week. Ms. Almandinger stated that the pool concept survey result has been received and there were nearly 1400 responses and the company, Water's Edge, who did the survey stated that the average response is typically between 500-600. Ms. Almandinger stated that Water's Edge would like to schedule a pool concept presentation at a later date.

6. Other Business

7. Adjournment

Ms. Blankenship motioned to adjourn at 6:41 PM.

ACTION:	Motion to item 7. by Trudy Blankenship; second by None; Motion with a 4:0
AYES:	Brandi Ensor, Trudy Blankenship, Terri Heckmaster, Jeff Hole
NOES:	None
ABSTAIN:	None

City of Carthage, Missouri

COMMITTEE ON INSURANCE/AUDIT AND CLAIMS

February 27, 2024 - 5:30 PM
CITY HALL COUNCIL CHAMBERS

AGENDA

1. **Call to Order**
2. **Old Business**
   1. Approval of February 13, 2024 Minutes
   2. Review & Approval of the Claims Report
3. **Citizens Participation**
   (Citizens wishing to speak should notify Department Head or Committee Chair in advance)
4. **New Business**
   1. Consider and Discuss City of Carthage Wellness Packet
   2. Staff Reports
5. **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

Carthage Water & Electric Plant

AGENDA

Notice is hereby given that the Carthage Water & Electric Plant Board will meet February 15, 2024, 3:00 p.m. at the CWEP Complex, 627 W. Centennial, Carthage. The tentative agenda of the regular meeting includes:

ADDITIONS TO THE AGENDA

APPROVAL OF THE BOARD MINUTES: January 18th, 2024

APPROVAL OF DISBURSEMENTS: January $3,875,530.38

FINANCIAL STATEMENT: January

COMMITTEE REPORTS

CITIZENS PARTICIPATION PERIOD:

OLD BUSINESS: None.

NEW BUSINESS:

1. Presentation by Nicki Fuller, Executive Director of Southwestern Power Resources Association
2. Consideration of bids for Custodial Maintenance

STAFF REPORTS

BOARD MEMBER COMMENTS

Persons with disabilities who need special assistance may call 417-237-7300 or 1-800-735-2466 (TDD via Relay Missouri) at least 24 hours prior to meeting.

Representatives of the news media may obtain copies of this notice by contacting:
Megan Kirby, P O Box 611 Carthage, MO 64836 417-237-7300

CWEP
BOARD MEETING MINUTES

February 15, 2024

The Carthage Water & Electric Plant Board met in regular session February 15, 2024, 3:00 p.m. at the CWEP Office, 627 W Centennial, Carthage, MO.

Board:

☒Brian Schmidt - President
☒Ron Ross- Vice President*
☒Darren Collier -Secretary
☒Alan Snow -Liaison
☒ Sid Teel - Member
☒Tom Garrison – Member
☒ G. Stephen Beimdiek- Member

* Attended via videoconference

Staff:

☒Chuck Bryant-General Manager
☒Cassandra Ludwig-General Counsel
☒Jason Peterson-Director of IT & Broadband
☒Megan Kirby- Executive Assistant
☒Jason Choate-Director of Water Services
☒Kelli Nugent/CFO
☒Kevin Emery-Director of Power Services
☒Stephanie Howard-Director of Business & ED

President Schmidt called the meeting to order at 3:01 p.m.

ADDITIONS/CHANGES TO THE AGENDA:

APPROVAL OF MINUTES:

A motion by Beimdiek and seconded by Collier to approve the minutes of the regular meeting of January 18, 2024, as presented, passed unanimously.

APPROVAL OF DISBURSEMENTS:

A motion by Teel and seconded by Garrison to approve disbursements for January in the amount of $3,875,530.38, passed unanimously.

FINANCIAL STATEMENT:

CFO Nugent presented the January 2024 financials to the Board, noting that combined operating expenses were under budget for the month and year to date combined operating revenues exceeded budget for the month. Purchased power expense was lower than expected. Water revenues for the month of January were less than budget. Wastewater revenues exceeded budget for the month, and water operating expenses were under budget.

Communication revenues exceeded budget for the month and communication operating expenses continue to be less than budget.

A motion by Ross and seconded by Beimdiek to approve the January 2024 financials passed unanimously.

COMMITTEE REPORTS:

President Schmidt reported to the Board on behalf of the salary study committee, noting that the committee continues to meet weekly with Lockton. He noted there have been a couple weeks that have been cancelled due to not having much to discuss. Schmidt informed the Board that the committee is now just waiting on survey responses. He noted a target of April for the salary study to be completed.

CITIZENS PARTICIPATION PERIOD:

During citizens participation period, new CWEP employee Briana Burns introduced herself to the Board as the new Customer Service Representative.

OLD BUSINESS: None.

NEW BUSINESS:

There being no objections, President Schmidt changed the order of discussion of the new business items.

1. **CONSIDERATION OF BIDS FOR CUSTODIAL MAINTENANCE**

GM Bryant reported proposals were requested from contractors to provide custodial maintenance to several CWEP Buildings. CWEP held two walk-through tours for interested respondents and contractors which provided an opportunity to view the facilities and understand the work that will be required. Individuals from four different cleaning companies attended the tours.

CWEP received proposals from Dana’s Cleaning Service of Missouri, Jani-King of Springfield, Drew’s Cleaning Crew, and KSS Cleaning Services.

After a thorough review and evaluation of all proposals, it was determined that Drew’s Cleaning Crew will meet CWEP’s expectations and provide exceptional custodial maintenance skills while maintaining safety and security measures.
A motion was made by Collier and seconded by Beimdiek to award this contract to Drew’s Cleaning Crew in the amount of $7,400.00 per month, motion passed unanimously.

2. **PRESENTATION BY NICKI FULLER, EXECUTIVE DIRECTOR OF SOUTHWESTERN POWER RESOURCES ASSOCIATION**

General Manager Bryant welcomed SPRA Executive Director Nicki Fuller to the meeting. Nicki gave an informative presentation to the board regarding SPRA. She gave an overview of the Southwestern Power Administration, reviewed the mission and objectives of SPRA and discussed components of SWPA rates and funding. GM Bryant extended his appreciation to SPRA Executive Director Fuller for coming and effectively educating the board about SPRA and federal hydropower.

STAFF REPORTS:

CFO Nugent noted in December the final draw was taken of the fiber project lease purchase proceeds that were issued in December of 2020.

General Counsel Ludwig noted Customer Service Staff have been busy fielding calls of customers with high bills due to discovery of water leaks and have been working with those customers to get bills paid. She reported the addition of two new Customer Service Representatives, Briana Burns and Amber Lasiter, noting she is excited to have them and think they will be a good addition to the team. Ludwig also mentioned staff have been making phone calls and hanging door tags to notify customers about work being done for the 69kv line project.

Director of Water Services Choate reported there have been 12 main breaks since the first of the year with around 60 calls for shutoffs due to broken pipes or water leaks.

Director of Business and Economic Development Howard mentioned the land purchased for Carthage Economic Development closed last week and they will now be working with Olsson and Allgeier Martin to develop plans for the park moving forward.

Director of Broadband and IT services Peterson reported there are no outstanding servicing requests for fiber. He noted this will mean scheduling installations will be a lot quicker now. He reported Cyber security is going well, there were no clicks for the month of January.

Director of Power Services Emery noted CWEP is currently receiving supplemental energy.

GM Bryant reported staff is in the middle of budget. He mentioned there will be a meeting with Craig Woycheese from Toth and Associates to discuss rates. He reported the purchasing department continues to face issues with lead times and pricing. GM Bryant mentioned letters that were received from the community thanking CWEP for quality of service the offer and the Sparkle in the Park during the holidays. Bryant expressed his appreciation to employees for continuing to deliver reliable services to the City of Carthage. GM Bryant announced that

Senator Jill Carter will be in the Community Room on Friday, February 16th at 1:00pm to present a resolution to CWEP.

BOARD MEMBER COMMENTS:

Board Secretary Collier gave a shoutout to Jost Tiffany and expressed his appreciation for fielding 13 calls in one night for water shut offs.

Board member Beimdiek thanked Nicki Fuller for a very informative presentation.

At 4:22pm, a motion by Beimdiek and seconded by Collier to adjourn the meeting passed unanimously.

____

President – Brian Schmidt

____

Secretary – Darren Collier

McCune Brooks Regional Hospital Trust
Regular Meeting of the Board of Trustees
February 28, 2024
2:00 p.m.
Schmidt Associates Conference Room
1105 Industrial Drive, Carthage, MO.

Agenda

I.	Call to Order	Ron Petersen
II.	Approval of November 29th, 2023 Minutes	Ron Petersen
III.	Financial Statement Report & Review	Stan Schmidt
IV.	Review of Grant Applications	Ron Petersen
V.	Next meeting date	Ron Petersen
VI.	Adjournment	Ron Petersen

City Administrator's Report   01/09/24-02/23/24

City Staff and Internal Projects

- Still working with Spencer/Fane and Gilmore Bell on respective projects
- All 5 year Capital Projects Presented to Committees/Now working on refining and inputting the personnel portion of the budget
- Continuing communication with OpenGov (demand letter sent)
- City Staff working on Headshot Photos for Council and City Leaders (Scheduled in April)
- Meeting about refining Blight Procedure with Economic Development Dir. and Staff

Community

- Ribbon Cutting J-Builders new property
- CEDC Meeting
- Region M Board Meeting

Meetings

- Public Services Committee
- Budget Ways and Means
- Planning and Zoning Committee
- JASCO Board Meeting
- Public Works Meeting
- Meetings with Economic Development Director
- Several Meetings with Mayor and various department heads including Bi-Weekly staff meeting

From the Team

- News Coverage of $142,000 Cyber Security Grant obtained by IT
- News Coverage of SWAP meeting and Rec Classes at Memorial Hall
- Carthage High School Soundwave stopped by City Hall to Sing on Valentine's Day (Thank you!)
- Great Parks and Rec Covering on Good Morning 4 States Show
- News Coverage about Carl Lewton Stadium nearing completion

Monthly Budget

- Sales tax revenues for January came in at $256,342 which is up 6% for the month but down 1.1%. for the year. The Use Tax came way above the projection at $187,515 which is up 119% for the month. The marijuana tax revenue is at approx. $15,000 again for two months running (from last Meeting, Feb not yet available)

COUNCIL BILL NO. ___24-06___ **ORDINANCE NO. _____________**

An Ordinance authorizing the Mayor to enter into a contract with Sprouls Construction, Inc. of Lamar, Missouri, for a box culvert replacement on West Chestnut in the amount of $231,476.70, in the City of Carthage, Missouri.

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 a contract with Sprouls Construction, Inc. of Lamar, Missouri for replacement of a box culvert on West Chestnut, for the City of Carthage, a copy of which 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 ________________, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Public Works Committee

ZANEVAN ENGINEERING

CIVIL ENGINEERING

Project Management
Construction Plans
Permitting
Right of Way Negotiation
Utility Coordination
Project Specifications
Contract Documents
Agency Coordination

CONSTRUCTION ENGINEERING

Bidding Services
Construction Inspection
Contract Administration
Project Documentation

STRUCTURAL ENGINEERING

Highway Bridges
Forensic Investigations
Building Inspections
Residential Structures
Commercial Structures
Structure Rehabilitation

Zanevan Engineering, LLC
1221 Oak Street
Carthage, MO 64836
417.800.2500
www.zanevan.com

February 6, 2024

Zeb Carney
Public Works Director
623 E. 7th Street
Carthage, Missouri 64836

RE: Letter of Recommendation
West Chestnut Culvert Replacement – Carthage, MO

Dear Mr. Carney:

The bids for the above referenced project have been reviewed and tabulated. It is the recommendation of this office to accept the low bid from Sprouls Construction, Inc. of Lamar, Missouri in the amount of $231,476.70.

A copy of the bid tabulation is attached for your review and approval.

Sincerely,

Zanevan Engineering, LLC

Jason Eckhart

Jason Eckhart, PE
President/Owner

Enclosure

BID TABULATION
WEST CHESTNUT CULVERT REPLACEMENT
CARTHAGE, MISSOURI
BID OPENING: FEBRUARY 6, 2024 @ 10 a.m.

				SPROULS CONSTRUCTION, INC. 397 W. HWY. DD LAMAR, MISSOURI 64759		JKS CONSTRUCTION, INC. 417 S. 120TH ST. GIRARD, KANSAS 66743		JEFF ASBELL EXCAV. & TRUCKING 9400 STATE HWY. 171 CARL JUNCTION, MISSOURI 64834		G & G CONSTRUCTION CO., INC. P.O. BOX 863 CARTHAGE, MISSOURI 64836		HUNTER CHASE & ASSOCIATES 1200 E. WOODHURST, J-200 SPRINGFIELD, MISSOURI 65804		ELEMENTS CONST. CONCEPTS 5850 E. 20TH ST. JOPLIN, MISSOURI 64801	
Item No.	*Description*	*No. Units*	*Unit*	*Unit Price*	*Extended Total*	*Unit Price*	*Extended Total*	*Unit Price*	*Extended Total*	*Unit Price*	*Extended Total*	*Unit Price*	*Extended Total*	*Unit Price*	*Extended Total*
1	MOBILIZATION	1	LS	$ 17,000.00	$ 17,000.00	$ 30,500.00	$ 30,500.00	$ 19,000.00	$ 19,000.00	$ 14,440.00	$ 14,440.00	$ 60,225.00	$ 60,225.00	$ 50,000.00	$ 50,000.00
2	SEEDING AND MULCH	0.01	AC	$ 50,000.00	$ 500.00	$ 200,000.00	$ 2,000.00	$ 136,032.00	$ 1,360.32	$ 155,000.00	$ 1,550.00	$ 10,000.00	$ 100.00	$ 200,000.00	$ 2,000.00
3	REMOVAL OF IMPROVEMENTS	1	LS	$ 24,000.00	$ 24,000.00	$ 20,000.00	$ 20,000.00	$ 21,850.00	$ 21,850.00	$ 51,650.00	$ 51,650.00	$ 33,225.00	$ 33,225.00	$ 45,000.00	$ 45,000.00
4	ASPHALT PAVEMENT (4" THICK)	179	SY	$ 80.00	$ 14,320.00	$ 55.50	$ 9,934.50	$ 63.00	$ 11,277.00	$ 68.30	$ 12,225.70	$ 76.00	$ 13,604.00	$ 75.00	$ 13,425.00
5	COMPACTED TYPE 1 GRANULAR BASE (6" THICK)	179	SY	$ 16.00	$ 2,864.00	$ 20.00	$ 3,580.00	$ 24.50	$ 4,385.50	$ 49.20	$ 8,806.80	$ 15.00	$ 2,685.00	$ 20.00	$ 3,580.00
6	CONCRETE SIDEWALK	16	SY	$ 95.00	$ 1,520.00	$ 60.00	$ 960.00	$ 125.50	$ 2,008.00	$ 187.50	$ 3,000.00	$ 95.00	$ 1,520.00	$ 200.00	$ 3,200.00
7	COMPACTED CRUSHED STONE (4" THICK)	16	SY	$ 12.00	$ 192.00	$ 25.00	$ 400.00	$ 33.70	$ 539.20	$ 51.40	$ 822.40	$ 14.00	$ 224.00	$ 25.00	$ 400.00
8	TACTILE WARNING SURFACE	20	SF	$ 40.00	$ 800.00	$ 40.00	$ 800.00	$ 30.50	$ 610.00	$ 36.50	$ 730.00	$ 44.00	$ 880.00	$ 40.00	$ 800.00
9	CONCRETE GUTTER FLUME	10	SY	$ 300.00	$ 3,000.00	$ 120.00	$ 1,200.00	$ 1,435.00	$ 14,350.00	$ 536.00	$ 5,360.00	$ 2,568.00	$ 25,680.00	$ 1,000.00	$ 10,000.00
10	SMALL BLOCK RETAINING WALL	8	LF	$ 200.00	$ 1,600.00	$ 90.00	$ 720.00	$ 385.00	$ 3,080.00	$ 137.50	$ 1,100.00	$ 378.00	$ 3,024.00	$ 250.00	$ 2,000.00
11	PEDESTRIAN RAILING	113	LF	$ 150.00	$ 16,950.00	$ 240.00	$ 27,120.00	$ 204.00	$ 23,052.00	$ 224.00	$ 25,312.00	$ 246.00	$ 27,798.00	$ 200.00	$ 22,600.00
12	THRIE BEAM BRIDGE RAIL	25	LF	$ 419.75	$ 10,493.75	$ 365.00	$ 9,125.00	$ 415.00	$ 10,375.00	$ 440.00	$ 11,000.00	$ 498.00	$ 12,450.00	$ 350.00	$ 8,750.00
13	TRANSITION SECTION	25	LF	$ 109.25	$ 2,731.25	$ 95.00	$ 2,375.00	$ 108.00	$ 2,700.00	$ 120.00	$ 3,000.00	$ 130.00	$ 3,250.00	$ 200.00	$ 5,000.00
14	TYPE "A" GUARDRAIL	25	LF	$ 144.90	$ 3,622.50	$ 126.00	$ 3,150.00	$ 143.00	$ 3,575.00	$ 158.00	$ 3,950.00	$ 172.00	$ 4,300.00	$ 100.00	$ 2,500.00
15	GUARDRAIL END SECTION	4	EA	$ 301.30	$ 1,205.20	$ 262.00	$ 1,048.00	$ 297.00	$ 1,188.00	$ 362.50	$ 1,450.00	$ 358.00	$ 1,432.00	$ 250.00	$ 1,000.00
16	BRIDGE SLAB (12" THICK W/ REINFORCING)	166	SY	$ 343.00	$ 56,938.00	$ 390.00	$ 64,740.00	$ 358.50	$ 59,511.00	$ 386.90	$ 64,225.40	$ 548.00	$ 90,968.00	$ 740.00	$ 122,840.00
17	BLOCK WALL AND FOOTING (W/ REINFORCING)	108	LF	$ 400.00	$ 43,200.00	$ 340.00	$ 36,720.00	$ 627.00	$ 67,716.00	$ 661.00	$ 71,388.00	$ 695.00	$ 75,060.00	$ 900.00	$ 97,200.00
18	CONCRETE RETAINING WALL AND FOOTING (W/ REINFORCING)	32	LF	$ 530.00	$ 16,960.00	$ 584.00	$ 18,688.00	$ 980.00	$ 31,360.00	$ 487.50	$ 15,600.00	$ 1,018.00	$ 32,576.00	$ 1,500.00	$ 48,000.00
19	CONCRETE CHANNEL FLOOR (4" THICK W/ W.W.M.)	104	SY	$ 95.00	$ 9,880.00	$ 15.00	$ 1,560.00	$ 110.00	$ 11,440.00	$ 103.46	$ 10,759.84	$ 82.00	$ 8,528.00	$ 240.00	$ 24,960.00
20	EXISTING STORM WATER PIPE CONNECTION	2	LF	$ 250.00	$ 500.00	$ 100.00	$ 200.00	$ 1,058.00	$ 2,116.00	$ 750.00	$ 1,500.00	$ 1,253.00	$ 2,506.00	$ 1,000.00	$ 2,000.00
21	TYPE 3 MOVABLE BARRICADE	8	EA	$ 200.00	$ 1,600.00	$ 250.00	$ 2,000.00	$ 113.50	$ 908.00	$ 225.00	$ 1,800.00	$ 287.00	$ 2,296.00	$ 250.00	$ 2,000.00
22	R11-2 SIGN (BRIDGE CLOSED)	8	EA	$ 200.00	$ 1,600.00	$ 160.00	$ 1,280.00	$ 35.50	$ 284.00	$ 125.00	$ 1,000.00	$ 102.00	$ 816.00	$ 100.00	$ 800.00
TOTAL BID AMOUNT					$ 231,476.70		$ 238,100.50 *		$ 292,685.02		$ 310,670.14		$ 403,147.00		$ 468,055.00

This is to certify that at 10:00 A.M. on February 6, 2024, at the office of the City of Carthage City Hall, Carthage, Missouri, the bids tabulated herein were publicly opened, read aloud and checked. The totals are correct as to additions and extensions.

Jason Eckhart

Jason Eckhart, P.E.
Zanevan Engineering

***Total bid amount incorrect due to contractor's mathematical error.**

AGREEMENT FORM 00500

THIS AGREEMENT, made this____________day of________________, 2024, by and between City of Carthage, Carthage, Missouri, hereinafter called "OWNER" and Sprouls Construction, Inc. doing business as (~~an individual~~), or (~~a partnership~~,) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of West Chestnut Culvert Replacement, Carthage, Missouri.

2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS on the date stipulated in the NOTICE TO PROCEED and will complete the same within 90 calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR understands that the specifications governing the work contemplated are attached to this proposal.

5. The CONTRACTOR agrees to pay, without condition or recourse, as liquidated damages to the sum of Five Hundred and 00/100 dollars ($500.00) for each consecutive calendar day after the stated DATE OF COMPLETION or extension thereto that the CONTRACTOR shall be in default as provided in SECTION 15 OF THE General Conditions. CONTRACTOR further agrees to reimburse the subcontractors, suppliers, engineers, and other contractors of the OWNER for costs incurred and/or damages suffered by reason or reasons attributable to the CONTRACTOR'S failure to complete the CONTRACT by the completion date, or extensions thereof, as provided by section 15 of the General Conditions. Said liquidated damages and payments shall be withheld from the payments due the contractor. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of Two Hundred Thirty-One Thousand Four Hundred Seventy-Six and 70/100 Dollars ($231,476.70)

6. The term "CONTRACT DOCUMENTS" means and includes the following:
   - (A) Invitation to Bid
   - (B) Instructions to Bidders
   - (C) Bid
   - (D) Bid Bond
   - (E) Agreement Form
   - (F) Notice of Award
   - (G) Notice to Proceed
   - (H) Performance Bond
   - (I) Payment bond
   - (J) General Conditions of Contract
   - (K) Supplementary Conditions
   - (L) Specifications prepared by Zanevan Engineering and dated January, 2024.
   - (M) Drawings prepared by Zanevan Engineering and dated January, 2024.
   - (N) Addenda

No. 1	dated Jan. 23	20 24
No. 2	dated Feb. 5	20 24
No. ________	dated ________	20__
No. ________	dated ________	20__
No. ________	dated ________	20__

7. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.

8. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three (3) copies each of which shall be deemed an original on the date first above written.

	OWNER:
	City of Carthage
(SEAL)__________________	By __________________
Attest __________________	Name Dan Rife (Please Type or Print)
Name Miranda Deal	Title Mayor
Title City Clerk	
	CONTRACTOR:
(SEAL)__________________	By __________________
Attest __________________	Name __________________ (Please Type or Print)
Name__________________	Title __________________

NOTICE OF AWARD 00501

TO: Sprouls Construction, Inc.

397 W. Hwy. DD

Lamar, MO 64759

PROJECT Description: West Chestnut Culvert Replacement, Carthage, Missouri.

The OWNER has considered the BID submitted by you for the above-described WORK in response to its Invitation to Bid dated January 10, 2024 and Instructions to Bidders.

You are hereby notified that you BID has been accepted in the amount of Two Hundred Thirty-One Thousand Four Hundred Seventy-Six and 70/100 Dollars ($231,476.70).

You are required by the Instructions to Bidders to execute the Agreement and furnish the required CONTRACTORS PERFORMANCE BOND, PAYMENT BOND and CERTIFICATES OF INSURANCE within fourteen (14) consecutive calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS and INSURANCE CERTIFICATES within fourteen (14) consecutive calendar days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this_______day of_________________, 20______.

City of Carthage

By:_________________________

Title: Mayor

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by this the_____day of________________________20____.

By____________________________

Title___________________________

NOTICE TO PROCEED 00502

TO: Sprouls Construction, Inc.

397 W. Hwy. DD

Lamar, Missouri 64759

DATE: February 6, 2024

PROJECT: West Chestnut Culvert Replacement, Carthage, Missouri

You are hereby notified to commence WORK in accordance with the Agreement dated February 27, 2024, on or before March 18, 2024, and you are to complete the WORK within 90 calendar days thereafter. The date of completion of all WORK is therefore June 17, 2024.

City of Carthage

By:____________________________

Title: Mayor

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED

is hereby acknowledged by__________________________

____

this the_____day of____________, 20______

By__________________________________

MISSOURI DEPARTMENT OF REVENUE

Form **5060**

Project Exemption Certificate

This form is to be completed and given to your contractor.

Exempt Entity and Project Information

Name of Exempt Entity Issuing the Certificate: CITY OF CARTHAGE			Missouri Tax Exemption Number: 1 2 4 8 7 4 3 1	
Address: 326 GRANT STREET	City: CARTHAGE		State: MO	ZIP Code: 64836
E-mail Address: z.carney@carthagemo.gov				
Project Number	Project Begin Date (MM/DD/YYYY): 03/18/2024	Estimated Project End Date (MM/DD/YYYY): 06/17/2024		
Description of Project: REPLACEMENT OF BRIDGE STRUCTURE.				
Project Location: WEST CHESTNUT STREET, CARTHAGE, MISSOURI		Certificate Expiration Date (MM/DD/YYYY): 07/01/2024		

Provide a signed copy of this certificate, along with a copy of the exempt entity's Missouri Sales and Use Tax Exemption Letter to each contractor or subcontractor who will be purchasing tangible personal property for use in this project. It is the responsibility of the exempt entity to ensure the validity of the information on the certificate. The exempt entity must issue a new certificate if any of the information changes.

Signature of Authorized Exempt Entity	Printed Name of Authorized Exempt Entity	Date (MM/DD/YYYY)
[signature]	ZEB CARNEY	02/05/2024

Contractor

The Missouri exempt entity named above hereby authorizes the purchase, without sales tax, of tangible personal property to be incorporated or consumed in the construction project identified herein and no other, pursuant to **Section 144.062, RSMo**. Under penalties of perjury, I declare that the above information and any attached supplement is true, complete, and correct.

Name of Purchasing Contractor: SPROULS CONSTRUCTION, INC.	Signature of Contractor		Date (MM/DD/YYYY): __/__/____	
Address: 397 W. HWY. DD	City: LAMAR		State: MO	ZIP Code: 64759

Subcontractor

Contractors - Present this to your supplier in order to purchase the necessary materials tax exempt. Complete the Subcontractor portion if extending the certificate to your subcontractor. The contractor must sign the form in the space provided below.

Name of Purchasing Subcontractor			
Address	City	State	ZIP Code
Signature of Contractor	Contractor's Printed Name	Date (MM/DD/YYYY): __/__/____	

Form 5060 (Revised 11-2019)

Taxation Division
P.O Box 358
Jefferson City, MO 65105-0358

Phone: (573) 751-2836
Fax: (573) 522-1666
E-mail: salestaxexemptions@dor.mo.gov

Visit **http://dor.mo.gov/business/sales/sales-use-exemptions.php** for additional information.

COUNCIL BILL NO. ___24-07___ **ORDINANCE NO. _____________**

An Ordinance of the City of Carthage, Missouri authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and Zanevan Engineering, LLC for construction inspection services on the I-49 Interchange Project, in the City of Carthage, Missouri.

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

SECTION I: The agreement with Zanevan Engineering, LLC for Engineering for construction inspection services on the I-49 Interchange Project, attached hereto as Exhibit A, a copy of which 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 ________________, 2024.

____

Dan Rife, Mayor

ATTEST:

____

Miranda Deal, City Clerk

Sponsored by: Public Works Committee

SPONSOR: City of Carthage, Missouri
LOCATION: Carthage, Missouri
PROJECT: S6030(51) State Highway HH, I-49 Southbound Ramps and Dr. Russell Smith Way Intersection

THIS CONTRACT is between City of Carthage, Missouri, hereinafter referred to as the "Local Agency", and Zanevan Engineering, hereinafter referred to as the "Engineer".

INASMUCH as funds have been made available by the Federal Highway Administration through its Off-System Bridge Program, coordinated through the Missouri Department of Transportation, the Local Agency intends to construct the replacement of existing signalized intersection at outer road and southbound ramp terminal intersection with a roundabout for Route HH (Fir Road), Dr. Russell Smith Way (outer road) and I 49 southbound ramps and requires professional engineering services. The Engineer will provide the Local Agency with professional services hereinafter detailed for the planning, design and construction inspection of the desired improvements and the Local Agency will pay the Engineer as provided in this contract. It is mutually agreed as follows:

ARTICLE I – SCOPE OF SERVICES

A. DESIGN PHASE - The Engineer will:

1. determine the needs of the Local Agency for the project;

2. conduct topographic, property and utility surveys sufficient to develop plans for the project;

3. arrange for subsurface investigations, if needed;

4. conduct hydraulic studies, prepare alternative designs and cost estimates, develop preliminary plans, and recommend to the Local Agency the best overall general design based on these studies;

5. submit electronic copies of preliminary plans, estimates and studies for review by the Local Agency and Missouri Department of Transportation (MoDOT);

6. prepare detailed construction plans, cost estimates, specifications and related documents as necessary for the purpose of soliciting bids for constructing the project. Provision will be made in the contract documents for that portion of the work that will be performed by Local Agency's forces;

7. secure adequate property title information, determine right-of-way requirements, prepare right-of-way plans, and assist the Local Agency in acquiring the right-of-way deeds needed for the project;

8. ensure compliance with water quality requirements by coordinating with the Missouri Department of Natural Resources and the U.S. Army Corps of Engineers and also insure compliance with the requirements of the Federal Emergency Management Agency (FEMA);

9. ensure compliance with historic preservation requirements through coordination with the Missouri Department of Natural Resources, and if deemed necessary, arrange to have the site examined by a qualified archaeologist on a subcontract basis. Cost of an archaeological study is not included in this contract. A Supplemental Agreement will be issued if an archaeological study is required;

10. ensure compliance with all regulations in regards to noise abatement and air quality, if necessary; and

11. provide the Local Agency electronic copy of completed plans, specifications and/cost estimates for the purpose of obtaining construction authorization from the Missouri Department of Transportation.

12. arrange for hazardous waste inspection and, if deemed necessary, arrange to have the hazardous waste removed by a qualified disposer on a subcontract basis. Cost of hazardous waste mitigation is not included in this contract. A Supplemental Agreement will be issued if mitigation is required.

B. BIDDING PHASE - The Engineer will:

1. upon receipt of construction authorization from MoDOT, make final corrections resulting from reviews by agencies involved, and provide an adequate number of plans, specifications, and bid documents to the Local Agency;

2. provide the Local Agency with a list of qualified area bidders and assist Local Agency in advertising for bids; and

3. assist the Local Agency in evaluating bids and requesting concurrence in award from MoDOT;

C. CONSTRUCTION PHASE - The Engineer will serve as the Local Agency's representative for administering the terms of the construction contract between Local Agency and their Contractor. Engineer will endeavor to protect the Local Agency against defects and deficiencies in workmanship and materials in work by the Contractor. However, the furnishing of such project representation will not make Engineer responsible for the construction methods and procedures used by the Contractor or for the Contractor's failure to perform work in accordance with the contract documents. Engineer's services will include more specifically as follows:

1. assist the Local Agency with a preconstruction conference to discuss project details with the Contractor;

2. make periodic site visits to observe the Contractor's progress and quality of work, and to determine if the work conforms to the contract documents. It is contemplated that survey staking and layout will be accomplished by the contractor's forces. The Engineer will accompany MoDOT and FHWA representatives on visits of the project site as requested;

3. check shop drawings and review schedules and drawings submitted by the Contractor;

4. reject work not conforming to the project documents;

5. prepare change orders for issuance by the Local Agency as necessary and assure that proper approvals are made prior to work being performed;

6. review wage rates, postings, equal employment opportunity and other related items called for in the contract documents;

7. inspect materials, review material certifications furnished by Contractor, sample concrete and other materials as required, and arrange for laboratory testing of samples by others on a subcontract basis. Independent assurance samples and tests will be performed by MoDOT personnel and such sampling and testing is excluded from the work to be performed by the Engineer under this contract;

8. maintain progress diary and other project records, measure and document quantities, and prepare monthly estimates for payments due the Contractor;

9. be present during critical construction operations, including but not limited to the following:
    a. structure layout;
    b. excavation and backfilling;
    c. driving of piles;
    d. checking of reinforcing steel prior to concrete placement;
    e. concrete batching and pouring;
    f. placement of girders; and
    g. placement of surfacing materials; and

10. participate in final inspection, provide the Local Agency with project documentation (diaries, test results, certifications, etc.), and provide as-built plans for the Local Agency's records.

ARTICLE II - <u>DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS</u>:

A. DBE Goal: The following DBE goal has been established for this Agreement. The dollar value of services and related equipment, supplies, and materials used in furtherance thereof which is credited toward this goal will be based on the amount actually paid to DBE firms. The goal for the percentage of services to be awarded to DBE firms is 0% of the total Agreement dollar value.

B. DBE Participation Obtained by Engineer: The Engineer has obtained DBE participation, and agrees to use DBE firms to complete, 0.0% of the total services to be performed under this Agreement, by dollar value. The DBE firms which the Engineer shall use, and the type and dollar value of the services each DBE will perform, is as follows:

DBE FIRM NAME, STREET AND COMPLETE MAILING ADDRESS	TYPE OF DBE SERVICE	TOTAL $ VALUE OF THE DBE SUBCONTRACT	CONTRACT $ AMOUNT TO APPLY TO TOTAL DBE GOAL	PERCENTAGE OF SUBCONTRACT DOLLAR VALUE APPLICABLE TO TOTAL GOAL

ARTICLE III-ADDITIONAL SERVICES

The Local Agency reserves the right to request additional work, and changed or unforeseen conditions may require changes and work beyond the scope of this contract. In this event, a supplement to this agreement shall be executed and submitted for the approval of MoDOT prior to performing the additional or changed work or incurring any additional cost thereof. Any change in compensation will be covered in the supplement.

ARTICLE IV - RESPONSIBILITIES OF LOCAL AGENCY

The Local Agency will cooperate fully with the Engineer in the development of the project, including the following:

A. make available all information pertaining to the project which may be in the possession of the Local Agency;

B. provide the Engineer with the Local Agency's requirements for the project;

C. make provisions for the Engineer to enter upon property at the project site for the performance of his duties;

D. examine all studies and layouts developed by the Engineer, obtain reviews by MoDOT, and render decisions thereon in a prompt manner so as not to delay the Engineer;

E. designate a Local Agency's employee to act as Local Agency's Person in Responsible Charge under this contract, such person shall have authority to transmit instructions, interpret the Local Agency's policies and render decisions with respect to matters covered by this agreement (see EPG 136.3);

F. perform appraisals and appraisal review, negotiate with property owners and otherwise provide all services in connection with acquiring all right-of-way needed to construct this project.

ARTICLE V - PERIOD OF SERVICE

The Engineer will commence work within two weeks after receiving notice to proceed from the Local Agency. The general phases of work will be completed in accordance with the following schedule:

A. PS&E Approval by MODOT shall be completed on ___________.

B. Construction Phase shall be completed 60 days after construction final completion schedule.

The Local Agency will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Engineer. Requests for extensions of time shall be made in writing by the Engineer, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

ARTICLE VI – STANDARDS

The Engineer shall be responsible for working with the Local Agency in determining the appropriate design parameters and construction specifications for the project using good engineering judgment based on the specific site conditions, Local Agency needs, and guidance provided in the most current version of EPG 136 LPA Policy. If the project is on the state highway system or is a bridge project, then the latest version of MoDOT's Engineering Policy Guide (EPG) and Missouri Standard Specifications for Highway Construction shall be used (see EPG 136.7). The project plans must also be in compliance with the latest ADA (Americans with Disabilities Act) Regulations.

ARTICLE VII - COMPENSATION

For services provided under this contract, the Local Agency will compensate the Engineer as follows:

A. For design services, including work through the construction contract award stage, the Local Agency will pay the Engineer the actual costs incurred plus a predetermined fixed fee of $__________, with a ceiling established for said design services in the amount of $_________, which amount shall not be exceeded.

B. For construction inspection services, the Local Agency will pay the Engineer the actual costs incurred plus a predetermined fixed fee of $40,112.42, with a ceiling established for said inspection services in the amount of $341,127.42, which amount shall not be exceeded.

C. The compensation outlined above has been derived from estimates of cost which are detailed in Attachment B. Any major changes in work, extra work, exceeding of the contract ceiling, or change in the predetermined fixed fee will require a supplement to this contract, as covered in Article III - ADDITIONAL SERVICES.

D. Actual costs in Sections A and B above are defined as:

1. Actual payroll salaries paid to employees for time that they are productively engaged in work covered by this contract, plus

2. An amount calculated at 110% (Safe Harbor) of actual salaries in Item 1 above for payroll additives, including payroll taxes, holiday and vacation pay, sick leave pay, insurance benefits, retirement and incentive pay, plus

3. An amount calculated at 0% of actual salaries in Item 1 above for general administrative overhead, based on the Engineer's system for allocating indirect costs in accordance with sound accounting principles and business practice, plus

4. Other costs directly attributable to the project but not included in the above overhead, such as vehicle mileage, meals and lodging, printing, surveying expendables, and computer time, plus

5. Project costs incurred by others on a subcontract basis, said costs to be passed through the Engineer on the basis of reasonable and actual cost as invoiced by the subcontractors.

E. The rates shown for additives and overhead in Sections VII. D.2 and VII. D.3 above are the established Engineer's overhead rate accepted at the time of contract execution and shall be utilized throughout the life of this contract for billing purposes.

F. The payment of costs under this contract will be limited to costs which are allowable under 23 CFR 172 and 48 CFR 31.

G. **METHOD OF PAYMENT** - Partial payments for work satisfactorily completed will be made to the Engineer upon receipt of itemized invoices by the Local Agency. Invoices will be submitted no more frequently than once every two weeks and must be submitted monthly for invoices greater than $10,000. A pro-rated portion of the fixed fee will be paid with each invoice. Upon receipt of the invoice and progress report, the Local Agency will, as soon as practical, but not later than 45 days from receipt, pay the Engineer for the services rendered, including the proportion of the fixed fee earned as reflected by the estimate of the portion of the services completed as shown by the progress report, less partial payments previously made. A late payment charge of one and one half percent (1.5%) per month shall be assessed for those invoiced amount not paid, through no fault of the Engineer, within 45 days after the Local Agency's receipt of the Engineer's invoice. The Local Agency will not be liable for the late payment charge on any invoice which requests payment for costs which exceed the proportion of the maximum amount payable earned as reflected by the estimate of the portion of the services completed, as shown by the progress report. The payment, other than the fixed fee, will be subject to final audit of actual expenses during the period of the Agreement.

H. **PROPERTY ACCOUNTABILITY** - If it becomes necessary to acquire any specialized equipment for the performance of this contract, appropriate credit will be given for any residual value of said equipment after completion of usage of the equipment.

ARTICLE VIII - COVENANT AGAINST CONTINGENT FEES

The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Local Agency shall have the right to annul this agreement without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee, plus reasonable attorney's fees.

ARTICLE IX - SUBLETTING, ASSIGNMENT OR TRANSFER

No portion of the work covered by this contract, except as provided herein, shall be sublet or transferred without the written consent of the Local Agency. The subletting of the work shall in no way relieve the Engineer of his primary responsibility for the quality and performance of the work. It is the intention of the Engineer to engage subcontractors for the purposes of:

Sub-Consultant Name	**Address**	**Services**
NA	NA	NA

ARTICLE X - PROFESSIONAL ENDORSEMENT

All plans, specifications and other documents shall be endorsed by the Engineer and shall reflect the name and seal of the Professional Engineer endorsing the work. By signing and sealing the PS&E submittals the Engineer of Record will be representing to MoDOT that the design is meeting the intent of the federal aid programs.

ARTICLE XI - RETENTION OF RECORDS

The Engineer shall maintain all records, survey notes, design documents, cost and accounting records, construction records and other records pertaining to this contract and to the project covered by this contract, for a period of not less than three years following final payment by FHWA. Said records shall be made available for inspection by authorized representatives of the Local Agency, MoDOT or the federal government during regular working hours at the Engineer's place of business.

ARTICLE XII - OWNERSHIP OF DOCUMENTS

Plans, tracings, maps and specifications prepared under this contract shall be delivered to and become the property of the Local Agency upon termination or completion of work. Basic survey notes, design computations and other data prepared under this contract shall be made available to the Local Agency upon request. All such information produced under this contract shall be available for use by the Local Agency without restriction or limitation on its use. If the Local Agency incorporates any portion of the work into a project other than that for which it was performed, the Local Agency shall save the Engineer harmless from any claims and liabilities resulting from such use.

ARTICLE XIII – SUSPENSION OR TERMINATION OF AGREEMENT

A. The Local Agency may, without being in breach hereof, suspend or terminate the Engineer's services under this Agreement, or any part of them, for cause or for the convenience of the Local Agency, upon giving to the Engineer at least fifteen (15) days' prior written notice of the effective date thereof. The Engineer shall not accelerate performance of services during the fifteen (15) day period without the express written request of the Local Agency.

B. Should the Agreement be suspended or terminated for the convenience of the Local Agency, the Local Agency will pay to the Engineer its costs as set forth in Attachment B including actual hours expended prior to such suspension or termination and direct costs as defined in this Agreement for services performed by the Engineer, a proportional amount of the fixed fee based upon an estimated percentage of Agreement completion, plus reasonable costs incurred by the Engineer in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Engineer's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

C. The Engineer shall remain liable to the Local Agency for any claims or damages occasioned by any failure, default, or negligent errors and/or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a termination for non-performance or breach by Engineer. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.

D. The Engineer shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of a suspension or termination where the Engineer is deprived of the opportunity to complete the Engineer's services.

E. Upon the occurrence of any of the following events, the Engineer may suspend performance hereunder by giving the Local Agency 30 days advance written notice and may continue such suspension until the condition is satisfactorily remedied by the Local Agency. In the event the condition is not remedied within 120 days of the Engineer's original notice, the Engineer may terminate this agreement.

1. Receipt of written notice from the Local Agency that funds are no longer available to continue performance.

2. The Local Agency's persistent failure to make payment to the Engineer in a timely manner.

3. Any material contract breach by the Local Agency.

ARTICLE XIV - DECISIONS UNDER THIS CONTRACT

The Local Agency will determine the acceptability of work performed under this contract, and will decide all questions which may arise concerning the project. The Local Agency's decision shall be final and conclusive.

ARTICLE XV - SUCCESSORS AND ASSIGNS

The Local Agency and the Engineer agree that this contract and all contracts entered into under the provisions of this contract shall be binding upon the parties hereto and their successors and assigns.

ARTICLE XVI - COMPLIANCE WITH LAWS

The Engineer shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the work, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, 2000e), as well as with any applicable titles of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and non-discrimination clauses incorporated herein, and shall procure all licenses and permits necessary for the fulfillment of obligations under this contract.

ARTICLE XVII - RESPONSIBILITY FOR CLAIMS AND LIABILITY

The Engineer agrees to save harmless the Local Agency, MoDOT and FHWA from all claims and liability due to his negligent acts or the negligent acts of his employees, agents or subcontractors.

ARTICLE XVIII - NONDISCRIMINATION

The Engineer, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors. The Engineer will comply with state and federal related 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, 2000e), as well as with any applicable titles of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.). More specifically, the Engineer will comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation, as contained in 49 CFR 21 through Appendix H and 23 CFR 710.405 which are herein incorporated by reference and made a part of this contract. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Engineer's obligations under this contract and the regulations relative to non-discrimination on the ground of color, race or national origin.

ARTICLE XIX – LOBBY CERTIFICATION

CERTIFICATION ON LOBBYING: Since federal funds are being used for this agreement, the Engineer's signature on this agreement constitutes the execution of all certifications on lobbying which are required by 49 C.F.R. Part 20 including Appendix A and B to Part 20. Engineer agrees to abide by all certification or disclosure requirements in 49 C.F.R. Part 20 which are incorporated herein by reference.

ARTICLE XX – INSURANCE

A. The Engineer shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Engineer from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Engineer and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

B. The Engineer shall also maintain professional liability insurance to protect the Engineer against the negligent acts, errors, or omissions of the Engineer and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

C. The Engineer's insurance coverage shall be for not less than the following limits of liability:

1. Commercial General Liability: $500,000 per person up to $3,000,000 per occurrence;

2. Automobile Liability: $500,000 per person up to $3,000,000 per occurrence;
3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: $1,000,000; and

4. Professional ("Errors and Omissions") Liability: $1,000,000, each claim and in the annual aggregate.

D. The Engineer shall, upon request at any time, provide the Local Agency with certificates of insurance evidencing the Engineer's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance are in effect as to the services under this Agreement.

E. Any insurance policy required as specified in (ARTICLE XX) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.

ARTICLE XXI - ATTACHMENTS

The following exhibits are attached hereto and are hereby made part of this contract:

Attachment A – Scope of Service

Attachment B - Estimate of Cost

Attachment C - Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.

Attachment D - Certification Regarding Debarment, Suspension, and Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.

Attachment E – DBE Contract Provisions

Attachment F – Fig. 136.4.15 Conflict of Interest Disclosure Form

Executed by the Engineer this _____ day of _______________, 2024.

Executed by the City this _________ day of ______________, 2024.

FOR: CITY OF CARTHGE, MISSOURI

BY: ____
Mayor

ATTEST: ___________________________
City Clerk

FOR: ZANEVAN ENGINEERING, LLC.

BY: ____
President

ATTEST: ___________________________

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

____

City Clerk

ATTACHMENT A

Scope of Services

See ARTICLE I – SCOPE OF SERVICES

ATTACHMENT B

ATTACHMENT B

ESTIMATE OF ENGINEERING COST
City of Carthage, Missouri
Project S6030(51)
State Highway HH, I-49 Southbound Ramps and Dr. Russell Smith Way Intersection

CONSTRUCTION PHASE						
		Hours		Rate		Cost
	Principal	400		$75.00		$30,000.00
	Project Engineer	200		$42.50		$8,500.00
	Project Coordinator	800		$33.00		$26,400.00
	Technician III - Inspector	1702		$45.00		$76,590.00

	Subtotal	3102				$141,490.00
	Overhead - Safe Harbor			110.00%		$155,639.00
	Subtotal					$297,129.00
	Other Direct Costs					
	Travel, @$0.67/Mi.	5800				$3,886.00

		Subtotal Direct Costs				$3,886.00

				Subtotal		$301,015.00
	Fixed Fee @13.5%					$40,112.42
	CONTRACT CEILING, CONSTRUCTION PHASE					$341,127.42

ATTACHMENT C

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -
PRIMARY COVERED TRANSACTIONS**

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective 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 primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

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

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

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary 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.

7. The prospective primary 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 Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the

method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List at the Excluded Parties List System. https://www.epls.gov/epls/search.do?page=A&status=current&agency=69#A.

9. 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 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.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

   a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

   b. 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;

   c. 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 (1)(b) of this certification; and

   d. 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.

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

ATTACHMENT D

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

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

2. 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.

3. 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 when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed 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.

6. 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.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List at the Excluded Parties List System.
https://www.epls.gov/epls/search.do?page=A&status=current&agency=69#A.

8. 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 a participant is not required to exceed that which normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 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 with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

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 participation in this transaction 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.

Attachment E
Disadvantage Business Enterprise Contract Provisions

1. Policy: It is the policy of the U.S. Department of Transportation and the Local Agency that businesses owned by socially and economically disadvantaged individuals (DBE's) as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thus, the requirements of 49 C.F.R. Part 26 and Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21) apply to this Agreement.

2. Obligation of the Engineer to DBE's: The Engineer agrees to assure that DBEs have the maximum opportunity to participate in the performance of this Agreement and any subconsultant agreement financed in whole or in part with federal funds. In this regard the Engineer shall take all necessary and reasonable steps to assure that DBEs have the maximum opportunity to compete for and perform services. The Engineer shall not discriminate on the basis of race, color, religion, creed, disability, sex, age, or national origin in the performance of this Agreement or in the award of any subsequent subconsultant agreement.

3. Geographic Area for Solicitation of DBEs: The Engineer shall seek DBEs in the same geographic area in which the solicitation for other subconsultants is made. If the Engineer cannot meet the DBE goal using DBEs from that geographic area, the Engineer shall, as a part of the effort to meet the goal, expand the search to a reasonably wider geographic area.

4. Determination of Participation Toward Meeting the DBE Goal: DBE participation shall be counted toward meeting the goal as follows:

A. Once a firm is determined to be a certified DBE, the total dollar value of the subconsultant agreement awarded to that DBE is counted toward the DBE goal set forth above.

B. The Engineer may count toward the DBE goal a portion of the total dollar value of a subconsultant agreement with a joint venture eligible under the DBE standards, equal to the percentage of the ownership and control of the DBE partner in the joint venture.

C. The Engineer may count toward the DBE goal expenditures to DBEs who perform a commercially useful function in the completion of services required in this Agreement. A DBE is considered to perform a commercially useful function when the DBE is responsible for the execution of a distinct element of the services specified in the Agreement and the carrying out of those responsibilities by actually performing, managing and supervising the services involved and providing the desired product.

D. A Engineer may count toward the DBE goal its expenditures to DBE firms consisting of fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of this Agreement, provided that the fee or commission is determined by MoDOT's External Civil Rights Division to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. The Engineer is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals.

5. Replacement of DBE Subconsultants: The Engineer shall make good faith efforts to replace a DBE Subconsultant, who is unable to perform satisfactorily, with another DBE Subconsultant. Replacement firms must be approved by MoDOT's External Civil Rights Division.

6. Verification of DBE Participation: Prior to final payment by the Local Agency, the Engineer shall file a list with the Local Agency showing the DBEs used and the services performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in this Agreement. Failure on the part of the Engineer to achieve the DBE participation specified in this Agreement may result in sanctions being imposed on the Commission for noncompliance with 49 C.F.R. Part 26 and/or Section 1101(b) of TEA-21. If the total DBE participation is less than the goal amount stated by the MoDOT's External Civil Rights Division, liquidated damages may be assessed to the Engineer.

Therefore, in order to liquidate such damages, the monetary difference between the amount of the DBE goal dollar amount and the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the Engineer's payments as liquidated damages. If this Agreement is awarded with less than the goal amount stated above by MoDOT's External Civil Rights Division, that lesser amount shall become the goal amount and shall be used to determine liquidated damages. No such deduction will be made when, for reasons beyond the control of the Engineer, the DBE goal amount is not met.

7. Documentation of Good Faith Efforts to Meet the DBE Goal: The Agreement goal is established by MoDOT's External Civil Rights Division. The Engineer must document the good faith efforts it made to achieve that DBE goal, if the agreed percentage specified is less than the percentage stated. The Good Faith Efforts documentation shall illustrate reasonable efforts to obtain DBE Participation. Good faith efforts to meet this DBE goal amount may include such items as, but are not limited to, the following:

A. Attended a meeting scheduled by the Department to inform DBEs of contracting or consulting opportunities.

B. Advertised in general circulation trade association and socially and economically disadvantaged business directed media concerning DBE subcontracting opportunities.

C. Provided written notices to a reasonable number of specific DBEs that their interest in a subconsultant agreement is solicited in sufficient time to allow the DBEs to participate effectively.

D. Followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in subconsulting work for this Agreement.

E. Selected portions of the services to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down subconsultant agreements into economically feasible units to facilitate DBE participation).

F. Provided interested DBEs with adequate information about plans, specifications and requirements of this Agreement.

G. Negotiated in good faith with interested DBEs, and not rejecting DBEs as unqualified without sound reasons, based on a thorough investigation of their capabilities.

H. Made efforts to assist interested DBEs in obtaining any bonding, lines of credit or insurance required by the Commission or by the Engineer.

I. Made effective use of the services of available disadvantaged business organizations, minority contractors' groups, disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBE firms.

8. Good Faith Efforts to Obtain DBE Participation: If the Engineer's agreed DBE goal amount as specified is less than the established DBE goal given, then the Engineer certifies that good faith efforts were taken by Engineer in an attempt to obtain the level of DBE participation set by MoDOT's External Civil Rights.

Attachment F – Fig. 136.4.15
Conflict of Interest Disclosure Form for LPA/Consultants

Local Federal-aid Transportation Projects

Firm Name (Consultant): Zanevan Engineering, LLC

Project Owner (LPA): **City of Carthage, Missouri**

Project Name: State Highway HH, I-49 Southbound Ramps and Dr. Russell Smith Way Intersection

Project Number: S6030(51)

As the LPA and/or consultant for the above local federal-aid transportation project, I have:

1. Reviewed the conflict of interest information found in Missouri's Local Public Agency Manual (EPG 136.4)
2. Reviewed the Conflict of Interest laws, including 23 CFR § 1.33, 49 CFR 18.36.

And, to the best of my knowledge, determined that, for myself, any owner, partner or employee, with my firm or any of my sub-consulting firms providing services for this project, including family members and personal interests of the above persons, there are:

☒ No real or potential conflicts of interest

If no conflicts have been identified, complete and sign this form and submit to LPA

☐ Real conflicts of interest or the potential for conflicts of interest

If a real or potential conflict has been identified, describe on an attached sheet the nature of the conflict, and provide a detailed description of Consultant's proposed mitigation measures (if possible). Complete and sign this form and send it, along with all attachments, to the appropriate MoDOT District Representative, along with the executed engineering services contract.

LPA	Consultant
Printed Name:________________	Printed Name: Jason Eckhart, PE
Signature:________________	Signature:________________
Date: ________________	Date: ________________

COUNCIL BILL NO. ___24-08___ **ORDINANCE NO. _____________**

An Ordinance of the City of Carthage, Missouri authorizing the Mayor to execute an Agreement between the City of Carthage, Missouri and Zanevan Engineering, LLC for construction inspection services on the 3rd Street Bridge Project, in the City of Carthage, Missouri.

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

SECTION I: The agreement with Zanevan Engineering, LLC for Engineering for construction inspection services on the 3rd Street Bridge Project, attached hereto as Exhibit A, a copy of which 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 ________________, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Public Works Committee

SPONSOR: City of Carthage, Missouri
LOCATION: Carthage, Missouri
PROJECT: BRO-R117002 Bridge #0720003 on 3rd Street Over Tributary of Spring River

THIS CONTRACT is between City of Carthage, Missouri, hereinafter referred to as the "Local Agency", and Zanevan Engineering, hereinafter referred to as the "Engineer".

INASMUCH as funds have been made available by the Federal Highway Administration through its Off-System Bridge Program, coordinated through the Missouri Department of Transportation, the Local Agency intends to construct a replacement bridge on 3rd Street Over Tributary of Spring River and requires professional engineering services. The Engineer will provide the Local Agency with professional services hereinafter detailed for the planning, design and construction inspection of the desired improvements and the Local Agency will pay the Engineer as provided in this contract. It is mutually agreed as follows:

ARTICLE I – SCOPE OF SERVICES

A. DESIGN PHASE - The Engineer will:

1. determine the needs of the Local Agency for the project;

2. conduct topographic, property and utility surveys sufficient to develop plans for the project;

3. arrange for subsurface investigations, if needed;

4. conduct hydraulic studies, prepare alternative designs and cost estimates, develop preliminary plans, and recommend to the Local Agency the best overall general design based on these studies;

5. submit electronic copies of preliminary plans, estimates and studies for review by the Local Agency and Missouri Department of Transportation (MoDOT);

6. prepare detailed construction plans, cost estimates, specifications and related documents as necessary for the purpose of soliciting bids for constructing the project. Provision will be made in the contract documents for that portion of the work that will be performed by Local Agency's forces;

7. secure adequate property title information, determine right-of-way requirements, prepare right-of-way plans, and assist the Local Agency in acquiring the right-of-way deeds needed for the project;

8. ensure compliance with water quality requirements by coordinating with the Missouri Department of Natural Resources and the U.S. Army Corps of Engineers and also insure

compliance with the requirements of the Federal Emergency Management Agency (FEMA);

9. ensure compliance with historic preservation requirements through coordination with the Missouri Department of Natural Resources, and if deemed necessary, arrange to have the site examined by a qualified archaeologist on a subcontract basis. Cost of an archaeological study is not included in this contract. A Supplemental Agreement will be issued if an archaeological study is required;

10. ensure compliance with all regulations in regards to noise abatement and air quality, if necessary; and

11. provide the Local Agency electronic copy of completed plans, specifications and/cost estimates for the purpose of obtaining construction authorization from the Missouri Department of Transportation.

12. arrange for hazardous waste inspection and, if deemed necessary, arrange to have the hazardous waste removed by a qualified disposer on a subcontract basis. Cost of hazardous waste mitigation is not included in this contract. A Supplemental Agreement will be issued if mitigation is required.

B. BIDDING PHASE - The Engineer will:

1. upon receipt of construction authorization from MoDOT, make final corrections resulting from reviews by agencies involved, and provide an adequate number of plans, specifications, and bid documents to the Local Agency;

2. provide the Local Agency with a list of qualified area bidders and assist Local Agency in advertising for bids; and

3. assist the Local Agency in evaluating bids and requesting concurrence in award from MoDOT;

ARTICLE II - <u>DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS</u>:

A. DBE Goal: The following DBE goal has been established for this Agreement. The dollar value of services and related equipment, supplies, and materials used in furtherance thereof which is credited toward this goal will be based on the amount actually paid to DBE firms. The goal for the percentage of services to be awarded to DBE firms is __0__% of the total Agreement dollar value.

B. DBE Participation Obtained by Engineer: The Engineer has obtained DBE participation, and agrees to use DBE firms to complete, __0___% of the total services to be performed under this Agreement, by dollar value. The DBE firms which the Engineer shall use, and the type and dollar value of the services each DBE will perform, is as follows:

DBE FIRM NAME, STREET AND COMPLETE MAILING ADDRESS	TYPE OF DBE SERVICE	TOTAL $ VALUE OF THE DBE SUBCONTRACT	CONTRACT $ AMOUNT TO APPLY TO TOTAL DBE GOAL	PERCENTAGE OF SUBCONTRACT DOLLAR VALUE APPLICABLE TO TOTAL GOAL

ARTICLE III-ADDITIONAL SERVICES

The Local Agency reserves the right to request additional work, and changed or unforeseen conditions may require changes and work beyond the scope of this contract. In this event, a supplement to this agreement shall be executed and submitted for the approval of MoDOT prior to performing the additional or changed work or incurring any additional cost thereof. Any change in compensation will be covered in the supplement.

ARTICLE IV - RESPONSIBILITIES OF LOCAL AGENCY

The Local Agency will cooperate fully with the Engineer in the development of the project, including the following:

A. make available all information pertaining to the project which may be in the possession of the Local Agency;

B. provide the Engineer with the Local Agency's requirements for the project;

C. make provisions for the Engineer to enter upon property at the project site for the performance of his duties;

D. examine all studies and layouts developed by the Engineer, obtain reviews by MoDOT, and render decisions thereon in a prompt manner so as not to delay the Engineer;

E. designate a Local Agency's employee to act as Local Agency's Person in Responsible Charge under this contract, such person shall have authority to transmit instructions, interpret the Local Agency's policies and render decisions with respect to matters covered by this agreement (see EPG 136.3);

F. perform appraisals and appraisal review, negotiate with property owners and otherwise provide all services in connection with acquiring all right-of-way needed to construct this project.

ARTICLE V - PERIOD OF SERVICE

The Engineer will commence work within two weeks after receiving notice to proceed from the Local Agency. The general phases of work will be completed in accordance with the following schedule:

A. PS&E Approval by MODOT shall be completed on March 31, 2025

B. Construction Phase shall be completed 60 days after construction final completion schedule.

The Local Agency will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Engineer. Requests for extensions of time shall be made in writing by the Engineer, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

ARTICLE VI – STANDARDS

The Engineer shall be responsible for working with the Local Agency in determining the appropriate design parameters and construction specifications for the project using good engineering judgment based on the specific site conditions, Local Agency needs, and guidance provided in the most current version of EPG 136 LPA Policy. If the project is on the state highway system or is a bridge project, then the latest version of MoDOT's Engineering Policy Guide (EPG) and Missouri Standard Specifications for Highway Construction shall be used (see EPG 136.7). The project plans must also be in compliance with the latest ADA (Americans with Disabilities Act) Regulations.

ARTICLE VII - COMPENSATION

For services provided under this contract, the Local Agency will compensate the Engineer as follows:

A. For design services, including work through the construction contract award stage, the Local Agency will pay the Engineer the actual costs incurred plus a predetermined fixed fee of $8,811.47, with a ceiling established for said design services in the amount of $69,747.72, which amount shall not be exceeded.

B. For construction inspection services, the Local Agency will pay the Engineer the actual costs incurred plus a predetermined fixed fee of $_________, with a ceiling established for said inspection services in the amount of $____________, which amount shall not be exceeded.

C. The compensation outlined above has been derived from estimates of cost which are detailed in Attachment B. Any major changes in work, extra work, exceeding of the contract ceiling, or change in the predetermined fixed fee will require a supplement to this contract, as covered in Article III - ADDITIONAL SERVICES.

D. Actual costs in Sections A and B above are defined as:

1. Actual payroll salaries paid to employees for time that they are productively engaged in work covered by this contract, plus

2. An amount calculated at 110% (Safe Harbor) of actual salaries in Item 1 above for payroll additives, including payroll taxes, holiday and vacation pay, sick leave pay, insurance benefits, retirement and incentive pay, plus

3. An amount calculated at 0% of actual salaries in Item 1 above for general administrative overhead, based on the Engineer's system for allocating indirect costs in accordance with sound accounting principles and business practice, plus

4. Other costs directly attributable to the project but not included in the above overhead, such as vehicle mileage, meals and lodging, printing, surveying expendables, and computer time, plus

5. Project costs incurred by others on a subcontract basis, said costs to be passed through the Engineer on the basis of reasonable and actual cost as invoiced by the subcontractors.

E. The rates shown for additives and overhead in Sections VII. D.2 and VII. D.3 above are the established Engineer's overhead rate accepted at the time of contract execution and shall be utilized throughout the life of this contract for billing purposes.

F. The payment of costs under this contract will be limited to costs which are allowable under 23 CFR 172 and 48 CFR 31.

G. **METHOD OF PAYMENT** - Partial payments for work satisfactorily completed will be made to the Engineer upon receipt of itemized invoices by the Local Agency. Invoices will be submitted no more frequently than once every two weeks and must be submitted monthly for invoices greater than $10,000. A pro-rated portion of the fixed fee will be paid with each invoice. Upon receipt of the invoice and progress report, the Local Agency will, as soon as practical, but not later than 45 days from receipt, pay the Engineer for the services rendered, including the proportion of the fixed fee earned as reflected by the estimate of the portion of the services completed as shown by the progress report, less partial payments previously made. A late payment charge of one and one half percent (1.5%) per month shall be assessed for those invoiced amount not paid, through no fault of the Engineer, within 45 days after the Local Agency's receipt of the Engineer's invoice. The Local Agency will not be liable for the late payment charge on any invoice which requests payment for costs which exceed the proportion of the maximum amount payable earned as reflected by the estimate of the portion of the services completed, as shown by the progress report. The payment, other than the fixed fee, will be subject to final audit of actual expenses during the period of the Agreement.

H. **PROPERTY ACCOUNTABILITY** - If it becomes necessary to acquire any specialized equipment for the performance of this contract, appropriate credit will be given for any residual value of said equipment after completion of usage of the equipment.

ARTICLE VIII - COVENANT AGAINST CONTINGENT FEES

The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Local Agency shall have the right to annul this agreement without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee, plus reasonable attorney's fees.

ARTICLE IX - SUBLETTING, ASSIGNMENT OR TRANSFER

No portion of the work covered by this contract, except as provided herein, shall be sublet or transferred without the written consent of the Local Agency. The subletting of the work shall in no way relieve the Engineer of his primary responsibility for the quality and performance of the work. It is the intention of the Engineer to engage subcontractors for the purposes of:

Sub-Consultant Name	**Address**	**Services**
NA	NA	NA

ARTICLE X - PROFESSIONAL ENDORSEMENT

All plans, specifications and other documents shall be endorsed by the Engineer and shall reflect the name and seal of the Professional Engineer endorsing the work. By signing and sealing the PS&E submittals the Engineer of Record will be representing to MoDOT that the design is meeting the intent of the federal aid programs.

ARTICLE XI - RETENTION OF RECORDS

The Engineer shall maintain all records, survey notes, design documents, cost and accounting records, construction records and other records pertaining to this contract and to the project covered by this contract, for a period of not less than three years following final payment by FHWA. Said records shall be made available for inspection by authorized representatives of the Local Agency, MoDOT or the federal government during regular working hours at the Engineer's place of business.

ARTICLE XII - OWNERSHIP OF DOCUMENTS

Plans, tracings, maps and specifications prepared under this contract shall be delivered to and become the property of the Local Agency upon termination or completion of work. Basic survey notes, design computations and other data prepared under this contract shall be made available to the Local Agency upon request. All such information produced under this contract shall be available for use by the Local Agency without restriction or limitation on its use. If the Local Agency incorporates any portion of the work into a project other than that for which it was performed, the Local Agency shall save the Engineer harmless from any claims and liabilities resulting from such use.

ARTICLE XIII – SUSPENSION OR TERMINATION OF AGREEMENT

A. The Local Agency may, without being in breach hereof, suspend or terminate the Engineer's services under this Agreement, or any part of them, for cause or for the convenience of the Local Agency, upon giving to the Engineer at least fifteen (15) days' prior written notice of the effective date thereof. The Engineer shall not accelerate performance of services during the fifteen (15) day period without the express written request of the Local Agency.

B. Should the Agreement be suspended or terminated for the convenience of the Local Agency, the Local Agency will pay to the Engineer its costs as set forth in Attachment B including actual hours expended prior to such suspension or termination and direct costs as defined in this Agreement for services performed by the Engineer, a proportional amount of the fixed fee based upon an estimated percentage of Agreement completion, plus reasonable costs incurred by the Engineer in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Engineer's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

C. The Engineer shall remain liable to the Local Agency for any claims or damages occasioned by any failure, default, or negligent errors and/or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a termination for non-performance or breach by Engineer. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.

D. The Engineer shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of a suspension or termination where the Engineer is deprived of the opportunity to complete the Engineer's services.

E. Upon the occurrence of any of the following events, the Engineer may suspend performance hereunder by giving the Local Agency 30 days advance written notice and may continue such suspension until the condition is satisfactorily remedied by the Local Agency. In the event the condition is not remedied within 120 days of the Engineer's original notice, the Engineer may terminate this agreement.

1. Receipt of written notice from the Local Agency that funds are no longer available to continue performance.

2. The Local Agency's persistent failure to make payment to the Engineer in a timely manner.

3. Any material contract breach by the Local Agency.

ARTICLE XIV - DECISIONS UNDER THIS CONTRACT

The Local Agency will determine the acceptability of work performed under this contract, and will decide all questions which may arise concerning the project. The Local Agency's decision shall be final and conclusive.

ARTICLE XV - SUCCESSORS AND ASSIGNS

The Local Agency and the Engineer agree that this contract and all contracts entered into under the provisions of this contract shall be binding upon the parties hereto and their successors and assigns.

ARTICLE XVI - COMPLIANCE WITH LAWS

The Engineer shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the work, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, 2000e), as well as with any applicable titles of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and non-discrimination clauses incorporated herein, and shall procure all licenses and permits necessary for the fulfillment of obligations under this contract.

ARTICLE XVII - RESPONSIBILITY FOR CLAIMS AND LIABILITY

The Engineer agrees to save harmless the Local Agency, MoDOT and FHWA from all claims and liability due to his negligent acts or the negligent acts of his employees, agents or subcontractors.

ARTICLE XVIII - NONDISCRIMINATION

The Engineer, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors. The Engineer will comply with state and federal related 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, 2000e), as well as with any applicable titles of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.). More specifically, the Engineer will comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation, as contained in 49 CFR 21 through Appendix H and 23 CFR 710.405 which are herein incorporated by reference and made a part of this contract. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Engineer's obligations under this contract and the regulations relative to non-discrimination on the ground of color, race or national origin.

ARTICLE XIX – LOBBY CERTIFICATION

<u>CERTIFICATION ON LOBBYING</u>: Since federal funds are being used for this agreement, the Engineer's signature on this agreement constitutes the execution of all certifications on lobbying which are required by 49 C.F.R. Part 20 including Appendix A and B to Part 20. Engineer agrees to abide by all certification or disclosure requirements in 49 C.F.R. Part 20 which are incorporated herein by

reference.

ARTICLE XX – INSURANCE

A. The Engineer shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Engineer from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Engineer and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

B. The Engineer shall also maintain professional liability insurance to protect the Engineer against the negligent acts, errors, or omissions of the Engineer and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

C. The Engineer's insurance coverage shall be for not less than the following limits of liability:

1. Commercial General Liability: $500,000 per person up to $3,000,000 per occurrence;

2. Automobile Liability: $500,000 per person up to $3,000,000 per occurrence;
3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: $1,000,000; and

4. Professional ("Errors and Omissions") Liability: $1,000,000, each claim and in the annual aggregate.

D. The Engineer shall, upon request at any time, provide the Local Agency with certificates of insurance evidencing the Engineer's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance are in effect as to the services under this Agreement.

E. Any insurance policy required as specified in (ARTICLE XX) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.

ARTICLE XXI - ATTACHMENTS

The following exhibits are attached hereto and are hereby made part of this contract:

Attachment A – Scope of Service

Attachment B - Estimate of Cost

Attachment C - Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.

Attachment D - Certification Regarding Debarment, Suspension, and Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.

Attachment E – DBE Contract Provisions

Attachment F – Fig. 136.4.15 Conflict of Interest Disclosure Form

Executed by the Engineer this _____ day of _______________, 2024.

Executed by the City this _________ day of ______________, 2024.

FOR: CITY OF CARTHGE, MISSOURI

BY: ____
Mayor

ATTEST: ___________________________
City Clerk

FOR: ZANEVAN ENGINEERING, LLC.

BY: ____
President

ATTEST: ___________________________

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

____

City Clerk

ATTACHMENT A

Scope of Services

See ARTICLE I – SCOPE OF SERVICES

ATTACHMENT B

DESIGN PHASE						
	Surveying	Hours		Rate		Cost
	Technician III	40		$40.00		$1,600.00
	Preliminary Design					
	Principal	64		$75.00		$4,800.00
	Project Engineer	40		$42.50		$1,700.00
	Senior Designer	160		$50.75		$8,120.00
	Clerical	40		$33.25		$1,330.00
	Final Design					
	Principal	32		$75.00		$2,400.00
	Project Engineer	40		$42.50		$1,700.00
	Senior Designer	56		$50.75		$2,842.00
	Clerical	48		$33.25		$1,596.00
	Bidding					
	Principal	16		$75.00		$1,200.00
	Project Engineer	2		$42.50		$85.00
	Senior Designer	2		$50.75		$101.50
	Clerical	44		$33.25		$1,463.00

	Subtotal	584				$28,937.50
	Overhead - Safe Harbor			110.00%		$31,831.25
	Subtotal					$60,768.75
	Other Direct Costs					
	Travel, @$0.67/Mi.	250				$167.50

				Subtotal Direct Costs		$167.50
	Fixed Fee @14.5%					$8,811.47
	CONTRACT CEILING, DESIGN PHASE					$69,747.72

ATTACHMENT C

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective 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 primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

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

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

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary 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.

7. The prospective primary 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 Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List at the Excluded Parties List System. https://www.epls.gov/epls/search.do?page=A&status=current&agency=69#A.

9. 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 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.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

    a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

    b. 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;

    c. 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 (1)(b) of this certification; and

    d. 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.

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

ATTACHMENT D

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

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

2. 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.

3. 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 when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed 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.

6. 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.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List at the Excluded Parties List System. https://www.epls.gov/epls/search.do?page=A&status=current&agency=69#A.

8. 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 a participant is not required to exceed that which normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 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 with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

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 participation in this transaction 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.

Attachment E
Disadvantage Business Enterprise Contract Provisions

1. Policy: It is the policy of the U.S. Department of Transportation and the Local Agency that businesses owned by socially and economically disadvantaged individuals (DBE's) as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thus, the requirements of 49 C.F.R. Part 26 and Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21) apply to this Agreement.

2. Obligation of the Engineer to DBE's: The Engineer agrees to assure that DBEs have the maximum opportunity to participate in the performance of this Agreement and any subconsultant agreement financed in whole or in part with federal funds. In this regard the Engineer shall take all necessary and reasonable steps to assure that DBEs have the maximum opportunity to compete for and perform services. The Engineer shall not discriminate on the basis of race, color, religion, creed, disability, sex, age, or national origin in the performance of this Agreement or in the award of any subsequent subconsultant agreement.

3. Geographic Area for Solicitation of DBEs: The Engineer shall seek DBEs in the same geographic area in which the solicitation for other subconsultants is made. If the Engineer cannot meet the DBE goal using DBEs from that geographic area, the Engineer shall, as a part of the effort to meet the goal, expand the search to a reasonably wider geographic area.

4. Determination of Participation Toward Meeting the DBE Goal: DBE participation shall be counted toward meeting the goal as follows:

A. Once a firm is determined to be a certified DBE, the total dollar value of the subconsultant agreement awarded to that DBE is counted toward the DBE goal set forth above.

B. The Engineer may count toward the DBE goal a portion of the total dollar value of a subconsultant agreement with a joint venture eligible under the DBE standards, equal to the percentage of the ownership and control of the DBE partner in the joint venture.

C. The Engineer may count toward the DBE goal expenditures to DBEs who perform a commercially useful function in the completion of services required in this Agreement. A DBE is considered to perform a commercially useful function when the DBE is responsible for the execution of a distinct element of the services specified in the Agreement and the carrying out of those responsibilities by actually performing, managing and supervising the services involved and providing the desired product.

D. A Engineer may count toward the DBE goal its expenditures to DBE firms consisting of fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of this Agreement, provided that the fee or commission is determined by MoDOT’s External Civil Rights Division to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. The Engineer is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals.

5. Replacement of DBE Subconsultants: The Engineer shall make good faith efforts to replace a DBE Subconsultant, who is unable to perform satisfactorily, with another DBE Subconsultant. Replacement firms must be approved by MoDOT’s External Civil Rights Division.

6. Verification of DBE Participation: Prior to final payment by the Local Agency, the Engineer shall file a list with the Local Agency showing the DBEs used and the services performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in this Agreement. Failure on the part of the Engineer to achieve the DBE participation specified in this Agreement may result in sanctions being imposed on the Commission for noncompliance with 49 C.F.R. Part 26 and/or Section 1101(b) of TEA-21. If the total DBE participation is less than the goal amount stated by the MoDOT's External Civil Rights Division, liquidated damages may be assessed to the Engineer.

Therefore, in order to liquidate such damages, the monetary difference between the amount of the DBE goal dollar amount and the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the Engineer's payments as liquidated damages. If this Agreement is awarded with less than the goal amount stated above by MoDOT's External Civil Rights Division, that lesser amount shall become the goal amount and shall be used to determine liquidated damages. No such deduction will be made when, for reasons beyond the control of the Engineer, the DBE goal amount is not met.

7. Documentation of Good Faith Efforts to Meet the DBE Goal: The Agreement goal is established by MoDOT's External Civil Rights Division. The Engineer must document the good faith efforts it made to achieve that DBE goal, if the agreed percentage specified is less than the percentage stated. The Good Faith Efforts documentation shall illustrate reasonable efforts to obtain DBE Participation. Good faith efforts to meet this DBE goal amount may include such items as, but are not limited to, the following:

A. Attended a meeting scheduled by the Department to inform DBEs of contracting or consulting opportunities.

B. Advertised in general circulation trade association and socially and economically disadvantaged business directed media concerning DBE subcontracting opportunities.

C. Provided written notices to a reasonable number of specific DBEs that their interest in a subconsultant agreement is solicited in sufficient time to allow the DBEs to participate effectively.

D. Followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in subconsulting work for this Agreement.

E. Selected portions of the services to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down subconsultant agreements into economically feasible units to facilitate DBE participation).

F. Provided interested DBEs with adequate information about plans, specifications and requirements of this Agreement.

G. Negotiated in good faith with interested DBEs, and not rejecting DBEs as unqualified without sound reasons, based on a thorough investigation of their capabilities.

H. Made efforts to assist interested DBEs in obtaining any bonding, lines of credit or insurance required by the Commission or by the Engineer.

I. Made effective use of the services of available disadvantaged business organizations, minority contractors' groups, disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBE firms.

8. Good Faith Efforts to Obtain DBE Participation: If the Engineer's agreed DBE goal amount as specified is less than the established DBE goal given, then the Engineer certifies that good faith efforts were taken by Engineer in an attempt to obtain the level of DBE participation set by MoDOT's External Civil Rights.

Attachment F – Fig. 136.4.15
Conflict of Interest Disclosure Form for LPA/Consultants

Local Federal-aid Transportation Projects

Firm Name (Consultant): Zanevan Engineering, LLC

Project Owner (LPA): City of Carthage, Missouri

Project Name: Bridge #0720003 on 3rd Street Over Tributary of Spring River

Project Number: BRO-R117002

As the LPA and/or consultant for the above local federal-aid transportation project, I have:

1. Reviewed the conflict of interest information found in Missouri's Local Public Agency Manual (EPG 136.4)
2. Reviewed the Conflict of Interest laws, including 23 CFR § 1.33, 49 CFR 18.36.

And, to the best of my knowledge, determined that, for myself, any owner, partner or employee, with my firm or any of my sub-consulting firms providing services for this project, including family members and personal interests of the above persons, there are:

☒ No real or potential conflicts of interest
If no conflicts have been identified, complete and sign this form and submit to LPA

☐ Real conflicts of interest or the potential for conflicts of interest
If a real or potential conflict has been identified, describe on an attached sheet the nature of the conflict, and provide a detailed description of Consultant's proposed mitigation measures (if possible). Complete and sign this form and send it, along with all attachments, to the appropriate MoDOT District Representative, along with the executed engineering services contract.

LPA	Consultant
Printed Name:______________	Printed Name: Jason Eckhart, PE
Signature:______________	Signature:______________
Date: ______________	Date: ______________

COUNCIL BILL NO. __24-09__ **ORDINANCE NO. ______**

AN ORDINANCE AMENDING THE ANNUAL OPERATING AND CAPITAL BUDGET OF THE CITY OF CARTHAGE FOR FISCAL YEAR 2023 - 2024 FOR SPECIFIED FUNDS (GENERAL FUND, FIRE PROTECTION TAX FUND, USE TAX FUND AND PUBLIC SAFETY FUND).

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

SECTION I: The City of Carthage's 2023 - 2024 Annual Operating and Capital Budget for the **General Fund,** is hereby amended to reflect supplemental appropriations from the unallocated and unappropriated Fund Balance, for:

a.) the **Police Department,** is hereby amended to reflect a supplemental appropriation of an amount not to exceed $78,145 to the Overtime line item, $16,332 to the Pension line item, and $5,978 to the FICA line item due to errors created by OpenGov software; and

b.) the **Parks** & **Recreation Department** is hereby amended to reflect a supplemental appropriation of an amount not to exceed $4,000 to the Sponsorships line item, $5,000 to the Programming line item, and $5,000 to the Little League Expense line item; and

c.) the **Memorial Hall Department** is hereby amended to reflect a supplemental appropriation of an amount not to exceed $5,340 to the Building Maintenance line item for emergency restroom repairs, $1,000 to the Sponsorships line item, and $10,000 to the Programming line item; and

SECTION II: The City of Carthage's 2023 - 2024 Annual Operating and Capital Budget for the **Fire Protection Sales Tax Fund,** is hereby amended to reflect supplemental appropriations from the unallocated and unappropriated fund balance, for:

- An amount not to exceed $1,441 to the Capital Projects line item for increased expenses in purchasing SCBA 's.

SECTION III: The City of Carthage's 2023 - 2024 Annual Operating and Capital Budget for the **Use Tax Fund,** is hereby amended to reflect supplemental appropriations from the unallocated and unappropriated Fund Balance, for:

- An amount not to exceed $150,000 to the Parks Capital Outlay line item for Rock Stadium Improvements; and
- An amount not to exceed $12,520 to the Golf Capital Outlay line item for Rainbird Irrigation System repairs.

SECTION IV: The City of Carthage's 2023 -2024 Annual Operating and Capital Budget for the **Public Safety Fund,** is hereby amended to reflect supplemental appropriations from the unallocated and unappropriated fund balance, for:

- A supplemental appropriation of up to $11,639 to the Capital Outlay line item ($5,160 for pistols, $479 for dart gun kit, and $4,840 to the Uniform line item).

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

PASSED AND APPROVED THIS _______ DAY OF ________, 2024.

____

Dan Rife, Mayor

ATTEST:

____

Miranda Deal, City Clerk

Sponsored by: Budget Ways & Means

COUNCIL BILL NO. ___24-10___ **ORDINANCE NO. ______**

An Ordinance authorizing the Mayor to enter into a contract with 360 Fire Protection in the amount of $10,687.25 for updating the fire system at City Hall, in the City of Carthage, Missouri.

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 a Contract with 360 Fire Protection for updating the fire system at City Hall in the amount of Ten Thousand Six Hundred Eighty-Seven Dollars and 25/100 ($10,687.25), a copy of the bid proposal and contract are 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 ___________, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Public Safety Committee

From 360 FIRE PROTECTION
1801 East Trafficway Street
Springfield MO 65802
417-771-5644
www.360fireprotection.com

Quote No.	**0001405**
Type	Repair
Prepared By	Joe Willcockson
Created On	10/11/2023
Valid Until	11/30/2023

Quote For CITY OF CARTHAGE
Carthage City Hall
326 Grant Street
Carthage MO 64836
(417) 237-7000

Description of Work

rewiring and installation of new devices where needed to encompass brining notification circuits and coverage up to code compliance.

Services to be completed

[Alarm Systems] Location - Building
installation of cabling and devices for horn/strobe and notification corrections.

Parts, labor, and fees	Quantity	Unit Price	Total
p2rl horn/strobe	3	$85.13	$255.39
srl strobe ony	9	$65.63	$590.67
Alarm Labor - Regular Rate	24	$120.00	$2,880.00
misc cabling and hardware	1	$675.00	$675.00
		GRAND TOTAL	**$4,401.06**

Terms and Conditions

- ***ALL INSPECTIONS AND TESTS ARE PERFORMED BY QUALIFIED TECHNICIANS AND ARE PERFORMED TO MEET THE LATEST NFPA CODES AND STANDARDS***
- ***ULF (UPLOAD FEES)-are fees charged by 3rd party entities within certain jurisdictions for compliance and paperwork processing systems.***
- ***Service charges may be added to final invoice for certain services performed.***

By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: ______________________ Date: ____________________

Signature: ______________________________________

From	**360 FIRE PROTECTION** 1801 East Trafficway Street Springfield MO 65802 417-771-5644 www.360fireprotection.com

Quote No.	**0001404**
Type	Installation
Prepared By	Joe Willcockson
Created On	10/11/2023

Quote For	**CITY OF CARTHAGE** Carthage City Hall 326 Grant Street Carthage MO 64836 (417) 237-7000

Description of Work

REPLACEMENT OF MAIN FACP WITH INITIATION AND NOTIFICATION DEVICES AND KEEPING EXISTING SETUP AND WIRING IN PLACE. ***DOES NOT INCLUDE ANY APPLICABLE SALES TAX***

INCLUDES REPLACEMENT OF FIRE PANEL AND FIELD DEVICES, WITH REWIRING OF ZONES AT PANEL, WITH REPLACEMENT OF EOL RESISTORS ON EACH ZONE. INCLUDES THE ADDITION OF 120 SURGE SUPRESSION. INCLUDES MINOR PATCHING OF WALL AT PANEL AND 1 COAT OF BASE PRIMER. PAINTING TO BE PERFORMED OR HANDLED BY CUSTOMER.

Services to be completed

[Alarm Systems] Location - Building

REPLACEMENT OF MAIN FACP AND KEEPING EXISTING SETUP AND WIRING IN PLACE.

Parts, labor, and fees	Quantity	Unit Price	Total
FL-MS10-UD7	1	$1,966.50	$1,966.50
Alarm Labor - Regular Rate	18	$120.00	$2,160.00
DTK-120-HW	1	$102.00	$102.00
AL-R FOR PATCHING	2	$97.50	$195.00
MISC HARDWARE AND PATCHING MATERIAL	1	$45.00	$45.00
PS-DA PULL STATION	9	$61.50	$553.50
system sensor smoke detector	9	$68.63	$617.67
P2RL HORN/STROBE	4	$85.13	$340.52
2WTRB ELEV. RELAY SMOKES	3	$102.00	$306.00
		GRAND TOTAL	**$6,286.19**

Terms and Conditions

- ***ALL INSPECTIONS AND TESTS ARE PERFORMED BY QUALIFIED TECHNICIANS AND ARE PERFORMED TO MEET THE LATEST NFPA CODES AND STANDARDS***
- ***ULF (UPLOAD FEES)-are fees charged by 3rd party entities within certain jurisdictions for compliance and paperwork processing systems.***
- ***Service charges may be added to final invoice for certain services performed.***

COUNCIL BILL NO. ___24-11___ **ORDINANCE NO. _____________**

An Ordinance authorizing the Mayor to execute a contract between the City of Carthage and MODOT for installation and maintenance of lighting on HH Highway in the City of Carthage, Missouri.

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 an agreement with the Missouri Highways and Transportation Commission outlining the responsibilities of the parties for the installation and maintenance of lighting on HH Highway in the City of Carthage, a copy of the 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 ________________, 2024.

____

Dan Rife, Mayor

ATTEST:

____

Miranda Deal, City Clerk

Sponsored by: CWEP Board

MoDOT District: *Southwest*
MoDOT Agreement Administrator: *Melanie Belote*
eAgreement No.: *2023-10-82473*

CCO Form: TR39
Approved: 10/03 (BDG)
Revised: 03/23 (GH)
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
LIGHTING MAINTENANCE AGREEMENT

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

WITNESSETH:

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

(1) PURPOSE AND SCOPE: It is the purpose of this Agreement to outline the responsibilities of the Commission and the City for installation and lighting maintenance of the portion of Route HH.

(2) INSTALLATION OF LIGHTING:

(A) The City shall install luminaires along RT HH from east of Hazel Street to west of Grand Avenue. The City will incur the installation expense of the luminaires.

(B) The City shall maintain, at the City’s cost, all basic intersection and roadway lighting installed by the City within the Commission's limited access right of way. The lighting shall be maintained in accordance with the Missouri Department of Transportation’s Engineering Policy Guide. The City shall pay the cost of electrical current for the operation of the lighting, basic intersection lighting and roadway lighting. The City shall provide and maintain power at the locations designated.

(3) MAINTENANCE BY CONTRACT:

(A) The City may have the maintenance work required pursuant to this Agreement performed by either its own maintenance personnel or by contract with qualified individuals or companies approved by the Commission to provide a fully functional and dependable lighting system.

(B) The City shall respond to any emergency situation in which repair or maintenance of damage to the lighting is required immediately to correct a dangerous condition or restore the safe, unobstructed flow of traffic on the improvement.

(4) MAINTENANCE BY CITY WITHIN COMMISSION RIGHT OF WAY: In order to coordinate maintenance activities on the improvement, the City shall notify the Commission either by telephone, telefax, or in writing, prior to performing maintenance work within Commission right of way. Such notification shall be made to the District's Operational Support Engineer or a designated assistant, and shall include the location and nature of the work to be performed. Any maintenance activities done by the City which involves closing one or more of the through lanes of the improvement, affects the safety of the traveling public, or which will cause permanent changes to the configuration of the improvement, may require a permit from the Commission. The City will be informed of whether or not a permit is required at the time the City notifies Commission of the proposed maintenance activities. The City shall comply with any additional condition placed upon the issuance of the permit.

(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 representative of the City and the Commission.

(6) UTILITY LOCATING RESPONSIBILITY: The City shall be responsible for any utility locate request information at RT HH from east of Hazel Street to west of Grand Avenue concerning the cable(s) for the lighting system, including the pullbox(es) and conduit(s).

(7) COMMISSION REPRESENTATIVE: The Commission's 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 to each of the City Representatives, additional persons having the authority to act on behalf of the Commission in the performance of this Agreement.

(8) CITY REPRESENTATIVE: The Carthage Water & Electric Plant General Manager is designated as the City's representative for the purpose of administering the provisions of this Agreement. The City Representatives may designate by written notice to the Commission's Representative additional persons having the authority to act on behalf of the City or a City Department in the performance of this Agreement.

(9) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given upon delivery by First Class, Priority or Express United States mail, postage prepaid, or upon actual receipt by courier, personal or facsimile delivery, addressed as follows:

(A) To the Commission:

Stacy Reese
Missouri Department of Transportation
3025 E. Kearney Street
Springfield, MO 65803

(B) To the City

Chuck Bryant
Carthage Water & Electric Plant
627 W. Centennial Avenue
Carthage, Missouri 64836

With a copy delivered to:
Kevin Emery
Carthage Water & Electric Plant
627 W. Centennial Avenue
Carthage, Missouri 64836
kemery@cwep.com

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(10) 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.

(11) 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.

(12) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and 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 is required or 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 the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities ($500,000 per claimant and $3,000,000 per occurrence) 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.

(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.

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

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

(15) AUDIT OF RECORDS: The City must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(16) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(17) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any

rights or benefits to anyone other than the Commission and the City.

(18) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(19) COMMISSION RIGHT OF WAY: All improvements made within the state-owned right-of-way shall become the Commission's property.

(20) NO INTEREST: By contributing to the cost of the maintenance of this project or improvement, the City gains no interest in the constructed lighting improvements whatsoever. The Commission shall not be obligated to keep the constructed lighting in place if the Commission, in its sole discretion, determines removal or modification of the lighting is in the best interests of the state highway system. In the event the Commission decides to remove the lighting improvements, the City shall not be entitled to a refund of the funds contributed by the City pursuant to this Agreement.

(21) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

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

Executed by City this ______________________________(date).

Executed by Commission this _____________________________(date).

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION	**City of Carthage**
______________________________	By ______________________________
Title __________________________	Title ____________________________
ATTEST:	ATTEST:
By ______________________________ Secretary to the Commission	By ______________________________
	Title ____________________________
	Ordinance No. _________________

Commented [GH1]: A copy of the ordinance or resolution which authorizes execution of this Agreement is needed.

APPROVED AS TO FORM:

By ______________________________
Commission Counsel

COUNCIL BILL NO. ___24-13___ **ORDINANCE NO.______**

An Emergency Ordinance authorizing the Mayor to enter into an Agreement with the Carthage R-9 School System granting the School System the privilege to utilize the Carl Lewton Stadium from February 15, 2024 to May 31, 2024 for the Carthage R-9 baseball program and to be considered an emergency ordinance due to unforeseen circumstances which delay could hinder the effective delivery of municipal services.

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 R-9 School System granting the School System the privilege to utilize the Carl Lewton Stadium from February 15, 2024 to May 31, 2024 for the Carthage R-9 baseball program, a copy of which agreement is attached hereto and incorporated herein as if set out in full.

SECTION II: That all ordinances or parts of ordinances therefore enacted which are in conflict herewith are hereby repealed.

SECTION III: This Ordinance shall be considered an emergency ordinance passed as an emergency measure under the terms of the Charter of the City due to unforeseen circumstances and delay could hinder the effective delivery of municipal services.

PASSED AND APPROVED THIS _________ DAY OF _____________, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Public Services Committee

AGREEMENT

This AGREEMENT is entered into this 19th day of February, 2024, by and between the City of Carthage, Jasper County, Missouri, and the Carthage R-9 School District, in the City of Carthage for the use of the Carl Lewton Stadium from February 15, 2024 to May 31, 2024.

WITNESSETH:

RECITALS

Whereas, the City of Carthage has responsibility for the maintenance of the Parks within the City of Carthage, and

Whereas, the Carthage R-9 baseball program plays their home games at Carl Lewton Stadium located within Municipal Park and,

Whereas, in order for there to be an orderly relationship between the City of Carthage and Carthage R-9 Schools, the parties hereto desire to formally express their goals and objectives.

COVENANTS

NOW, THEREFORE, in consideration of the promises set forth herein it is agreed as follows:

That the City of Carthage hereby grants to Carthage R-9 School District exclusive privileges to utilize the Carl Lewton Stadium for the 2024 men's baseball season to run from February 15, 2024 to May 31, 2024, waiving all rental fees.

Carthage R-9 will assume the following responsibilities:

1. Supplying suitable portable restroom facilities for both games and practices.
2. Maintaining all areas within the fenced perimeter, encompassing irrigation and repairing the playing surface, mowing.
3. Offering concessions during games.
4. Covering the expenses associated with metered water usage.
5. Covering the expenses related to metered electrical usage.
6. Ensuring that vendors are fully licensed if food trucks are employed for concessions and paying sales tax to the City of Carthage during the outlined timeframe.

City will undertake the following obligations:

1. Managing the removal of trash from barrels and supplying a dumpster.
2. Furnishing garage space for the School's "gator."
3. Upkeeping and repairing stadium lighting.
4. Supplying bleachers.
5. Maintaining areas located outside the fenced area.

Insurance:

The City of Carthage, Missouri requires a General Liability Insurance policy with Bodily Injury and Property Damage requirements for events held on City property.

Organizations must agree to carry during the performance of this Event/Agreement and at Organization's own expense, Commercial General Liability Insurance (comparable to Comprehensive General Liability Insurance) against any and all claims or suits with the following minimum limit of liability:

Comprehensive General Liability; Minimum limit $2,000,000 combined single limit for bodily injury and property damage per occurrence. The City of Carthage shall be included as additional "Named Insured".

This agreement may be modified upon such terms and conditions as may be acceptable to the respective parties. All modifications shall be in writing and signed by both parties.

Passed and approved by the Carthage R-9 School District on the 19th day of February, 2024.

Jeff Jones – President
Carthage R-9 Board of Education

Niki Cloud - Secretary
Carthage R-9 Board of Education

Dr. Luke A. Boyer, Superintendent
Carthage R-9 School District

Passed and approved by the City of Carthage on the _______ day of _________, 2024.

____
Dan Rife, Mayor
City of Carthage

COUNCIL BILL NO. ___24-14___ **ORDINANCE NO. ______**

An Ordinance authorizing the Mayor to enter into a contract with Elements Construction Concepts of Joplin, Missouri for Restroom Facilities for City Parks – Phase 2 for the amount of Two Hundred Thirty Thousand Three Hundred Forty Dollars and 00/100 ($230,340.00), in the City of Carthage, Missouri.

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 a contract with Elements Construction Concepts of Joplin, Missouri for Restroom Facilities for City Parks – Phase 2 for the amount of Two Hundred Thirty Thousand Three Hundred Forty Dollars and 00/100 ($230,340.00) a copy of which 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 ______, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Public Services Committee

ZANEVAN ENGINEERING

CIVIL ENGINEERING

Project Management
Construction Plans
Permitting
Right of Way Negotiation
Utility Coordination
Project Specifications
Contract Documents
Agency Coordination

CONSTRUCTION ENGINEERING

Bidding Services
Construction Inspection
Contract Administration
Project Documentation

STRUCTURAL ENGINEERING

Highway Bridges
Forensic Investigations
Building Inspections
Residential Structures
Commercial Structures
Structure Rehabilitation

Zanevan Engineering, LLC
1221 Oak Street
Carthage, MO 64836
417.800.2500
www.zanevan.com

February 1, 2024

Abi Almandinger
Parks and Recreation Director
521 Robert Ellis Young Drive
Carthage, Missouri 64836

RE: Letter of Recommendation
Restroom Facilities for City Parks, Phase 2 – Carthage, MO

Dear Ms. Almandinger:

The bids for the above referenced project have been reviewed and tabulated. It is the recommendation of this office to accept the low bid from Elements Construction Concepts of Joplin, Missouri in the amount of $230,340.00.

A copy of the bid tabulation is attached for your review and approval.

Sincerely,

Zanevan Engineering, LLC

Jason Eckhart

Jason Eckhart, PE
President/Owner

Enclosure

BID TABULATION
PARKS RESTROOM FACILITIES - PHASE 2
CARTHAGE, MISSOURI
Bid Opening: January 30, 2024 @ 10 a.m.

				ELEMENTS CONST. CONCEPTS		SPROULS CONST., INC.	
				5850 E. 20TH STREET		397 W. HWY DD	
CENTRAL PARK				JOPLIN, MO 64801		LAMAR, MO 64759	
Item No.	*Description*	*No. Units*	*Unit*	*Unit Price*	*Extended Total*	*Unit Price*	*Extended Total*
1-1	MOBILIZATION	1	LS	$ 16,000.00	$ 16,000.00	$ 15,000.00	$ 15,000.00
1-2	SEED AND MULCH	0.23	AC	$ 20,000.00	$ 4,600.00	$ 15,000.00	$ 3,450.00
1-3	REMOVAL OF IMPROVEMENTS	1	LS	$ 7,000.00	$ 7,000.00	$ 10,000.00	$ 10,000.00
1-4	REINFORCEMENT OVER 2" COMPACTED GRANULAR BASE	57	SY	$ 135.00	$ 7,695.00	$ 110.00	$ 6,270.00
1-5	7" THICK CONCRETE OVER 6" COMPACTED GRANULAR BASE	23	SY	$ 195.00	$ 4,485.00	$ 150.00	$ 3,450.00
1-6	2" DIA. SCHEDULE 80 PVC WATER SERVICE LINE	307	LF	$ 45.00	$ 13,815.00	$ 45.00	$ 13,815.00
1-7	2" GATE VALVE	2	EA	$ 1,500.00	$ 3,000.00	$ 2,500.00	$ 5,000.00
1-8	PLACE AND CONNECT 2" WATER METER	1	EA	$ 5,000.00	$ 5,000.00	$ 2,500.00	$ 2,500.00
1-9	WATER SERVICE LINE CONNECTION	1	EA	$ 6,000.00	$ 6,000.00	$ 1,500.00	$ 1,500.00
1-10	4" DIA. SCHEDULE 80 PVC SANITARY SEWER SERVICE LINE	73	LF	$ 65.00	$ 4,745.00	$ 80.00	$ 5,840.00
1-11	6" DIA. SCHEDULE 80 PVC SANITARY SEWER SERVICE LINE	289	LF	$ 95.00	$ 27,455.00	$ 100.00	$ 28,900.00
1-12	4"x4"x4" DIA. WYE	1	EA	$ 500.00	$ 500.00	$ 600.00	$ 600.00
1-13	6"x6"x4" DIA. WYE	1	EA	$ 600.00	$ 600.00	$ 1,000.00	$ 1,000.00
1-14	CLEAN OUTS	4	EA	$ 1,200.00	$ 4,800.00	$ 500.00	$ 2,000.00
1-15	SANITARY SEWER SERVICE LINE CONNECTION	1	EA	$ 4,500.00	$ 4,500.00	$ 1,500.00	$ 1,500.00
1-16	RESTROOM RENOVATIONS - RESTROOMS	1	LS	$ 24,065.00	$ 24,065.00	$ 25,000.00	$ 25,000.00
1-17	RESTROOM RENOVATIONS - POOL HOUSE	1	LS	$ 23,650.00	$ 23,650.00	$ 115,000.00	$ 115,000.00
Subtotal Amount - Central Park					**$ 157,910.00**		**$ 240,825.00**
FAIR ACRES							
Item No.	*Description*	*No. Units*	*Unit*	*Unit Price*	*Extended Total*	*Unit Price*	*Extended Total*
2-1	MOBILIZATION	1	LS	$ 5,000.00	$ 5,000.00	$ 10,000.00	$ 10,000.00
2-2	SEED AND MULCH	0.1	AC	$ 20,000.00	$ 2,000.00	$ 20,000.00	$ 2,000.00
2-3	REMOVAL OF IMPROVEMENTS	1	LS	$ 3,500.00	$ 3,500.00	$ 10,000.00	$ 10,000.00
2-4	EARTHERN FILL AND GRADING	27	CY	$ 200.00	$ 5,400.00	$ 100.00	$ 2,700.00
2-5	REINFORCEMENT OVER 2" COMPACED GRANULAR BASE	51	SY	$ 120.00	$ 6,120.00	$ 100.00	$ 5,100.00
2-6	6" THICK BASE ROCK	75	SY	$ 25.00	$ 1,875.00	$ 18.00	$ 1,350.00
2-7	1-1/2" DIA. SCHEDULE 80 PVC WATER SERVICE LINE	193	LF	$ 45.00	$ 8,685.00	$ 40.00	$ 7,720.00
2-8	1-1/2" GATE VALVE	1	EA	$ 1,500.00	$ 1,500.00	$ 800.00	$ 800.00
2-9	WATER SERVICE LINE CONNECTION	1	EA	$ 5,000.00	$ 5,000.00	$ 1,500.00	$ 1,500.00
2-10	4" DIA. SCHEDULE 80 PVC SANITARY SEWER SERVICE LINE	10	LF	$ 250.00	$ 2,500.00	$ 150.00	$ 1,500.00
2-11	CLEAN OUTS	1	EA	$ 1,500.00	$ 1,500.00	$ 500.00	$ 500.00
2-12	SEWER SERVICE LINE CONNECTION	1	EA	$ 5,000.00	$ 5,000.00	$ 1,000.00	$ 1,000.00
Subtotal Amount - Fair Acres					**$ 48,080.00**		**$ 44,170.00**
MUNICIPAL PARK							
Item No.	*Description*	*No. Units*	*Unit*	*Unit Price*	*Extended Total*	*Unit Price*	*Extended Total*
3-1	MOBILIZATION	1	LS	$ 2,500.00	$ 2,500.00	$ 10,000.00	$ 10,000.00
3-2	REMOVAL OF IMPROVEMENTS	1	LS	$ 2,000.00	$ 2,000.00	$ 15,000.00	$ 15,000.00
3-3	RESTROOM RENOVATIONS	1	LS	$ 19,850.00	$ 19,850.00	$ 95,000.00	$ 95,000.00
Subtotal Amount - Municipal Park					**$ 24,350.00**		**$ 120,000.00**
TOTAL BID AMOUNT					**$ 230,340.00**		**$ 404,995.00**

This is to certify that at 10:00 A.M. on January 30, 2024, at the office of the City of Carthage City Hall, Carthage, Missouri, the bids tabulated herein were publicly opened, read aloud and checked. The totals are correct as to additions and extensions.

Jason Eckhart

Jason Eckhart, P.E.
Zanevan Engineering

AGREEMENT FORM 00500

THIS AGREEMENT, made this____________day of________________, 2024, by and between City of Carthage, Carthage, Missouri, hereinafter called "OWNER" and Elements Construction Concepts doing business as (~~an individual~~), or (~~a partnership~~,) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of Restroom Facilities for City Parks – Phase 2, Carthage, Missouri.

2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS on the date stipulated in the NOTICE TO PROCEED and will complete the same within 180 calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR understands that the specifications governing the work contemplated are attached to this proposal.

5. The CONTRACTOR agrees to pay, without condition or recourse, as liquidated damages to the sum of Five Hundred and 00/100 dollars ($500.00) for each consecutive calendar day after the stated DATE OF COMPLETION or extension thereto that the CONTRACTOR shall be in default as provided in SECTION 15 OF THE General Conditions. CONTRACTOR further agrees to reimburse the subcontractors, suppliers, engineers, and other contractors of the OWNER for costs incurred and/or damages suffered by reason or reasons attributable to the CONTRACTOR'S failure to complete the CONTRACT by the completion date, or extensions thereof, as provided by section 15 of the General Conditions. Said liquidated damages and payments shall be withheld from the payments due the contractor. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of Three Hundred Forty-One Thousand Eight Hundred Twenty-Seven and no/100 Dollars ($341,827.00)

6. The term "CONTRACT DOCUMENTS" means and includes the following:
   - (A) Invitation to Bid
   - (B) Instructions to Bidders
   - (C) Bid
   - (D) Bid Bond
   - (E) Agreement Form
   - (F) Notice of Award
   - (G) Notice to Proceed
   - (H) Performance Bond
   - (I) Payment bond
   - (J) General Conditions of Contract
   - (K) Supplementary Conditions
   - (L) Specifications prepared by Zanevan Engineering and dated December, 2023.
   - (M) Drawings prepared by Zanevan Engineering and dated December, 2023.
   - (N) Addenda

No. ________	dated ________	20__
No. ________	dated ________	20__
No. ________	dated ________	20__
No. ________	dated ________	20__
No. ________	dated ________	20__

NOTICE OF AWARD 00501

TO: Elements Construction Concepts

5850 E. 20th Street

Joplin, Missouri 64801

PROJECT Description: Restroom Facilities for City Parks – Phase 2, Carthage, Missouri.

The OWNER has considered the BID submitted by you for the above-described WORK in response to its Invitation to Bid dated January 10, 2024 and Instructions to Bidders.

You are hereby notified that you BID has been accepted in the amount of Two Hundred Thirty Thousand Three Hundred Forty and no/100 Dollars ($230,340.00).

You are required by the Instructions to Bidders to execute the Agreement and furnish the required CONTRACTORS PERFORMANCE BOND, PAYMENT BOND and CERTIFICATES OF INSURANCE within fourteen (14) consecutive calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS and INSURANCE CERTIFICATES within fourteen (14) consecutive calendar days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this______day of_______________, 20_____.

City of Carthage

By: ____________________

Title: Mayor

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by this the_____day of______________________20____.

By__________________________

Title_________________________

7. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.

8. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three (3) copies each of which shall be deemed an original on the date first above written.

	OWNER:
	City of Carthage
(SEAL)__________	By __________
Attest __________	Name Dan Rife (Please Type or Print)
Name Miranda Deal	Title Mayor
Title City Clerk	

	CONTRACTOR:
(SEAL)__________	By __________
Attest __________	Name __________ (Please Type or Print)
Name__________	Title __________

MISSOURI DEPARTMENT OF REVENUE

Form **5060** **Project Exemption Certificate**

This form is to be completed and given to your contractor.

Exempt Entity and Project Information

Name of Exempt Entity Issuing the Certificate: CITY OF CARTHAGE			Missouri Tax Exemption Number: 1 2 4 8 7 4 3 1
Address: 326 GRANT STREET	City: CARTHAGE	State: MO	ZIP Code: 64836
E-mail Address: a.almandinger@carthagemo.gov			
Project Number:	Project Begin Date (MM/DD/YYYY): 04/01/2024	Estimated Project End Date (MM/DD/YYYY): 09/27/2024	

Description of Project

THE PROPOSED WORK INCLUDES INSTALLATION OF WATER AND SEWER SERVICE LINES, RENOVATION OF EXISTING RESTROOMS IN CENTRAL PARK AND MUNICIPAL PARK AND SITE WORK FOR THE INSTALLATION OF A PREFABRICATED RESTROOM IN FAIR ACRES PARK.

Project Location: FAIR ACRES PARK, CARTHAGE, MISSOURI	Certificate Expiration Date (MM/DD/YYYY): 10/11/2024

Provide a signed copy of this certificate, along with a copy of the exempt entity's Missouri Sales and Use Tax Exemption Letter to each contractor or subcontractor who will be purchasing tangible personal property for use in this project. It is the responsibility of the exempt entity to ensure the validity of the information on the certificate. The exempt entity must issue a new certificate if any of the information changes.

Signature of Authorized Exempt Entity	Printed Name of Authorized Exempt Entity	Date (MM/DD/YYYY)
		__/__/____

Contractor

The Missouri exempt entity named above hereby authorizes the purchase, without sales tax, of tangible personal property to be incorporated or consumed in the construction project identified herein and no other, pursuant to **Section 144.062, RSMo**. Under penalties of perjury, I declare that the above information and any attached supplement is true, complete, and correct.

Name of Purchasing Contractor: ELEMENTS CONSTRUCTION CONCEPTS	Signature of Contractor:		Date (MM/DD/YYYY): 02/01/2024
Address: 5850 E. 20TH STREET	City: JOPLIN	State: MO	ZIP Code: 64801

Subcontractor

Contractors - Present this to your supplier in order to purchase the necessary materials tax exempt. Complete the Subcontractor portion if extending the certificate to your subcontractor. The contractor must sign the form in the space provided below.

Name of Purchasing Subcontractor:			
Address:	City:	State:	ZIP Code:
Signature of Contractor:	Contractor's Printed Name:	Date (MM/DD/YYYY): __/__/____	

Form 5060 (Revised 11-2019)

Taxation Division
P.O Box 358
Jefferson City, MO 65105-0358

Phone: (573) 751-2836
Fax: (573) 522-1666
E-mail: salestaxexemptions@dor.mo.gov

Visit **http://dor.mo.gov/business/sales/sales-use-exemptions.php** for additional information.

COUNCIL BILL NO. ___24-15___ **ORDINANCE NO. ______**

An Ordinance authorizing the Mayor to enter into a contract with Elements Construction Concepts of Joplin, Missouri for Dog Park Sidewalks at Municipal Park for the amount of Forty-Three Thousand Four Hundred Sixty Dollars and 00/100 ($43,460.00), in the City of Carthage, Missouri.

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 a contract with Elements Construction Concepts of Joplin, Missouri for Dog Park Sidewalks at Municipal Park for the amount of Forty-Three Thousand Four Hundred Sixty Dollars and 00/100 ($43,460.00) a copy of which 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 ______, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Public Services Committee

AGREEMENT FORM 00500

THIS AGREEMENT, made this______________day of___________________, 2024, by and between City of Carthage, Carthage, Missouri, hereinafter called "OWNER" and Elements Construction Concepts doing business as (an individual), or (a partnership,) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of Dog Park at Municipal Park, Carthage, Missouri.

2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS on the date stipulated in the NOTICE TO PROCEED and will complete the same within 45 calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR understands that the specifications governing the work contemplated are attached to this proposal.

5. The CONTRACTOR agrees to pay, without condition or recourse, as liquidated damages to the sum of Five Hundred and 00/100 dollars ($500.00) for each consecutive calendar day after the stated DATE OF COMPLETION or extension thereto that the CONTRACTOR shall be in default as provided in SECTION 15 OF THE General Conditions. CONTRACTOR further agrees to reimburse the subcontractors, suppliers, engineers, and other contractors of the OWNER for costs incurred and/or damages suffered by reason or reasons attributable to the CONTRACTOR'S failure to complete the CONTRACT by the completion date, or extensions thereof, as provided by section 15 of the General Conditions. Said liquidated damages and payments shall be withheld from the payments due the contractor. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of Forty-Three Thousand Four Hundred Sixty and no/100 Dollars ($43,460.00).

6. The term "CONTRACT DOCUMENTS" means and includes the following:

   (A) Invitation to Bid
   (B) Instructions to Bidders
   (C) Bid
   (D) Bid Bond
   (E) Agreement Form
   (F) Notice of Award
   (G) Notice to Proceed
   (H) Performance Bond
   (I) Payment bond
   (J) General Conditions of Contract
   (K) Supplementary Conditions
   (L) Specifications prepared by Zanevan Engineering and dated December, 2023.
   (M) Drawings prepared by Zanevan Engineering and dated December, 2023.
   (N) Addenda

No. 1	dated January 4	20 24
No. ________	dated ________	20__
No. ________	dated ________	20__
No. ________	dated ________	20__
No. ________	dated ________	20__

7. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.

8. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three (3) copies each of which shall be deemed an original on the date first above written.

	OWNER:
	City of Carthage
(SEAL)____________________	By ____________________
Attest ____________________	Name Dan Rife (Please Type or Print)
Name Miranda Deal	Title Mayor
Title City Clerk	
	CONTRACTOR:
(SEAL)____________________	By ____________________
Attest ____________________	Name ____________________ (Please Type or Print)
Name____________________	Title ____________________

NOTICE OF AWARD 00501

TO: Elements Construction Concepts

5850 E. 20th Street

Joplin, Missouri 64801

PROJECT Description: Dog Park at Municipal Park, Carthage, Missouri.

The OWNER has considered the BID submitted by you for the above-described WORK in response to its Invitation to Bid dated December 13, 2023 and Instructions to Bidders.

You are hereby notified that you BID has been accepted in the amount of Forty-three Thousand Four Hundred Sixty and no/100 Dollars ($43,460.00).

You are required by the Instructions to Bidders to execute the Agreement and furnish the required CONTRACTORS PERFORMANCE BOND, PAYMENT BOND and CERTIFICATES OF INSURANCE within fourteen (14) consecutive calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS and INSURANCE CERTIFICATES within fourteen (14) consecutive calendar days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this_______day of________________, 20______.

City of Carthage

By:_________________________

Title: Mayor

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by this the_____day of_______________________20____.

By____________________________

Title__________________________

COUNCIL BILL NO. ___24-16___ **ORDINANCE NO. ________**

An Ordinance authorizing the Mayor to enter into an Agreement with Carthage Youth Softball League for non-exclusive use of the softball fields at the Fair Acres Sports Complex during the summer of 2024, in the City of Carthage, Missouri.

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 Carthage Youth Softball League for non-exclusive use of the softball fields at the Fair Acres Sports Complex during the summer of 2024 as outlined in the agreement, a copy of which 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 ______, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Public Services Committee

AGREEMENT

This AGREEMENT is entered into this_______ day of __________, 2024, by and between the City of Carthage, Jasper County, Missouri, and the Carthage Youth Softball a Missouri not-for-profit corporation, hereinafter referred to as "Youth Softball".

WITNESSETH:

RECITALS

Whereas, the City of Carthage has responsibility for the maintenance of the Parks within the City of Carthage, and

Whereas, a portion of the Fair Acres Sports Complex was developed for youth softball and softball purposes and,

Whereas, Youth Softball offers a softball program with the principles of directing its team members toward the maximum development of their talents and abilities and,

Whereas, the Youth Softball program strives to instill in young softball players an understanding and appreciation of such concepts as high self-esteem, personal accountability, constructive self-motivation, goal setting, and goal achievement as these ideas relate to their success in training and in competition, and

Whereas, Youth Softball and the City of Carthage desire to make provision for the continuance of the quality softball programs that have existed, and

Whereas, in order for there to be an orderly relationship between the City of Carthage and Youth Softball, the parties hereto desire to formally express their goals and objectives.

COVENANTS

NOW, THEREFORE, in consideration of the promises set forth herein it is agreed as follows:

That the City of Carthage hereby grants to Youth Softball a non-exclusive privilege to utilize the Softball Fields at the Complex at Fair Acres Sports for a Softball Program to run from March 15 to July 15, 2024, which shall include up to five tournaments. The City retains the right to schedule the fields for any additional events taking into consideration the Youth Softball schedule.

Youth Softball shall provide the Parks Director with a schedule for its season. Youth Softball must receive written permission from the Parks Director for any tournaments or play outside of the normal summer program. There will be fees associated for field space outside of the defined Youth Softball agreement timeframe.

Youth Softball agrees to provide a program that will enable all Youth in the general Carthage area to participate.

Youth Softball agrees to operate a responsible and appropriate Softball program. Youth Softball agrees to provide all equipment and complete management and supervision of the Softball program; and the City assumes no responsibility for expenses related to the management of the Softball program.

The City agrees to provide reasonable maintenance on the Softball Fields as may be necessary and the Youth Softball agrees to work in cooperation with the City in the maintenance of the Softball fields. The parties to this agreement further agree to cooperate in the maintenance of the general Softball field's area and to keep it free from all trash and debris.

Youth Softball shall be responsible for:

- Provide the Parks Director with a schedule for its season and obtain written permission for any tournaments or play outside the normal summer program.
- Ensure that the program allows all youth in the general Carthage area to participate.
- Operate a responsible and appropriate Softball program, including providing equipment and complete management and supervision.
- Assume responsibility for minor repairs such as light bulb replacement and daily use of the concession stand.
- Use of the fields at Fair Acres are allowed for practice or games only after the agreement is signed by both parties.
- Indemnify, protect, and hold the City of Carthage harmless from any liability, losses, claims, damages, and expenses resulting from Youth Softball's use of the softball fields or facilities.
- Provide the following
    - Annual documents
    - A list of all current Board of Directors members
    - Financial statements
    - Detailed budget
    - Not-for-profit documentation
- Modify the agreement in writing and with mutual consent of both parties.
- All trash pickup in the immediate vicinity of the baseball fields and adjacent parking lots.
- Clean the restrooms at the end of every evening when fields are utilized for practices and/or games and during operations as needed
- Maintain the playing surface of the fields, including but not limited to providing and applying additional dirt as needed for infields and the pitcher mounds.

City shall be responsible for:

- Emptying of trash barrels and providing a dumpster.
- Major repairs related to plumbing, roofing, electrical, fencing, structural and lighting.
- Provide a secure storage area for equipment. The City of Carthage assumes no liability for loss or damage to equipment.
- Mowing of the fields.
- Pay all utility costs.

The City of Carthage agrees that Youth Softball shall have the right to place signs on fences at the ball fields, and shall be responsible for the installation and removal of signs on fences. All signs should be of the banner type, which provides for airflow to prevent damage to fences.

The City of Carthage hereby grants to Youth Softball a non-exclusive right to utilize the softball concession stand during their summer season and their tournaments as specified herein, subject to the right of the City to schedule events.

<u>Insurance:</u>

Youth Softball remains financially responsible for any liability or property damage cause by the activities of the rental. Youth Softball shall procure and maintain at all times relevant hereto, a certificate of insurance showing Commercial General Liability (CGL) coverage of two million dollars ($2,000,000) with the City of Carthage named as co-insured, covering all of Youth Softball's activities on the property. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Facility use activity.

CGL insurance shall cover liability arising from premises, operations, independent contractors, personal injury, including death, property damage and advertising injury, athletic participation, liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and liability arising from the indemnity provisions of this Agreement.

Youth Softball shall indemnify, protect and hold the City of Carthage harmless from any and all liability, losses, claims and damages whatsoever, and expenses including, without limitation, attorney fees and expenses resulting from all claims by or on behalf of any person, firm or corporation, arising out of or as a result of the use by Youth Softball of the said City fields or the use, operation or condition of the facilities or any part thereof, or any accident in connection with the operation, use or condition of the facilities or any part thereof resulting in damage to property or injury to or death of any person.

This agreement may be modified upon such terms and conditions as may be acceptable to the respective parties. All modifications shall be in writing and signed by both parties.

TERMS OF THE AGREEMENT

The terms of this agreement shall be from March 15, 2024 until July 15, 2024. This agreement shall be reviewed each year, evaluated and presented to the Public Services Committee of the Carthage City Council for consideration.

All notices required by this agreement shall be either personally delivered or placed in the United States Mail, properly addressed and with certified or registered postage prepaid. Said notices shall be sent to the parties at the following addresses, unless a party is otherwise notified in writing: to the City of Carthage, to the Mayor, Carthage City Hall, 326 Grant Street, Carthage, Missouri 64836, with a copy to the City Attorney, Carthage City Hall, 326 Grant Street, Carthage, Missouri 64836, the Parks Director, 521 Robert Ellis Young Drive, Carthage, Missouri 64836, and to the Carthage Youth Softball League.

Passed and approved by the Carthage Youth Softball League on the __________ Day of __________, 2024.

____
President
Carthage Youth Softball League

Passed and approved by the City of Carthage on the _____ day of __________, 2024.

____
Dan Rife
Mayor

Attest:

____
City Clerk

COUNCIL BILL NO. ___24-17___ **ORDINANCE NO. _____________**

An Ordinance authorizing the Mayor to execute a Lease Purchase Agreement with Bank of America for a Ferrara Heavy Duty Fire Engine, in the City of Carthage, Missouri.

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 a Lease Purchase Agreement with Bank of America for the lease purchase of a Ferrara Heavy Duty Fire Engine, a copy of which Agreement are 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 __________________, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Public Safety Committee

BANK OF AMERICA

Jill M. Forsyth
Senior Vice President
Global Leasing

14636 N. Scottsdale Road, Suite #200
Scottsdale, AZ 85254
T 480.624.0369 F 415.796.1301
jill.m.forsyth@BofA.com

January 12, 2024

Mr. Greg Dagnan
City of Carthage, Missouri
RE: LEASE PURCHASE AGREEMENT

Dear Greg:

Bank of America, National Association ("BANA") is pleased to present to City of Carthage, Missouri our response to your request for proposal for tax-exempt Lease-Purchase Financing for the acquisition of a Ferrara Heavy Duty Fire Engine. We believe this response is fully compliant with your request.

Bank of America, N.A. and is one of the largest municipal leasing companies in the Country. We have a national presence and have helped many governmental agencies in Missouri over the years. The request for bid is straightforward and BANA looks forward to assisting the city with its equipment lease financing.

I will personally handle this transaction and with over 25 years in the municipal business, the transaction will be completed efficiently and successfully. My contact information is included on the letterhead above and I am available for questions at any time. Thank you for the opportunity to present this response to the city. My team looks forward to working with you.

Sincerely,

Jill M. Forsyth
Senior Vice President

This proposal is submitted in response to your Request for Proposal LEASE PURCHASE AGREEMENT due January 17, 2024. The contents of this proposal and any subsequent discussions between us, including any and all information, recommendations, opinions, indicative pricing, quotations and analysis with respect to any municipal financial product or issuance of municipal securities, are provided to you in reliance upon the exemption provided for responses to requests for proposals or qualifications under the municipal advisor rules (the "Rules") of the Securities and Exchange Commission (240 CFR 15Ba1-1 et seq.).
The Staff of the SEC's Office of Municipal Securities has issued guidance which provides that, in order for a request for proposals to be consistent with this exemption, it must (a) identify a particular objective, (b) be open for not more than a reasonable period of time (up to six months being generally considered as reasonable), and (c) involve a competitive process (such as by being provided to at least three reasonably competitive market participants) or by being publicly posted to your official website. In submitting this proposal, we have relied upon your compliance with this guidance.
In submitting this proposal, we are not undertaking to act as a "municipal advisor" to you or any other person within the meaning of the Rules. In connection with this proposal and the transactions described herein, we are not subject to, and we hereby disclaim, any fiduciary duty to you or to any other person. We understand that you will consult with and rely on the advice of your own municipal, financial, tax, legal and other advisors as and to the extent you deem necessary in connection with your evaluation of this proposal and the transactions described herein.

BANK OF AMERICA

Jill M. Forsyth
Senior Vice President
Global Leasing

14636 N. Scottsdale Road, Suite #250
Scottsdale, AZ 85254
T 480.624.0369 F 415.796.1301
jill.m.forsyth@BofA.com

SUMMARY OF TERMS AND CONDITIONS

Date: January 12, 2024

Lessee: City of Carthage, Missouri ("Lessee")

Lessor: Bank of America, National Association or Designee ("BANA")

Structure: Tax-Exempt Lease Purchase subject to appropriation: Bank Qualified

Amount: Approximately $750,000

Security: A security interest in the equipment being financed

Interest rate **3.9680%**

This rate is inclusive of a 90-day rate lock. In order to take advantage of the rate lock, Lessee must confirm via email within 5 business days of the date of this proposal to lock the rate. This lock is subject to City Council action. If the rate lock is not confirmed timely, the rate may change to maintain the Lessor's economics.

Prepayment: Pre-payable in full after half of the term on any regularly scheduled payment date without penalty.

Governmental Entity Lease: The Base Rent installments are calculated on the assumptions, and Lessee will represent, that Lessee is a City or political subdivision of a City within the meaning of Section 103(c) of the Internal Revenue Code (the "Code"), and that this transaction will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code. Lessee shall provide Lessor with such evidence as Lessor may request to substantiate and maintain such tax status. Lessee shall comply with the filing requirements of Section 149(e) of the Code.

End of Term: At the expiration of the Lease Term, Lessee will own the equipment.

The transaction described in this document is an arm's length, commercial transaction between you and Bank of America, National Association or one of its subsidiaries or affiliates (collectively, *"BANA"*) in which: (i) BANA is acting solely as a principal (*i.e.*, as a lender or lessor) and for its own interest; (ii) BANA is not acting as a municipal advisor or financial advisor to you; (iii) BANA has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BANA or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BANA has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BANA is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.

Opinion of Counsel: Lessee's counsel shall deliver a validity opinion to Lessor at closing in form and substance satisfactory to Lessor. The opinion of counsel will cover that counsel has reviewed the documents and examined, approved and attached the text of the enabling resolution of Lessee's governing body authorizing Lessee to enter into the Lease.

Documentation: Included in our proposal submission is a Bank Qualified Master Equipment Lease/Purchase Agreement and Escrow/Account Control Agreement ("Escrow Agreement") for your review. The escrow agent named in the Escrow Agreement (Argent Institutional Trust Company) is one of our approved providers/vendors.

Credit: This proposal is subject to acceptable documentation and credit review. This process can be done timely upon an award. Useful life of the assets being financed must match or be greater than financing term.

Market Disruption: Notwithstanding anything contained herein to the contrary, in the event any material change shall occur in the financial markets after the date of this Proposal Letter, including but not limited to any governmental action or other event which materially adversely affects the extension of credit by banks, leasing companies or other lending institutions, the Lessor may modify the indicative pricing.

USA Patriot Act Compliance: Lessee acknowledges that pursuant to the requirements of the USA Patriot Act, as amended from time to time (including as amended by the USA Freedom Act of 2015) (the "Patriot Act"), Lessor is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Patriot Act.

Proposal Expiration: This proposal will expire on March 30, 2024

FIRM QUALIFICATIONS: Banc of America Public Capital Corp

Banc of America Public Capital Corp ("BAPCC") is a corporation and wholly owned subsidiary of Bank of America, N.A., one of the world's largest financial institutions, providing a full range of banking, investing, asset management and other financial and risk management products and services. Along with Global Leasing the number one market share leader in net assets and syndicated volume among U.S. leasing companies[1], BAPCC provides full-service leasing and equipment financing solutions that structure, invest in and distribute equipment financing products. BAPCC and Global Leasing have a strong combined presence in both the domestic and international markets with nearly 1,000 associates worldwide. Our team has a wide range of skills and expertise, including originators, debt and equity syndicators, pricing specialists, attorneys, equipment appraisers, credit analysts, portfolio managers, and contract administrators. These professionals ensure that our clients receive the soundest advice, the most competitive solutions, and the best execution available in the market.

In the public sector, BAPCC's Government Finance team is one of the tax-exempt industry's largest financial solutions providers with approximately $3.35 billion in commitments serving roughly 387 clients. With its nationwide presence in the municipal equipment financing realm, the group structures, implements and distributes tax-exempt financing solutions to complement the current and long-term financial strategies of tax-exempt entities.
[1]2021 Monitor 100 Special Issue (August)

KEY INDIVIDUALS INVOLVED WITH THE CITY OF CARTHAGE, MO

The two key individuals will support the City of Carthage with its equipment financing lease needs are Jill Forsyth and Lisa Coggi. Jill is a government leasing expert that has been in the municipal business for over 30 years. She has this response and is ultimately responsible for this relationship. Lisa Coggi is her transaction manager and handles the coordination of documents and timing with the operation staff. She has vast operational experience and is a member of the Missouri Bar Association.

Jill M. Forsyth: Senior Vice President, Banc of America Public Capital Corp
14648 North Scottsdale Road, Suite 250; Scottsdale, AZ 85254; Phone: 480-624-0369
jill.m.forsyth@bofa.com

Jill is a Senior Vice President Banc of America Public Capital Corp and is responsible for tax-exempt equipment transactions in the Western and Central portions of the US. Jill works directly with issuers including cities, counties, school districts, City governments and agencies, to structure unique solutions to finance equipment and provides master lease lines of credit. Jill has over thirty-five years of experience in the tax-exempt leasing industry and resides in Arizona. She joined Banc of America Leasing eighteen years ago after over 20+ years with JP Morgan Chase. Jill has received both her undergraduate and Master of Business degrees from Arizona State University

Lisa Coggi: Senior Vice President – Transaction Management, Banc of America Public Capital Corp
16900 Chesterfield Airport Road, Chesterfield, MO 63005 Phone: 312-537-6773
lisa.a.coggi@bofa.com

Lisa is a Senior Vice President, Transaction Management with the Banc of America Public Capital Corp ("BAPCC") Government Finance team. In that role, Lisa is responsible for acting as liaison between clients and internal BAPCC support services. Lisa joined Banc of America in 2006 after previously working with organizations such as Key Equipment Finance and The CIT Group. Lisa has in excess 30 years of experience in equipment finance in lease administration, originations, relationship management and process improvement roles. Lisa has earned her Bachelor of Arts degree from Loyola University–Chicago and her Juris Doctor degree from Saint Louis University School of Law, and she is a member of the Missouri Bar Association.

REFERENCES:

Client	Unified Government of Wyandotte County/Kansas City, KS
Contact Info	Deborah Jonscher; 913-573-5847; djonscher@wycokck.org
Year	2007-2022
Amount Financed	$2MM -$5MM annually
Description of Services	Multi-year Master Lease
Client	City of Kansas City
Contact Info	Dan Grandcolas; 816-274-1220; dan.grandcolas@kcmo.org
Year	2009-2023
Amount Financed	$9MM+ annually last 4 years
Description of Services	Multi-year Master Lease
Client	Kansas Department of Administration
Contact Info	Pat Higgins; 785-296-2145; pat.higgins@ks.gov
Year	2009-2023
Amount Financed	$5MM+ annually last 4 years
Description of Services	Master Lease Program

Jill M. Forsyth

Jill M. Forsyth
Senior Vice President

Amortization Schedules:

5 year quarterly

Date	Funding	Payment	Interest @ 3.9680	Principal	Balance
3/30/2024	$750,000.00				$750,000.00
6/30/2024		$ 41,528.02	$ 7,440.00	$ 34,088.02	$715,911.98
9/30/2024		$ 41,528.02	$ 7,101.85	$ 34,426.17	$681,485.81
12/30/2024		$ 41,528.02	$ 6,760.34	$ 34,767.68	$646,718.14
3/30/2025		$ 41,528.02	$ 6,415.44	$ 35,112.57	$611,605.56
6/30/2025		$ 41,528.02	$ 6,067.13	$ 35,460.89	$576,144.68
9/30/2025		$ 41,528.02	$ 5,715.36	$ 35,812.66	$540,332.01
12/30/2025		$ 41,528.02	$ 5,360.09	$ 36,167.92	$504,164.09
3/30/2026		$ 41,528.02	$ 5,001.31	$ 36,526.71	$467,637.38
6/30/2026		$ 41,528.02	$ 4,638.96	$ 36,889.05	$430,748.33
9/30/2026		$ 41,528.02	$ 4,273.02	$ 37,254.99	$393,493.34
12/30/2026		$ 41,528.02	$ 3,903.45	$ 37,624.56	$355,868.77
3/30/2027		$ 41,528.02	$ 3,530.22	$ 37,997.80	$317,870.97
6/30/2027		$ 41,528.02	$ 3,153.28	$ 38,374.74	$279,496.24
9/30/2027		$ 41,528.02	$ 2,772.60	$ 38,755.41	$240,740.82
12/30/2027		$ 41,528.02	$ 2,388.15	$ 39,139.87	$201,600.96
3/30/2028		$ 41,528.02	$ 1,999.88	$ 39,528.13	$162,072.82
6/30/2028		$ 41,528.02	$ 1,607.76	$ 39,920.25	$122,152.57
9/30/2028		$ 41,528.02	$ 1,211.75	$ 40,316.26	$ 81,836.31
12/30/2028		$ 41,528.02	$ 811.82	$ 40,716.20	$ 41,120.11
3/30/2029		$ 41,528.02	$ 407.91	$ 41,120.11	$ -
	$750,000.00	$830,560.33	$80,560.33	$750,000.00	

5 year semi-annual

Date	Funding	Payment	Interest @ 3.9680	Principal	Balance
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3/30/2024	$750,000.00				$750,000.00
9/30/2024		$ 83,425.01	$14,880.00	$ 68,545.01	$681,454.99
3/30/2025		$ 83,425.01	$13,520.07	$ 69,904.95	$611,550.04
9/30/2025		$ 83,425.01	$12,133.15	$ 71,291.86	$540,258.18
3/30/2026		$ 83,425.01	$10,718.72	$ 72,706.29	$467,551.88
9/30/2026		$ 83,425.01	$ 9,276.23	$ 74,148.79	$393,403.10
3/30/2027		$ 83,425.01	$ 7,805.12	$ 75,619.90	$317,783.20
9/30/2027		$ 83,425.01	$ 6,304.82	$ 77,120.20	$240,663.00
3/30/2028		$ 83,425.01	$ 4,774.75	$ 78,650.26	$162,012.74
9/30/2028		$ 83,425.01	$ 3,214.33	$ 80,210.68	$ 81,802.06
3/30/2029		$ 83,425.01	$ 1,622.95	$ 81,802.06	$ -
	------------	-----------	-----------	-----------	
	$750,000.00	$834,250.15	$84,250.15	$750,000.00	

This proposal is submitted in response to your Request for Proposal Lease Purchase Agree due date January 17, 2024. The contents of this proposal and any subsequent discussions between us, including any and all information, recommendations, opinions, indicative pricing, quotations and analysis with respect to any municipal financial product or issuance of municipal securities, are provided to you in reliance upon the exemption provided for responses to requests for proposals or qualifications under the municipal advisor rules (the "Rules") of the Securities and Exchange Commission (240 CFR 15Ba1-1 et seq.).

The Staff of the SEC's Office of Municipal Securities has issued guidance which provides that, in order for a request for proposals to be consistent with this exemption, it must (a) identify a particular objective, (b) be open for not more than a reasonable period of time (up to six months being generally considered as reasonable), and (c) involve a competitive process (such as by being provided to at least three reasonably competitive market participants) or by being publicly posted to your official website. In submitting this proposal, we have relied upon your compliance with this guidance.

In submitting this proposal, we are not undertaking to act as a "municipal advisor" to you or any other person within the meaning of the Rules. In connection with this proposal and the transactions described herein, we are not subject to, and we hereby disclaim, any fiduciary duty to you or to any other person. We understand that you will consult with and rely on the advice of your own municipal, financial, tax, legal and other advisors as and to the extent you deem necessary in connection with your evaluation of this proposal and the transactions described herein.

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

This Master Equipment Lease/Purchase Agreement (the *"Agreement"*) dated as of ________________________, and entered into by and between Bank of America, National Association, a national banking association (together with its successors, assigns and transferees, and as more particularly defined herein, *"Lessor"*), and __________________________, a [city] [county] [school district] [special district] [body corporate and politic] existing under the laws of the State of __________ (*"Lessee"*).

WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment described in each Equipment Schedule (as each such term is defined herein), subject to the terms and conditions of and for the purposes set forth in each Lease; and

WHEREAS, the relationship between the parties shall be a continuing one and items of equipment and other personal property may be financed pursuant to one or more Leases entered into from time to time in accordance with this Agreement by execution and delivery of additional Equipment Schedules by the parties hereto, subject to the terms and conditions provided herein; and

WHEREAS, Lessee is authorized under the constitution and laws of the State (as such term is defined herein) to enter into this Agreement and each Equipment Schedule for the purposes set forth herein and therein;

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Acquisition Amount" means, with respect to each Lease, the amount specified in the related Equipment Schedule and represented by Lessee to be sufficient for the purpose of acquiring and installing the Equipment listed in such Lease.

"Acquisition Period" means, with respect to each Lease for which an Escrow Account is established, that period identified in the related Equipment Schedule during which the Acquisition Amount attributable to such Lease may be expended on Equipment Costs pursuant to the related Escrow Agreement.

"Agreement" means this Master Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to this Agreement pursuant to Section 13.04.

"Casualty Value" means, with respect to each Lease, the amount that is shown on the Payment Schedule for each Rental Payment Date under the column titled either (i) the Prepayment Price or (ii) the "Casualty Value", if any.

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code in this Agreement and a Lease shall be deemed to include the relevant United States Treasury Regulations proposed or in effect thereunder.

"Commencement Date" means, for each Lease, the date when Lessee's obligation to pay rent commences under such Lease, which date shall be the earlier of (a) the date on which the Equipment listed in such Lease is accepted by Lessee in the manner described in Section 5.01, or (b) the date on which the Acquisition Amount is deposited in an Escrow Account for the purpose of acquiring and installing the Equipment listed in such Lease.

"Contract Rate" means, with respect to each Lease, the rate identified as such in the related Payment Schedule.

"Disbursement Request" means, with respect to each Lease for which an Escrow Account is established, the disbursement request attached to the applicable Escrow Agreement as Schedule 1 and made a part thereof.

"Equipment" means, with respect to each Lease, the property listed in the related Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Article V or Section 8.01. Whenever reference is made in this Agreement to Equipment listed in a Lease, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

"Equipment Costs" means, with respect to each Lease, the total cost of the Equipment listed in the related Equipment Schedule, including related soft costs such as freight, installation and taxes and other capitalizable costs, legal fees, financing costs and other costs necessary to vest full, clear legal title to the Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in each Lease, and other costs incurred in connection with the acquisition, installation and/or financing of the Equipment as provided in the related Lease; *provided* that (a) any such soft costs on a cumulative basis shall not exceed a percentage approved by Lessor of the total cost of the Equipment subject to such Lease and (b) in no event shall capitalizable delivery costs, installation charges, taxes and similar capitalizable soft costs relating to such Equipment be included without Lessor's prior consent.

"Equipment Schedule" means each separately numbered Equipment Schedule, substantially in the form of either *Exhibit A-1* (general Equipment) or *Exhibit A-2* (energy services Equipment) hereto, together with the related Payment Schedule.

"Escrow Account" means, with respect to any Lease, the account established and held by the Escrow Agent pursuant to the related Escrow Agreement.

"Escrow Agent" means, with respect to each Lease for which an Escrow Account is established, the Escrow Agent identified in the related Escrow Agreement, and its successors and assigns.

"Escrow Agreement" means, with respect to each Lease for which an Escrow Account is established, an Escrow and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which an Escrow Account is established and administered.

"Event of Default" means an Event of Default described in Section 12.01.

"Event of Non-appropriation" means, with respect to a Lease, the failure of Lessee's governing body to appropriate or otherwise make available funds to pay Rental Payments under such Lease following the Original Term or then current Renewal Term sufficient for the continued performance of such Lease by Lessee.

"Lease" means an Equipment Schedule and the terms and provisions of this Agreement which are incorporated by reference into such Equipment Schedule.

"Lease Term" means, with respect to each Lease, the Original Term and all Renewal Terms provided in the related Equipment Schedule.

"Lessee" means the entity referred to as Lessee in the first paragraph of this Agreement.

"Lessor" means (a) the entity referred to as Lessor in the first paragraph of this Agreement and its successors or (b) any assignee or transferee pursuant to Section 11.01 of any right, title or interest of Lessor in and to the Equipment under the applicable Lease (including the Rental Payments and other amounts due thereunder), any related Escrow Agreement and Escrow Account, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder or under such Lease.

"Material Adverse Change" means (a) any change in Lessee's creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee's ability to perform its obligations under this Agreement or any Lease or (b) a downgrade in Lessee's external debt rating from the date of this Agreement of two or more subgrades by either Moody's Investors Service, Inc. or S&P Global Ratings or any equivalent successor credit rating agency, or

any downgrade by either such agency that would cause Lessee's credit rating to be below investment grade, or, if any such rating agency no longer publishes such ratings at the date of determination, any other nationally recognized statistical rating organization that is selected by Lessee for purposes of such long-term general obligation bond ratings and long-term general fund related bond ratings.

"Original Term" means, with respect to each Lease, the period from the Commencement Date identified in the related Equipment Schedule until the end of the fiscal year of Lessee in effect at such Commencement Date.

"Outstanding Balance" means, with respect to each Lease, the amount that is shown for each Rental Payment Date under the column titled "Outstanding Balance" on the Payment Schedule.

"Payment Schedule" means, with respect to each Lease, the Payment Schedule attached to and made a part of the related Equipment Schedule and substantially in the form of *Exhibit B* attached to this Agreement.

"Prepayment Price" means, with respect to each Lease, the amount that is shown for each Rental Payment Date under the column titled "Prepayment Price" on the Payment Schedule.

"Principal Portion" means, with respect to each Lease, the amount that is shown for each Rental Payment Date under the column titled "Principal Portion" on the Payment Schedule.

"Related Documents" means, with respect to each Lease, the Lease, this Agreement and, if applicable, the related Escrow Agreement, each as may be amended and supplemented.

"Renewal Terms" means, with respect to each Lease, the consecutive renewal terms of such Lease as specified in the related Equipment Schedule, the first of which commences immediately after the end of the Original Term and each having a duration and a term coextensive with each successive fiscal year of Lessee; *provided* that the final such Renewal Term shall commence on the first day of the last such fiscal year and end on the first business day after the last scheduled Rental Payment Date.

"Rental Payment Date" means, with respect to each Lease, each date on which Lessee is required to make a Rental Payment under such Lease as specified in the related Payment Schedule.

"Rental Payments" means, with respect to each Lease, the basic rental payments payable by Lessee on the Rental Payment Dates and in the amounts as specified in the related Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay the principal component under such Lease and interest thereon at the applicable Contract Rate (or Taxable Rate if then in effect).

"*SEC*" means the U.S. Securities and Exchange Commission.

"State" means the State of ___________.

"Taxable Rate" means, with respect to each Lease, for each day that the interest component of Rental Payments is taxable for Federal income tax purposes, an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any Rental Payment Date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

"Vendor" means the manufacturer, installer or supplier of the Equipment listed in an Equipment Schedule or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessee arranged Lessee's acquisition, installation, maintenance and/or servicing of the Equipment pursuant to the applicable Lease.

"Vendor Agreement" means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment under a Lease.

ARTICLE II

Section 2.01. Representations and Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof and as of the Commencement Date of each Lease as follows:

(a) Lessee is [the State] [a political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State], with full power and authority to enter into the Related Documents and the transactions contemplated thereby and to perform all of its obligations thereunder.

(b) Lessee has duly authorized the execution and delivery of the Related Documents by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Related Documents.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof. No Event of Non-appropriation has occurred or is threatened with respect to any Lease.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a [city] [county] [school district] [special district] [body corporate and politic] of the State.

(e) Lessee has complied with such procurement and public bidding requirements as may be applicable to the Related Documents and the acquisition and installation by Lessee of the Equipment as provided in each Lease.

(f) During the Lease Term under each Lease, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid under the related Lease.

(g) Lessee has kept, and throughout the Lease Term of each Lease shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within two hundred seventy (270) days after the end of its fiscal year, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or for the following fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in this subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's independent auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Equipment listed on each Equipment Schedule and expects to make immediate use of the Equipment listed on each Equipment Schedule. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the related Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not (under the terms of any Lease or any underlying arrangement) directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount relating to any Lease will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations under the Related Documents. Lessee will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Escrow Account and Lessor's rights and benefits under each Lease and related Escrow Agreement.

(k) Lessee is the fee owner of the real estate where the Equipment under each Lease is and will be located (the "*Real Property*") and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such Real Property.

(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(m) In connection with the Lessee's compliance with any continuing disclosure undertakings (each, a "*Continuing Disclosure Agreement*") entered into by the Lessee pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "*Rule*"), the Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("*EMMA*"), notice of its incurrence of its obligations under the Related Documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with the Related Documents, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an "*EMMA Posting*"). Except to the extent required by applicable law, including the Rule, the Lessee shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Lessor or its affiliates and any Escrow Agent in any portion of such EMMA Posting: address and account information of the Lessor or its affiliates and any Escrow Agent; e-mail addresses telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lessor or its affiliates and any Escrow Agent; and the form of Disbursement Request that is attached to the Escrow Agreement.

The Lessee acknowledges and agrees that the Lessor and its affiliates are not responsible for the Lessee's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

Article III

Section 3.01. *Lease of Equipment.* Subject to the terms and conditions of this Agreement, Lessor agrees to provide the funds specified in each Lease to be provided by it for Lessee to acquire the Equipment described in the related Equipment Schedule. Upon the execution and delivery of each Lease, Lessor thereby demises, leases and transfers to Lessee, and Lessee thereby acquires, rents and leases from Lessor, the Equipment as set forth in such Lease and in accordance with the terms thereof. The Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue each Lease for the next Renewal Term unless Lessee shall have terminated such Lease pursuant to Section 3.03 or Section 10.01 of this Agreement. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the applicable Lease. Each Equipment Schedule signed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent lease and installment purchase of the Equipment therein described.

Section 3.02. *Continuation of Lease Term.* Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term of each Lease through the Original Term and all Renewal Terms and to pay the Rental Payments due thereunder. Lessee affirms that sufficient funds are legally available for the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term of each Lease can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due under each Lease, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the Lease Term for any Renewal Term for each Lease is within the sole discretion of the governing body of Lessee.

Section 3.03. *Non-appropriation.* Lessee is obligated only to pay such Rental Payments under each Lease as may lawfully be made during Lessee's then current fiscal year from funds budgeted and appropriated for that purpose. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments under any Lease following the then current Original Term or Renewal Term, such Lease or Leases shall be deemed terminated at the end of the then current Original Term or Renewal Term thereunder. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If any Lease is terminated in accordance with this Section 3.03, Lessee agrees to cease use of the Equipment thereunder and peaceably remove and deliver to Lessor, at Lessee's sole expense (from legally available funds), such Equipment to Lessor at the location(s) to be specified by Lessor on or before the end of the applicable Original Term or Renewal Term for which Rental Payments have been appropriated for the applicable Lease (each, a "*Non-Appropriation Return Date*"). Lessor may take whatever action at law or in equity as may be necessary or desirable to enforce Lessee's obligations in the immediately preceding sentence. Without limiting or reducing in any way Lessee's obligations in the second preceding sentence or Lessor's rights in the immediately preceding sentence, if the Lessee fails to return the Equipment to Lessor on or before the applicable Non-Appropriation Return Date pursuant to this Section 3.03, Lessee shall pay month-to-month rent at the Contract Rate (or the Taxable Rate if then in effect) set forth in the affected Lease for each month or part thereof that Lessee fails to return the Equipment thereunder pursuant to this Section 3.03.

Section 3.04. *Conditions to Lessor's Performance.* (a) As a prerequisite to the performance by Lessor of any of its obligations pursuant to any Lease, Lessee shall deliver to Lessor, in form and substance satisfactory to Lessor, the following:

(i) A fully completed Equipment Schedule, executed by Lessee;

(ii) If an Escrow Account is to be established with respect to such Lease, an Escrow Agreement substantially in the form attached hereto as *Exhibit I*, satisfactory to Lessor and executed by Lessee and the Escrow Agent;

(iii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as *Exhibit C-1A* or *Exhibit C-1B*, as applicable, authorizing the execution and delivery of this Agreement and the applicable Lease and related Escrow Agreement, if any, entered into pursuant hereto and performance by Lessee of its obligations under this Agreement and the applicable Lease and related Escrow Agreement, if any, entered into pursuant hereto;

(iv) A Certificate completed and executed by the Clerk or Secretary or other comparable officer of Lessee, substantially in the form attached hereto as *Exhibit C-2A* or *Exhibit C-2B*, as applicable, completed to the satisfaction of Lessor;

(v) An opinion of counsel to Lessee, substantially in the form attached hereto as *Exhibit D*, and otherwise satisfactory to Lessor;

(vi) Evidence of insurance as required by Section 7.02 hereof;

(vii) All documents, including financing statements, affidavits, notices and similar instruments, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02 hereof;

(viii) A waiver or waivers of interest in the Equipment from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located;

(ix) If Lessee has designated the Lease then being entered into as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, a certificate substantially in the form attached hereto as *Exhibit G* executed by an authorized official of Lessee;

(x) A copy of the Form 8038-G with respect to the Lease then being entered into, fully completed and executed by Lessee;

(xi) In the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty (60) days prior to the Commencement Date for the Lease then being entered into, evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement from tax exempt proceeds of expenditures incurred not more than sixty (60) days prior to the date of such resolution;

(xii) If any items of Equipment are motor vehicles, properly completed certificates of title or certificates of origin (or applications therefor) for such vehicles with Lessor's interest noted thereon in accordance with the instructions of Lessor;

(xiii) Copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to Equipment has passed to Lessee), to the extent required by Section 5.01(b) hereof;

(xiv) Wire instructions for payments to be made to Vendors and Form W-9 from each such Vendor; and

(xv) Such other items as are set forth in the related Equipment Schedule or are reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under the Related Documents shall be subject to: (i) no Material Adverse Change having occurred since the date of this Agreement, (ii) no Event of Default having occurred and then be continuing under any Lease then in effect, (iii) no Event of Non-appropriation under any Lease then in effect having occurred or being threatened, and (iv) no Lease having been terminated as the result of the occurrence of an Event of Default or an Event of Non-appropriation.

(c) Subject to satisfaction of the foregoing, (i) Lessor will pay the Acquisition Amount for Equipment described in an Equipment Schedule to the Vendor or reimburse Lessee for its prior expenditures with respect to such Equipment (subject to satisfaction of Section 3.04(a)(xi) hereof), upon receipt of the documents described in Sections 5.01(a) and (b) hereof; or (ii) if an Escrow Account is being established with respect to the related Lease, Lessor will deposit the Acquisition Amount for Equipment described in the applicable Equipment Schedule with the Escrow Agent to be held and disbursed pursuant to the related Escrow Agreement.

(d) This Agreement is not a commitment by Lessor or Lessee to enter into any Lease not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor or Lessee to enter into any proposed Lease, it being understood that whether Lessor or Lessee enters into any proposed Lease shall be a decision solely within their respective discretion.

(e) Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

(f) In the event of any conflict in terms between an Equipment Schedule and this Agreement, the terms of the Equipment Schedule shall control in the interpretation of the Lease created thereby.

Section 3.05 Evidence of Filing Form 8038-G. As soon as it is available, with respect to each Lease under this Agreement, Lessee shall provide to Lessor evidence that it, or its paid preparer, has filed the Form 8038-G for the applicable Lease with the Internal Revenue Service by delivering to Lessor proof of mailing such Form 8038-G. Notwithstanding anything to the contrary in this Agreement or the applicable Lease, it shall not be an Event of Default hereunder or thereunder if Lessee does not provide to Lessor evidence that it (or its paid preparer) filed the Form 8038-G for the applicable Lease with the Internal Revenue Service.

ARTICLE IV

Section 4.01. Rental Payments. Subject to Section 3.03 of this Agreement, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the Rental Payment Dates and in such amounts as provided in each Lease. If any Rental Payment or other amount payable hereunder is not paid within ten (10) days of its due date, Lessee shall pay an administrative late charge of five percent (5%) of the amount not timely paid or the maximum amount permitted by law, whichever is less. Lessee shall not permit the Federal Government to guarantee any Rental Payments under any Lease. Rental Payments consist of principal and interest components as more fully detailed on the Payment Schedule for each Lease, the interest on which begins to accrue as of the Commencement Date for each such Lease.

Section 4.02. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal. Each Lease shall set forth the principal and interest components of each Rental Payment payable thereunder during the applicable Lease Term.

Section 4.03. *Rental Payments to Constitute a Current Expense of Lessee.* Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments under each Lease shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained in this Agreement or in any Lease constitute a pledge of the general tax revenues, funds or moneys of Lessee.

Section 4.04. *Rental Payments to be Unconditional.* Except as provided in Section 3.03 of this Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in each Lease shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, disputes with the Lessor or the Vendor of any Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to any Vendor.

Section 4.05 *Tax Covenants.* Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes. In connection with the foregoing, Lessee hereby agrees that (a) so long as any Rental Payments under a Lease remain unpaid, moneys on deposit in the Escrow Account under any Escrow Agreement related to such Lease shall not be used in a manner that will cause such Lease to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code; and (b) Lessee shall rebate, from funds legally available for the purpose, an amount equal to excess earnings on the Escrow Account under any Escrow Agreement to the Federal Government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code.

Section 4.06. *Event of Taxability.* Upon the occurrence of an Event of Taxability with respect to a Lease, the interest component of Rental Payments under such Lease and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate applicable to such Lease retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for Federal income tax purposes (which retroactive date for such Lease shall be the earliest date as of which the interest component of any Rental Payment for such Lease is deemed includible in the gross income of the owner or owners thereof for Federal income tax purposes, which may be earlier than the date of delivery of such determination by the Internal Revenue Service), and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate identified in the related Lease.

For purposes of this Section, *"Event of Taxability"* means the circumstance of the interest component of any Rental Payment paid or payable pursuant to a Lease becoming includible for Federal income tax purposes in an owner's gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of Lessee. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment under such Lease is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment under such Lease is includable in the gross income of the owner thereof; or (c) receipt by Lessor or Lessee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by Lessor and acceptable to Lessee, to the effect that the interest component of any Rental Payment under a Lease has become includable in the gross income of the owner thereof for Federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for Federal income tax purposes.

Section 4.07. Mandatory Prepayment. If the Acquisition Amount for a Lease is deposited into an Escrow Account, any funds not applied to Equipment Costs and remaining in such Escrow Account on the earlier of (a) the expiration of the applicable Acquisition Period, (b) the date on which Lessee delivers to the Lessor the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from such Escrow Account or (c) a termination of the Escrow Account as provided in the Escrow Agreement shall be applied by Lessor on each successive Rental Payment Date thereafter to pay all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the applicable unpaid Principal Portion of Rental Payments owing under the related Lease in the inverse order of the Rental Payment Dates.

ARTICLE V

Section 5.01. Acquisition, Delivery Installation and Acceptance of Equipment. (a) With respect to each Lease, Lessee shall order the Equipment to be acquired and financed thereunder, cause the Equipment to be delivered and installed at the location specified in such Lease and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment listed in a Lease has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor a Final Acceptance Certificate in the form attached hereto as *Exhibit E*; *provided, however,* that if an Escrow Account has been established with respect to such Lease as provided in Section 3.04 hereof, Lessee shall execute and deliver Disbursement Requests to the Lessor pursuant to the related Escrow Agreement for the purpose of effecting disbursements from the Escrow Account to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed pursuant to such Lease. In connection with the execution and delivery by Lessee to Lessor of the final

Disbursement Request under the applicable Escrow Agreement for a Lease, Lessee shall deliver to Lessor a "Final Acceptance Certificate" in the form attached hereto as *Exhibit E.*

(b) (i) With respect to a Lease entered into without an Escrow Agreement, Lessee shall deliver to Lessor copies of invoices (and proof of payment of such invoices if Lessee seeks reimbursement for prior expenditures) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee. Lessee shall execute and deliver to Lessor an Equipment Schedule pursuant to Section 3.04(a)(i) within 5 business days of receipt from Lessor, subject to satisfaction of the conditions set forth in Section 3.04.

(ii) With respect to a Lease entered into with an Escrow Agreement, Lessor shall prepare an Equipment Schedule. In connection with the execution and delivery of the related Escrow Agreement, Lessee shall execute and deliver to Lessor such Equipment Schedule pursuant to Section 3.04(a)(i) within 5 business days of receipt, subject to satisfaction of the conditions set forth in Section 3.04. Lessee shall deliver to Lessor together with each Disbursement Request invoices (and proof of payment of such invoices if Lessee seeks reimbursement for prior expenditures) and bills of sale or other evidence of title transfer to Lessee relating to each item of Equipment accepted by Lessee as evidenced by such Disbursement Request. Once approved, Lessor shall deliver such Disbursement Request to the Escrow Agent for disbursement from the Escrow Account in accordance with the Escrow Agreement.

Section 5.02. Quiet Enjoyment of Equipment. So long as no Event of Default exists under the related Lease, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term under such Lease.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved or relocated from the location (or the base location with respect to motor vehicles) specified for it in the related Lease without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the related Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under the related Lease.

Lessee agrees that it shall maintain, preserve and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for in Sections 3.03 and 12.02(b) of this Agreement.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term under each Lease, and so long as Lessee is either not in default under Article XII hereof or an Event of Non-appropriation has not occurred, all right, title and interest in and to each item of the Equipment under the related Lease shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof and under the applicable Lease. Lessee shall at all times protect and defend, at its own cost and expense, its title, and Lessor's first priority security interest, in and to the Equipment (and Lessor's other Collateral as defined in Section 6.02 hereof) from and against all claims, liens and legal processes of its creditors, and keep all Equipment (and such other Collateral) free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default under a Lease or upon termination of a Lease pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or 12.02 of this Agreement, as applicable. Upon payment of all amounts due and owing under a Lease by Lessee in accordance with Section 10.01 hereof (including upon payment of all Rental Payments and other amounts payable under such Lease), Lessor's security interest or other interest in the Equipment under such Lease shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Equipment subject to the related Lease.

Section 6.02. Security Interest. As additional security for the payment and performance of all of Lessee's obligations under each Lease, upon the execution of such Lease, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Equipment subject to such Lease, (b) moneys and investments held from time to time in any related Escrow Account and (c) any and all proceeds of any of the foregoing, including, without limitation, insurance proceeds (collectively, the "*Collateral*"). Upon the execution of each Lease, Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Collateral, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the Uniform Commercial Code in effect in the State and treating such Article 9 as applicable to entities such as Lessee.

Section 6.03. Personal Property; No Encumbrances. Lessee agrees that the Equipment is deemed to be and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment under a Lease is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment under such Lease acceptable to Lessor or its assigns in their respective discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment under each Lease free of all levies, liens, and encumbrances except those created by such Lease. The parties to this Agreement contemplate that the Equipment under each Lease will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the lease, sale, purchase, operation, use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Lessee shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term under the affected Lease. During the Lease Term under each Lease, Lessor will not claim ownership of the Equipment thereunder for the purposes of any tax credits, benefits or deductions with respect to such Equipment.

Section 7.02. Insurance. Lessee shall, during the Lease Term under each Lease, maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Casualty Value of the Equipment under such Lease or (ii) the replacement cost of such Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability for bodily injury and property damage coverage (i) in such coverage amounts as may be required by Lessor for the applicable Equipment or (ii) in such minimum coverage amounts as may be agreed upon between Lessor and Lessee in connection with the execution and delivery of a Lease, and in all events under clauses (a) and (b) issued in form and amount satisfactory to Lessor and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, Lessee may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Lessor's prior consent (which Lessor may grant, withhold or deny in its sole discretion) and *provided* that Lessee has delivered to Lessor such information as Lessor may request with respect to the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Lessor. In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section 7.02, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as *Exhibit F*. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term under each Lease. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least thirty (30) days in advance of such cancellation or modification.

Section 7.03. *Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment under any Lease from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment under any Lease shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under any Lease. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into this Agreement or any Lease or any of the transactions contemplated hereby or thereby, (b) the ordering, acquisition, ownership, use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment under any Lease, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment under any Lease resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any Lease or any material misrepresentation provided by Lessee under or in connection with this Agreement or any Lease. The provisions of this Section 7.03 shall continue in full force and effect notwithstanding the full payment of all obligations under any or all Leases or the termination of the Lease Term under any or all Leases for any reason.

Section 7.04. *Advances.* In the event Lessee shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term under the affected Lease, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the due date until paid at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) *plus* five percent (5%) per annum or the maximum amount permitted by law, whichever is less.

ARTICLE VIII

Section 8.01. Damage, Destruction and Condemnation. If, prior to the termination of the Lease Term under the related Lease, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment or such part thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations under the affected Lease in accordance with Section 10.01(b) hereof.

If Lessee elects to replace any item of the Equipment (the *"Replaced Equipment"*) pursuant to this Section 8.01, the replacement equipment (the *"Replacement Equipment"*) shall be new or of a quality type, utility and condition at least as good as the Replaced Equipment and shall be of equal or greater value than the Replaced Equipment as determined and approved by Lessor in its sole discretion. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement and the related Lease. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment Date after the occurrence of a casualty event, or be required to prepay the obligations under the related Lease with respect to the damaged Equipment for an amount that shall be determined and approved by Lessor in its sole discretion.

For purposes of this Article VIII, the term *"Net Proceeds"* shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Casualty Value under the related Lease *plus* all other amounts then owing thereunder, and, upon such payment, the applicable Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds remaining, if any, after completing such repair, restoration, modification or improvement or after paying such Casualty Value for such Lease *plus* all other amounts then owing thereunder shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section 8.02, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of any of the Equipment under each Lease, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Equipment under each Lease shall be on an "as is" basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, any Lease, any Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement or any Lease.

Section 9.02. Vendor Agreements; Warranties. Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement for any Lease without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term under each Lease, so long as Lessee shall not be in default under such Lease, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against a Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendor of the Equipment and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to any Lease, including the right to receive full and timely Rental Payments and other payments under each Lease. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to any of the Equipment under each Lease.

ARTICLE X

Section 10.01. Prepayment; Payment in Full.

(a) *Prepayment.* Lessee shall have the option to prepay or satisfy all, but not less than all, of its obligations under a Lease, at the following times and upon the following terms:

(i) *Optional Prepayment.* From and after the date specified (if any) in the applicable Payment Schedule (the *"Prepayment Option Commencement Date"*), on the Rental Payment Dates specified in such Payment Schedule, upon not less than thirty

(30) days prior written notice, and upon payment in full of the sum of all Rental Payments then due under the related Lease *plus* the then applicable Prepayment Price, which may include a prepayment premium on the unpaid Outstanding Balance as set forth in such Payment Schedule *plus* all other amounts then owing thereunder; or

(ii) *Casualty or Condemnation Prepayment.* In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in a Lease, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment Date or sixty (60) days after the casualty event) upon payment in full to Lessor of (A) in the event such prepayment occurs on a Rental Payment Date, the sum of (i) all Rental Payments then due under such Lease *plus* (ii) the then applicable Casualty Value for such Lease *plus* (iii) all other amounts then owing thereunder OR, (B) in the event such prepayment for such Lease occurs on a date other than a Rental Payment Date, the sum of (i) the applicable Casualty Value shown on the Payment Schedule for such Lease for the Rental Payment Date immediately preceding the applicable date of such prepayment (or if the date of such prepayment occurs prior to the first Rental Payment Date for such Lease, the earliest Casualty Value shown on the related Payment Schedule) *plus* (ii) accrued interest at the Contract Rate (or the Taxable Rate if then in effect) on the Outstanding Balance as of the Rental Payment Date immediately preceding the applicable date of such prepayment from such Rental Payment Date (or if the date of such prepayment occurs prior to the first Rental Payment Date, the Commencement Date for such Lease) to the date of such prepayment *plus* (iii) all other amounts then owing thereunder.

(b) *Payment in Full.* Upon the expiration of the Lease Term under a Lease, the payment in full of all Rental Payments then due and all other amounts then owing under such Lease by Lessee to Lessor.

(c) Lessor's security interests in and to the related Equipment under such Lease will be terminated and Lessee will own such Equipment free and clear of Lessor's security interest in such Equipment after either (i) payment of either (A) the applicable Prepayment Price and all other amounts then owing under a Lease in accordance with Section 10.01(a)(i) of this Agreement or (B) the applicable Casualty Value and all other amounts then owing under a Lease in accordance with Section 10.01(a)(ii) of this Agreement or (ii) upon the expiration of the Lease Term of a Lease and payment in full of all Rental Payments then due and all other amounts then owing thereunder in accordance with Section 10.01(b) of this Agreement.

ARTICLE XI

Section 11.01. *Assignment by Lessor.* (a) Lessor's right, title and interest in and to the Rental Payments and any other amounts payable by Lessee under any and all of the Leases and the Escrow Agreement relating to any Lease, its security interest in the Equipment subject to the related Lease and in any related Escrow Account, and all proceeds therefrom (collectively, with respect to each Lease and related Escrow Agreement, the *"Related Assigned Rights"*), may be assigned and reassigned by Lessor at any time, in whole or in part, to one or more assignees or sub-assignees without the necessity of obtaining the consent of Lessee; *provided,* that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a *"qualified institutional buyer"* as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an *"accredited investor"* as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Related Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Related Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Related Assigned Rights (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Related Assigned Rights with respect to a Lease or the creation of any interest in the Related Assigned Rights with respect to a Lease in an aggregate principal component that is less than $100,000 and (iii) shall not require Lessee to make Rental Payments, to send notices or otherwise to deal with respect to matters arising under the Related Assigned Rights with respect to a Lease with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Related Assigned Rights with respect to a Lease are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the *"Lease Servicer"*) to act on their behalf with respect to the Related Assigned Rights with respect to a Lease, including with respect to the exercise of rights and remedies of Lessor on behalf of such owners upon the occurrence of an Event of Default or an Event of Non-appropriation under the related Lease. Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Related Assigned Rights with respect to a Lease (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided,* that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Rental Payments payable under a Lease, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer for such Lease. Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. During the Lease Term under each Lease, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or any Vendor. Assignments in part may include, without limitation, assignment of all of Lessor's security interest in and to the Equipment listed in a particular Lease and all rights in, to and under the Lease related to such Equipment and all of Lessor's security interest in and to the related Escrow Account, or all rights in, to and under the related Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign a Lease, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment with respect to such Lease, substantially in the form of *Exhibit H* attached hereto, within five (5) business days after its receipt of such request.

Section 11.02. Assignment and Subleasing by Lessee. **None of Lessee's right, title and interest in, to and under this Agreement, any Lease or any portion of the Equipment, any Escrow Agreement or the Escrow Account related thereto may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

ARTICLE XII

Section 12.01. Events of Default Defined. Any of the following events shall constitute an *"Event of Default"* under a Lease:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under any Lease within ten (10) days of the date when due as specified therein, (ii) maintain insurance as required under such Lease (including Section 7.02 of this Agreement, which is incorporated therein), or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 6.01 or 6.02 hereof for any Lease;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement or any Lease on its part to be observed or performed, other than as referred to in subsection (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or any Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor (including, without limitation, the occurrence of any Event of Default under any other Lease), or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of $100,000.00;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable Federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists under any Lease, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps with respect to any or all Leases with an Event of Default under this Agreement, including those with an Event of Default pursuant to Section 12.01(d) (each a "*Defaulted Lease*"):

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee pursuant to one or more Defaulted Leases and other amounts payable by Lessee under each such Defaulted Lease to the end of the then current Original Term or Renewal Term to be immediately due and payable;

(b) With or without terminating the Lease Term under any one or more Defaulted Leases, Lessor may enter the premises where the Equipment listed in any one or more of each such Defaulted Leases is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee pursuant to each such Defaulted Lease and other amounts related to each such Defaulted Lease that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under each such Defaulted Lease, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 of this Agreement. The exercise of any such remedies respecting any such Event of Default under any such Defaulted Lease shall not relieve Lessee of any other liabilities under each such Defaulted Lease or any other Lease that

Lessor determines not to treat as a Defaulted Lease or with respect to the Equipment listed therein;

(c) Lessor may terminate the Escrow Agreement relating to any one or more of such Defaulted Leases and apply any proceeds in each such applicable Escrow Account thereunder to the Rental Payments scheduled to be paid under any one or more of such Defaulted Leases as Lessor shall determine; and/or

(d) Lessor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under any one or more of such Defaulted Leases or each such Escrow Agreement relating thereto or as a secured party in any or all of the Equipment subject to any one or more of such Defaulted Leases or with respect to the related Escrow Account for one or more of such Defaulted Leases.

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder and/or under any Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article XII it shall not be necessary to give any notice other than such notice as may be required in this Article XII.

Section 12.04. Application of Moneys. Any net proceeds from the exercise of any remedy under this Agreement, including the application specified in Section 12.02(b)(ii) (after deducting all expenses of Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees), shall be applied as follows:

(a) If such remedy is exercised solely with respect to a single Defaulted Lease, Equipment listed in such Defaulted Lease or rights thereunder, then to amounts due pursuant to such Defaulted Lease and to other amounts related to such Defaulted Lease or such Equipment.

(b) If such remedy is exercised with respect to more than one Defaulted Lease, Equipment listed in more than one Defaulted Lease or rights under more than one Defaulted Lease, then to amounts due pursuant to one or more of such Defaulted Leases as Lessor shall determine and distribute on a pro rata basis or on such other basis as Lessor shall determine.

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications under this Agreement or any Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 13.02. Binding Effect. This Agreement and each Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or thereof.

Section 13.04. Amendments, Changes and Modifications. This Agreement and each Lease may only be amended by Lessor and Lessee in writing.

Section 13.05. Execution in Counterparts. This Agreement and each Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided* that only Counterpart No. 1 of each Lease (including the terms and provisions of this Agreement incorporated therein by reference) shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

Section 13.06. Applicable Law; Venue; Waiver of Jury Trial. This Agreement and each Lease shall be governed by and construed in accordance with the laws of the State. The parties hereto consent and submit to the jurisdiction of the State and venue in any state or Federal court of such State for the purposes of any suit, action or other proceeding arising in connection with this Agreement or any Lease, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Agreement or any Lease.

Section 13.07. Captions. The captions or headings in this Agreement and in each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement or any Lease.

Section 13.08. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated by this Agreement and each Lease thereunder (including in connection with any amendment, waiver or other modification hereof or of any other related document), the Lessee acknowledges and agrees that: (a) (i) the transactions regarding this Agreement and each Lease thereunder provided by the Lessor and any affiliate thereof are arm's-length commercial transactions between the Lessee, on the one hand, and the Lessor and its affiliates, on the other hand, (ii) the Lessee has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Lessee is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and each Lease thereunder and by the other related documents; (b) (i) the Lessor and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Lessee, or any other person and (ii) neither the Lessor nor any of its affiliates has any obligation to the Lessee with respect to the transactions contemplated by this Agreement and each Lease thereunder except those obligations expressly set forth herein and in the other related documents; and (c) the Lessor and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Lessee, and neither the Lessor nor any of its affiliates has any obligation to disclose any of such interests to the Lessee. To the fullest extent permitted by law, the Lessee, hereby waives and releases any claims that it may have against the Lessor or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated by this Agreement and each Lease thereunder.

Section 13.09. Entire Agreement. The parties agree that this Agreement and each Lease hereunder constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

Section 13.10. Electronic Signatures. The Related Documents may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe's Portable Document Format ("*PDF*")). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Master Equipment Lease/Purchase Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:
Bank of America, National Association
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 541-3057

LESSEE:
____
____
____
Attention: ____________________
Fax No.: ____________________

By:________________________
Name: ____________________
Title: ____________________

By: ________________________
Name: ____________________
Title: ____________________

LIST OF EXHIBITS

EXHIBIT A-1

FORM OF EQUIPMENT SCHEDULE NO. ______ - GENERAL EQUIPMENT

Re: Master Equipment Lease/Purchase Agreement, dated as of ___________, between Bank of America, National Association, a national banking association, as Lessor, and ______________________, as Lessee

1. *Defined Terms*. All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease/Purchase Agreement (the *"Agreement"*).

2. *Equipment*. For purposes of the Lease created hereby, the following items of Equipment are hereby included under this Equipment Schedule together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto as provided in the Agreement.

QUANTITY	DESCRIPTION	SERIAL NO.	MODEL NO.	LOCATION

3. *Payment Schedule.*

(a) *Rental Payments; Commencement Date*. The Rental Payments shall be in such amounts and payable on such Rental Payment Dates as set forth in the Payment Schedule attached to this Equipment Schedule and incorporated herein by this reference, subject to adjustment upon the occurrence of an Event of Taxability as provided in Section 4.06 of the Agreement. Lessee's obligation to pay Rental Payments under the Lease created hereby shall commence on the earlier of (i) the date on which the Equipment listed in this Equipment Schedule is accepted by Lessee in the manner described in Section 5.01 of the Agreement, as evidenced by the Final Acceptance Certificate executed by Lessee and substantially in the form of *Exhibit E* attached to the Agreement, or (ii) the date on which the Acquisition Amount is deposited in an Escrow Account for the purpose of acquiring and installing the Equipment listed in this Equipment Schedule pursuant to Section 3.04(c) of the Agreement (the earlier of such two dates being herein referred to as the *"Commencement Date"*).

(b) *Prepayment Price Schedule*. The Prepayment Price on each Rental Payment Date shall be the amount set forth for such Rental Payment Date in the "Prepayment Price" column of the Payment Schedule attached to this Equipment Schedule *plus* all Rental Payments then due (including the Rental Payment due on such Rental Payment Date) *plus* all other amounts then owing under this Equipment Schedule.

4. *Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement (particularly Section 2.01 thereof) are true and correct as though made on the Commencement Date. Lessee further represents and warrants that (a) no Material Adverse Change has occurred since the dated date of the Agreement; (b) no Event of Default has occurred and is continuing under any Lease currently in effect; (c) no Event of Non-appropriation under any Lease currently in effect has occurred or is threatened; (d) no Lease has been terminated as the result of the occurrence of an Event of Default or an Event of Non-appropriation; (e) the governing body of Lessee has authorized the execution and delivery of the Agreement and this Equipment Schedule; (f) the Equipment listed in this Equipment Schedule is essential to the functions of Lessee or to the services Lessee provides its citizens; (g) Lessee has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of its authority; and (h) Lessee expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

5. *The Lease.* The terms and provisions of the Agreement (other than to the extent that they relate solely to other Equipment Schedules or Equipment listed on other Equipment Schedules) are hereby incorporated into this Equipment Schedule by reference and made a part hereof.

[OPTION: IF ESCROW AGREEMENT IS USED:

6. *Acquisition Amount.* The Acquisition Amount that Lessor shall pay to the Escrow Agent for deposit into the Escrow Account in connection with this Equipment Schedule is $____________. It is expected that by [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Equipment Schedule No. ______, Lessee will have taken possession of all items of Equipment shown above and that the Lessee's final Disbursement Request pursuant to the Escrow Agreement will be signed by Lessee, approved by Lessor and delivered to the Escrow Agent on or before [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Equipment Schedule.

OR IF VENDOR PAID DIRECTLY USE:

6. *Acquisition Amount.* The Acquisition Amount for the Equipment listed in this Equipment Schedule to be paid to the Vendor (or reimbursed to Lessee) is $ ________________________.]

[OPTION: IF ESCROW AGREEMENT IS USED:

7. *Acquisition Period.* The Acquisition Period applicable to this Equipment Schedule shall end at the conclusion of the ____ month following the date hereof.]

[OPTION: IF ESCROW AGREEMENT IS USED AND A SURETY BOND IS REQUIRED:

[8.] *Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment listed in this Equipment Schedule, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment listed in this Equipment Schedule and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Vendor's obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, first to amounts due Lessor under this Equipment Schedule, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment listed in this Equipment Schedule or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to such Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations under this Equipment Schedule.

As a prerequisite to the performance by Lessor of any of its obligations under this Equipment Schedule, Lessee shall deliver to Lessor, in form and substance satisfactory to Lessor, a certified copy of each Surety Bond satisfying the conditions set forth in this Section ___, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date of this Equipment Schedule, provided however, that no "Disbursement Request" pursuant to the Escrow Agreement for this Equipment Schedule shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in this Section _________have been delivered to Lessor.

[7][8][9].*Lease Term.* The Lease Term shall consist of the Original Term and ____ consecutive Renewal Terms, with the final Renewal Term ending on ____________, subject to earlier termination pursuant to the Agreement.

[OPTION: IF MOTOR VEHICLES ARE BEING FINANCED:

[8][9][10]. *Registration.* Any Equipment that is a motor vehicle is to be registered and titled as follows:

(a) *Registered Owner:* [____________________]

(b) *Lienholder:* Bank of America, National Association
Bank of America Plaza
600 Peachtree Street NE, 11th Floor
Atlanta, GA 30308-2265

Lessee shall be responsible for the correct titling of all Equipment leased hereunder. Lessee will cause the original Certificates of Title to be delivered to Lessor for retention in Lessor's files throughout the Lease Term of the Lease created hereby.

Dated: ____________________

LESSOR:	LESSEE:
Bank of America, National Association 11333 McCormick Road Hunt Valley II M/C MD5-032-07-05 Hunt Valley, MD 21031 Attention: Contract Administration Fax No.: (443) 541-3057	______________________________ ______________________________ ______________________________ Attention: ____________________
By: ______________________________ Name: ____________________________ Title: _____________________________	By: ______________________________ Name: ____________________________ Title: _____________________________

Counterpart No. _____ of _____ manually executed and serially numbered counterparts. To the extent that the Lease created hereby constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT A-2

FORM OF EQUIPMENT SCHEDULE NO. ______ - ENERGY SERVICES EQUIPMENT

Re: Master Equipment Lease/Purchase Agreement, dated as of ____________, between Bank of America, National Association, a national banking association, as Lessor, and ______________________, as Lessee

1. *Defined Terms*. All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease/Purchase Agreement (the *"Agreement"*).

2. *Equipment*.

(a) Location of Equipment: For purposes of the Lease created hereby, the location of Equipment is set forth below:

(b) Equipment Description (Scope of Work): For purposes of the Lease created hereby, the description of the Equipment and the scope of work is set forth below:

3. *Payment Schedule*.

(a) *Rental Payments; Commencement Date*. The Rental Payments shall be in such amounts and payable on such Rental Payment Dates as set forth in the Payment Schedule attached to this Equipment Schedule and incorporated herein by this reference, subject to adjustment upon the occurrence of an Event of Taxability as provided in Section 4.06 of the Agreement. Lessee's obligation to pay Rental Payments under the Lease created hereby shall commence on the earlier of (i) the date on which the Equipment listed in this Equipment Schedule is accepted by Lessee in the manner described in Section 5.01 of the Agreement, as evidenced by the Final Acceptance Certificate executed by Lessee and substantially in the form of *Exhibit E* attached to the Agreement, or (ii) the date on which the Acquisition Amount is deposited in an Escrow Account for the purpose of acquiring and installing the Equipment listed in this Equipment Schedule pursuant to Section 3.04(c) of the Agreement (the earlier of such two dates being herein referred to as the *"Commencement Date"*).

(b) *Prepayment Price Schedule*. The Prepayment Price on each Rental Payment Date shall be the amount set forth for such Rental Payment Date in the "Prepayment Price" column of the Payment Schedule attached to this Equipment Schedule *plus* all Rental Payments then due (including the Rental Payment due on such Rental Payment Date) *plus* all other amounts then owing under this Equipment Schedule.

4. *Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement (particularly Section 2.01 thereof) are true and correct as though made on the Commencement Date. Lessee further represents and warrants that (a) no Material Adverse Change has occurred since the dated date of the Agreement; (b) no Event of Default has occurred and is continuing under any Lease currently in effect; (c) no Event of Non-appropriation under any Lease currently in effect has occurred or is threatened; (d) no Lease has been terminated as the result of the occurrence of an Event of Default or an Event of Non-appropriation; (e) the governing body of Lessee has authorized the execution and delivery of the Agreement and this Equipment Schedule; (f) the Equipment listed in this Equipment Schedule is essential to the functions of Lessee or to the services Lessee provides its citizens; (g) Lessee has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of its authority; and (h) Lessee expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

5. *The Lease.* The terms and provisions of the Agreement (other than to the extent that they relate solely to other Equipment Schedules or Equipment listed on other Equipment Schedules) are hereby incorporated into this Equipment Schedule by reference and made a part hereof.

6. *Acquisition Amount.* The Acquisition Amount that Lessor shall pay to the Escrow Agent for deposit into the Escrow Account in connection with this Equipment Schedule is $____________. It is expected that by [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Equipment Schedule No. ______, Lessee will have taken possession of all items of Equipment shown above and that the Lessee's final Disbursement Request pursuant to the Escrow Agreement will be signed by Lessee, approved by Lessor and delivered to the Escrow Agent on or before [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Equipment Schedule.

7. *Acquisition Period.* The Acquisition Period applicable to this Equipment Schedule shall end at the conclusion of the ____ month following the date hereof.

8. *Additional Representation Regarding the Use and Maintenance of the Equipment; Additional Representation Regarding Damage, Destruction and Condemnation.*

(a) Lessee agrees that it shall (a) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with respect to the Equipment under this Equipment Schedule; and (b) replace or rebuild any component of the Equipment under this Equipment Schedule that becomes permanently unfit for normal use or inoperable during the Lease Term of this Equipment Schedule (herein, the "*Inoperable Component*") in order to keep the Equipment as a whole in good repair and working order during the Lease Term of this Equipment Schedule. Lessee shall promptly notify Lessor in writing when any component of the Equipment under this Equipment Schedule is reasonably expected within forty-five (45) days to become an Inoperable Component. Lessee shall promptly replace or rebuild the Inoperable Component under this Equipment Schedule with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the applicable Inoperable Component, a remaining useful life of no less than the remaining Lease Term under this Equipment Schedule and such replacement or rebuilt component shall be in good operating condition.

(b) If Lessee elects to replace any item of the Equipment with Replacement Equipment pursuant to Section 8.01 of the Agreement, in addition to the other requirements set forth in Section 8.01, the Replacement Equipment shall also provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation.

9. *Liability Insurance.* Lessee shall, during the Lease Term under this Equipment Schedule, maintain or cause to be maintained liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least $5,000,000 per occurrence for bodily injury and property damage coverage (such liability insurance coverage may be in a combination of primary general liability and/or excess liability umbrella coverage).

10. *Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment listed in this Equipment Schedule, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment listed in this Equipment Schedule and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Vendor's obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, first to amounts due Lessor under this Equipment Schedule, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment listed in this Equipment Schedule or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to such Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations under this Equipment Schedule.

As a prerequisite to the performance by Lessor of any of its obligations under this Equipment Schedule, Lessee shall deliver to Lessor, in form and substance satisfactory to Lessor, a certified copy of each Surety Bond satisfying the conditions set forth in this Section ___, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date of this Equipment Schedule, provided however, that no "Disbursement Request" pursuant to the Escrow Agreement for this Equipment Schedule shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in this Section _________ have been delivered to Lessor.

11. *Lease Term.* The Lease Term shall consist of the Original Term and ____ consecutive Renewal Terms, with the final Renewal Term ending on ____________, subject to earlier termination pursuant to the Agreement.

Dated: _________________

LESSOR: Bank of America, National Association 11333 McCormick Road Hunt Valley II M/C MD5-032-07-05 Hunt Valley, MD 21031 Attention: Contract Administration Fax No.: (443) 541-3057	LESSEE: ______________________________ ______________________________ ______________________________ Attention: ______________________
By: ____________________________ Name: __________________________ Title: ___________________________	By: ____________________________ Name: __________________________ Title: ___________________________

Counterpart No. _____ of _____ manually executed and serially numbered counterparts. To the extent that the Lease created hereby constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT B

FORM OF PAYMENT SCHEDULE

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE [including prepayment premium; if applicable]	CASUALTY VALUE [including casualty premium; if applicable]

Contract Rate; Taxable Rate. The Contract Rate for this Equipment Schedule is _________% per annum. The Taxable Rate for this Equipment Schedule is _________% per annum.

Prepayment Option Commencement Date. For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date for this Equipment Schedule is _______________.

LESSOR:
Bank of America, National Association

By: ____________________
Name: ______________________________
Title: ______________________________

LESSEE:
[________________________]

By: ____________________
Name: ______________________________
Title: ______________________________

EXHIBIT C-1A

FORM OF AUTHORIZING RESOLUTION (AGREEMENT)

A RESOLUTION OF THE GOVERNING BODY OF ____________________, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT AND SEPARATE EQUIPMENT SCHEDULES THERETO FOR THE ACQUISITION, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT WITHIN THE TERMS HEREIN PROVIDED; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, ___________________ (the *"Lessee"*), a [city] [county] [school district] [special district] [body corporate and politic] duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State/Commonwealth of _________, is authorized by the laws of the State/Commonwealth of _________ to acquire, finance and lease personal property (tangible and intangible) for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the governing body of the Lessee (the *"Board"*) has determined that a need exists for the acquisition, financing and leasing of certain equipment consisting of ____________________, which constitutes personal property necessary for the Lessee to perform essential governmental functions (collectively, the *"Equipment"*) on the terms herein provided; and

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into that certain Master Equipment Lease/Purchase Agreement (the *"Agreement"*) with Bank of America, National Association (or one of its affiliates), as lessor (the *"Lessor"*), substantially in the proposed form presented to the Board at this meeting, and separate Equipment Schedules thereto substantially in the form attached to the Agreement; and

WHEREAS, the Board deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and separate Equipment Schedules thereunder and the other documentation relating thereto from time to time as provided in the Agreement for the acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of the Lessee as follows:

Section 1. *Findings and Determinations.* It is hereby found and determined that the terms of the Agreement (including the form of Equipment Schedule and the form of Payment Schedule, both attached thereto), in the form presented to the Board at this meeting, are in the best interests of the Lessee for the acquisition financing and leasing of the Equipment.

Section 2. *Approval of Documents.* The form, terms and provisions of the Agreement (including the form of Equipment Schedule and the form of Payment Schedule, both attached thereto) are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by __________________ [insert title of officials] of the Lessee or other members of the governing body of the Lessee (the *"Authorized Officials"*) executing the same, the execution of such documents being conclusive evidence of such approval; and the _________________________ of the Lessee is hereby authorized and directed to execute, and the ________________ of the Lessee is hereby authorized and directed to attest, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto, and the ________________________ of the Lessee is hereby authorized to affix the seal of the Lessee to such documents. The Authorized Officials are each hereby authorized and directed to sign and deliver on behalf of the Lessee the Agreement, each Equipment Schedule thereto under which a separate Lease (as defined in the Agreement) is created, each Payment Schedule attached thereto, any related Escrow Agreement and any related exhibits attached thereto if and when required; *provided, however,* that, without further authorization from the governing body of the Lessee, (a) the aggregate principal component of Rental Payments under all Leases entered into pursuant to the Agreement shall not exceed $____________; (b) the maximum term under any Lease entered into pursuant to the Agreement shall not exceed [_________________] years; and (c) the maximum interest rate used to determine the interest component of Rental Payments under each Lease shall not exceed the lesser of the maximum rate permitted by law or [__________ percent (___%)] per annum. The Authorized Officials may sign and deliver Leases to the Lessor on behalf of the Lessee pursuant to the Agreement on such terms and conditions as they shall determine are in the best interests of the Lessee up to the maximum aggregate principal component, maximum term and maximum interest rate provided above. The foregoing authorization shall remain in effect for a period of [two] years from the date hereof during which the Authorized Officials are authorized to sign and deliver Leases pursuant to the Agreement on the terms and conditions herein provided and to be provided in each such Lease.

Section 3. *Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Final Acceptance Certificates, Escrow Agreements, Disbursement Requests and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and each Lease.

Section 4. *No General Liability.* Nothing contained in this Resolution, the Agreement, any Lease, any Escrow Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the

Agreement, any Lease, any Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under each Lease entered into pursuant to the Agreement are limited obligations of the Lessee, subject to annual appropriation, as provided in the Agreement.

Section 5. Appointment of Authorized Lessee Representatives. The ____________ ______________________ and ___________________________ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of each Lease and related Escrow Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement and any Lease or Escrow Agreement.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this ________ day of __________.

[__________],
as lessee

[SEAL]

By:____________________________________
Printed Name: ___________________________
Title: _________________________________

ATTEST:

By:____________________________________
Printed: Name: _________________________
Title: _________________________________

The undersigned, a duly elected or appointed and acting __________________ [Secretary] [City Clerk] [County Clerk] of the Lessee identified in the above Resolution No. ___ (the *"Resolution"*), hereby certifies that the Resolution is a full, true and correct copy of such Resolution as adopted by the governing body of the Lessee on ____________, 20__. The Resolution is in full force and effect on the date hereof and has not been amended, modified or otherwise changed by the governing body of the Lessee since the date of adoption of the Resolution.

DATED this ____ day of ____________, 20__.

____

Name: ___________________________________

Title: ____________________________________

EXHIBIT C-1B

FORM OF AUTHORIZING RESOLUTION (LEASE)

A RESOLUTION OF THE GOVERNING BODY OF ___________________, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT SCHEDULE TO THE MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT FOR THE ACQUISITION, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT WITHIN THE TERMS PROVIDED HEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, ___________________ (the *"Lessee"*), a [city] [county] [school district] [special district] [body corporate and politic] duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State/Commonwealth of _________, is authorized by the laws of the State/Commonwealth of _________ to acquire, finance and lease personal property (tangible and intangible) for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the governing body of the Lessee (the *"Board"*) has determined that a need exists for the acquisition, financing and leasing of certain equipment with a cost not to exceed $_____________ and consisting of ___________________, which constitutes personal property necessary for the Lessee to perform essential governmental functions (collectively, the *"Equipment"*) on the terms herein provided; and

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into that certain Equipment Schedule (the "*Equipment Schedule*") with Bank of America, National Association (or one of its affiliates), as lessor (the *"Lessor"*), substantially in the proposed form presented to the Board at this meeting, which Equipment Schedule incorporates by reference the terms and provisions of that certain Master Equipment Lease/Purchase Agreement dated as of _____________ by and between Lessor and Lessee (the *"Agreement")*; and

WHEREAS, the Board deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Equipment Schedule and the other documentation relating to the acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of the Lessee as follows:

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Equipment Schedule and the form of Payment Schedule, in the form presented to the Board at this meeting, are in the best interests of the Lessee for the acquisition financing and leasing of the Equipment.

Section 2. Approval of Documents. The form, terms and provisions of the Equipment Schedule and Payment Schedule are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by ________________ [insert title of officials]] of the Lessee or other members of the governing body of the Lessee (the *"Authorized Officials"*) executing the same, the execution of such documents being conclusive evidence of such approval. The Authorized Officials are each hereby authorized and directed to sign and deliver on behalf of the Lessee the Equipment Schedule under which a separate Lease (as defined in the Agreement) is created, the Payment Schedule attached thereto, the Escrow Agreement and any related exhibits attached thereto.

Section 3. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Lease to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of a Final Acceptance Certificate, the Escrow Agreement, Disbursement Requests and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Lease.

Section 4. No General Liability. Nothing contained in this Resolution, the Lease, the Escrow Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Lease, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Lease entered into pursuant to the Agreement are limited obligations of the Lessee, subject to annual appropriation, as provided in the Agreement.

Section 5. Appointment of Authorized Lessee Representatives. The ___________ ____________________ and __________________________ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Lease and the Escrow Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Lease or the Escrow Agreement.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this

Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this ________ day of _________.

[_________],
as lessee

[SEAL]

By:_________________________________
Printed Name: ______________________
Title: _____________________________

ATTEST:

By:_________________________________
Printed: Name: _____________________
Title: _____________________________

The undersigned, a duly elected or appointed and acting __________________ [Secretary] [City Clerk] [County Clerk] of the Lessee identified in the above Resolution No. ___ (the *"Resolution"*), hereby certifies that the Resolution is a full, true and correct copy of such Resolution as adopted by the governing body of the Lessee on ____________, 20__. The Resolution is in full force and effect on the date hereof and has not been amended, modified or otherwise changed by the governing body of the Lessee since the date of adoption of the Resolution.

DATED this ____ day of ____________, 20__.

____
Name: ___________________________________
Title: ___________________________________

EXHIBIT C-2A

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE (AGREEMENT)

The undersigned, a duly elected or appointed and acting __________________ [Secretary] [City Clerk] [County Clerk] of __________________________ (*"Lessee"*) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the *"Officials"*) in the capacity set forth opposite their respective names below and the facsimile signatures below are true and correct as of the date hereof; and

B. THE OFFICIALS ARE DULY AUTHORIZED, ON BEHALF OF LESSEE, TO NEGOTIATE, EXECUTE AND DELIVER THE MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT DATED AS OF ____________________ (THE *"AGREEMENT"*) AND SEPARATE EQUIPMENT SCHEDULES RELATING THERETO FROM TIME TO TIME AS PROVIDED IN THE AGREEMENT (COLLECTIVELY, THE *"EQUIPMENT SCHEDULES"*), EACH BY AND BETWEEN LESSEE AND BANK OF AMERICA, NATIONAL ASSOCIATION ("LESSOR"), [THE ESCROW AND ACCOUNT CONTROL AGREEMENT DATED AS OF _________ BY AND AMONG LESSOR, LESSEE AND ___________ AS ESCROW AGENT,] ALL DOCUMENTS RELATED THERETO AND DELIVERED IN CONNECTION THEREWITH, AND ANY FUTURE MODIFICATION(S) OR AMENDMENTS THEREOF (COLLECTIVELY, THE *"OPERATIVE AGREEMENTS"*), AND THE OPERATIVE AGREEMENTS EACH ARE THE BINDING AND AUTHORIZED AGREEMENTS OF LESSEE, ENFORCEABLE IN ALL RESPECTS IN ACCORDANCE WITH THEIR RESPECTIVE TERMS.

Name of Official	Title	Signature
____________________	____________________	____________________
____________________	____________________	____________________
____________________	____________________	____________________

DATED: ________________________

BY: ________________________________
NAME: ______________________________
TITLE: ______________________________

(THE SIGNER OF THIS CERTIFICATE CANNOT BE LISTED ABOVE AS AUTHORIZED TO EXECUTE THE OPERATIVE AGREEMENTS.)

EXHIBIT C-2B

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE (LEASE)

The undersigned, a duly elected or appointed and acting ________________ [Secretary] [City Clerk] [County Clerk] of __________________________ (*"Lessee"*) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the *"Officials"*) in the capacity set forth opposite their respective names below and the facsimile signatures below are true and correct as of the date hereof; and

B. THE OFFICIALS ARE DULY AUTHORIZED, ON BEHALF OF LESSEE, TO NEGOTIATE, EXECUTE AND DELIVER THE EQUIPMENT SCHEDULE NO. ___ DATED AS OF _________(THE "*EQUIPMENT SCHEDULE*"), WHICH INCORPORATES BY REFERENCE THE TERMS AND PROVISIONS OF THE MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT DATED AS OF __________________ (THE *"AGREEMENT"*), EACH BY AND BETWEEN LESSEE AND BANK OF AMERICA, NATIONAL ASSOCIATION ("LESSOR"), [THE ESCROW AND ACCOUNT CONTROL AGREEMENT DATED AS OF _________ BY AND AMONG LESSOR, LESSEE ___________ AS ESCROW AGENT,] AND ALL DOCUMENTS RELATED THERETO AND DELIVERED IN CONNECTION THEREWITH, AND ANY FUTURE MODIFICATION(S) OR AMENDMENTS THEREOF (COLLECTIVELY, THE *"OPERATIVE AGREEMENTS"*), AND THE OPERATIVE AGREEMENTS EACH ARE THE BINDING AND AUTHORIZED AGREEMENTS OF LESSEE, ENFORCEABLE IN ALL RESPECTS IN ACCORDANCE WITH THEIR RESPECTIVE TERMS.

Name of Official	Title	Signature
________________	________________	____________________
________________	________________	____________________
________________	________________	____________________

DATED: ____________________

BY: ____________________________
NAME: ____________________________
TITLE: ____________________________

(THE SIGNER OF THIS CERTIFICATE CANNOT BE LISTED ABOVE AS AUTHORIZED TO EXECUTE THE OPERATIVE AGREEMENTS.)

EXHIBIT D

FORM OF OPINION OF COUNSEL TO LESSEE
(to be typed on letterhead of counsel)

Bank of America, National Association
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration

Re: Equipment Schedule No. ______, dated ______________, to Master Equipment Lease/Purchase Agreement, dated as of ______________, by and between Bank of America, National Association, as Lessor, and ________________________, as Lessee

Ladies and Gentlemen:

As legal counsel to ________________ (*"Lessee"*), I have examined (a) an executed counterpart of that certain Master Equipment Lease/Purchase Agreement, dated as of _____________________ (the *"Agreement"*) and Exhibits thereto, by and between Bank of America, National Association, as lessor (*"Lessor"*), and Lessee; (b) an executed counterpart of Equipment Schedule No. ______, dated _____________, by and between Lessor and Lessee, which incorporates by reference the terms and provisions of the Agreement (such Equipment Schedule No. ______ together with such incorporated terms and provisions are herein referred to collectively as the *"Equipment Schedule"*), has attached the Payment Schedule with respect thereto (the *"Payment Schedule"*) executed by Lessee, and provides for the lease of certain property listed in the Equipment Schedule (the *"Equipment"*); (c) an executed counterpart of that certain Escrow and Account Control Agreement dated as of ____________ (the *"Escrow Agreement"*), by and among Lessor, Lessee and ______________, as Escrow Agent; (d) an executed counterpart of the ordinances or resolutions of Lessee with respect to authorization of the transaction contemplated by the Agreement, the Equipment Schedule, the Escrow Agreement and documents related thereto; and (e) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Equipment Schedule, including the terms and provisions of the Agreement incorporated therein by reference, the related Payment Schedule, the Escrow Agreement and the documents relating thereto are herein collectively referred to as the *"Transaction Documents"*.

Based on the foregoing, I am of the following opinions:

1. Lessee is a [city] [county] [school district] [special district] [body corporate and politic], duly organized and existing under the laws of the State, and is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the *"Code"*) and the obligations of Lessee under the Lease will

constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code.

2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, except to the extent limited by State and Federal law affecting creditor's remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, procurement and public bidding laws and all other applicable State or Federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Equipment under the Lease, the Escrow Account or other Collateral thereunder.

[6. The portion of Rental Payments designated as interest is excluded from Lessor's gross income for Federal income tax purposes under Section 103 of the Code and is exempt from State of _______________ personal income taxes; and such interest is not a specific item of tax preference for purposes of the Federal alternative minimum tax.[1]]

[6. The portion of Rental Payments designated as interest or constituting or accruing as original issue discount is excluded from Lessor's gross income for Federal income tax purposes under Section 103 of the Code and is exempt from State of _______________ personal income taxes; and such interest and original issue discount are not a specific item of tax preference for purposes of the Federal alternative minimum tax.[2]]

---

[1] Please use this provision if the opinion of counsel will include a tax opinion.
[2] Please use this provision if the opinion of counsel will include a tax opinion and there is OID.

All capitalized terms herein shall have the same meanings as in the Transaction Documents, unless otherwise provided herein. Lessor and its successors and assigns[, and any counsel rendering an opinion on the tax-exempt status of the Rental Payments,[3]] are entitled to rely on this opinion.

Printed Name: ________________________ Signature: ______________________________
Firm: ______________________________ Dated: _________________________________
Address: ____________________________
Telephone No.: _______________________

[3] Please use this provision if bond counsel will be providing a separate tax opinion.

EXHIBIT E

FORM OF FINAL ACCEPTANCE CERTIFICATE

Bank of America, National Association
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration

Re: Equipment Schedule No. ______, dated ______________, to Master Equipment Lease/Purchase Agreement, dated as of ______________, by and between Bank of America, National Association, as Lessor, and ________________________, as Lessee

Ladies and Gentlemen:

In accordance with the above-referenced Master Equipment Lease/Purchase Agreement (the *"Agreement"*), the undersigned Lessee hereby certifies and represents to, and agrees with, Lessor as follows:

1. All of the Equipment listed in the above-referenced Equipment Schedule (the *"Equipment Schedule"*) has been delivered, installed and accepted on the date hereof.

2. Lessee has conducted such inspection and/or testing of the Equipment listed in the Equipment Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.

4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement and incorporated into the Equipment Schedule by reference are true and correct as of the date hereof.

5. (a) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default exists at the date hereof under any Lease currently in effect; (b) no Material Adverse Change has occurred since the date of the execution and delivery of the Agreement; (c) no Event of Non-appropriation under any Lease currently in effect has occurred or been threatened; and (d) no Lease has been terminated as the result of the occurrence of an Event of Default or an Event of Non-appropriation.

Capitalized terms used, but not defined, in this Final Acceptance Certificate shall have the same meanings as when such terms are used in the Agreement.

Date: ____________________

LESSEE:

____

By:____
Name: ___________________________________
Title: ___________________________________

EXHIBIT F

FORM OF SELF-INSURANCE CERTIFICATE

Bank of America, National Association
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration

Re: Equipment Schedule No. ______, dated ____________, to Master Equipment Lease/Purchase Agreement, dated as of ____________, by and between Bank of America, National Association, as Lessor, and __________________________, as Lessee

In connection with the above-referenced Equipment Schedule (the *"Equipment Schedule"*), ____________________________ (the *"Lessee"*) hereby warrants and represents to Bank of America, National Association the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the above-referenced Master Equipment Lease/Purchase Agreement (the "*Agreement*") incorporated into the Equipment Schedule by reference.

1. The Lessee is self-insured for damage or destruction to the Equipment listed in the Equipment Schedule (herein, the *"Equipment"*). The dollar amount limit for property damage to the Equipment under such self-insurance program is $_________________. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for property damage to the Equipment which policy has a dollar limit for property damage to the Equipment under such policy of $___________________.]

2. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Equipment. The dollar limit for such liability claims under the Lessee's self-insurance program is $_________________. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Equipment in the amount of $_________________.

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee's self-insurance liabilities is $_________________. [Amounts paid from the Lessee's self-insurance fund are subject to a dollar per claim of $___________________.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources: ______________________. Amounts payable for claims from such sources are limited as follows: __________________ ____.

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:

____

By:___________________________________
Name: ______________________________
Title: _______________________________

EXHIBIT G

FORM OF BANK QUALIFICATION CERTIFICATE

The undersigned, a duly authorized official of ________________________________ (the *"Lessee"*) certifies in connection with Schedule of Property No. ______, dated as of ___________, which incorporates by reference the terms and provisions of that certain Master Equipment Lease/Purchase Agreement dated as of ____________________ (such Schedule of Property and incorporated terms and provisions are herein referred to as the *"Lease"*), each by and between Bank of America, National Association and Lessee, as follows:

1. The obligations evidenced by the Lease are not "private activity bonds" as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the *"Code"*);

2. The Lessee hereby designates the principal components of the Rental Payments payable under the Lease as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code;

3. The reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Lessee (and all entities treated as one issuer with the Lessee, and all subordinate entities whose obligations are treated as issued by the Lessee) during the current calendar year will not exceed $10,000,000; and

4. Not more than $10,000,000 of obligations issued by the Lessee during the current calendar year has been designated for purposes of Section 265(b)(3) of the Code.

DATE: ____________________

LESSEE:

____

By:______________________________________
Name: ________________________________
Title: _________________________________

EXHIBIT H

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

Dated ____________________

BANK OF AMERICA, NATIONAL ASSOCIATION (*"Assignor"*) hereby gives notice that, as of _________, 20__, it has assigned and sold to ________________________ (*"Assignee"*) all of Assignor's right, title and interest in, to and under Equipment Schedule No. ______, dated ____________________ (including the Payment Schedule attached thereto, the *"Equipment Schedule"*), which incorporates by reference the terms and provisions of that certain Master Equipment Lease/Purchase Agreement dated as of ____________ (the *"Agreement"*), each by and between Assignor and ___________________ (*"Lessee"*), together with all exhibits, schedules, riders, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Lease (as such term is hereinafter defined), all of Assignor's right, title and interest in the Equipment listed in the Equipment Schedule and all of Assignor's right, title and interest in, to and under the Escrow and Account Control Agreement dated as of ____________, 20__ (the *"Escrow Agreement"*) by and among Lessee, Assignor and ______________________, as Escrow Agent, together with the Escrow Account related thereto (collectively, the *"Assigned Property"*).

For purposes of this Notice and Acknowledgment of Assignment (the *"Acknowledgment"*), *"Lease"* means collectively the Equipment Schedule and the terms and provisions of the Agreement incorporated therein by reference, together with all exhibits, schedules, riders, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith. The term *"Lease"* specifically excludes all other Equipment Schedules entered into under the Agreement and Rental Payments other than with respect to the Equipment Schedule. Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

1. Lessee hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Lease in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Lease and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Lease, to declare a default and to exercise all rights and remedies thereunder in connection with the occurrence of an Event of Non-appropriation or an Event of Default; and (ii) [except as provided in Section 3.03 of the Agreement,] the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Lease shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this *"Acknowledgement"*), the following information about the Lease is true, accurate and complete:

Number of Rental Payments Remaining	________________
Amount of Each Rental Payment	$________________
Total Amount of Rental Payments Remaining	$________________
Frequency of Rental Payments	________________
Next Rental Payment Due	________________
Funds Remaining in Escrow Account	$________________

4. The Lease remains in full force and effect, has not been amended, no Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder and no Event of Non-appropriation has occurred or is threatened with respect thereto.

5. Assignor hereby acknowledges the transfer restrictions imposed by Section 11.01 of the Agreement and confirms that the assignment to Assignee has been made in accordance with the provisions of that Section.

6. Any inquiries of Lessee related to the Lease and any requests for disbursements from the Escrow Account, if applicable, and all Rental Payments and other amounts coming due pursuant to the Lease on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

____

____

____

ACKNOWLEDGED AND AGREED:

LESSEE: ______________________________
[FOR EXHIBIT PURPOSES ONLY]

By:__________________________________
Name: ____________________________
Title: _____________________________

ASSIGNOR: BANK OF AMERICA, NATIONAL ASSOCIATION

[FOR EXHIBIT PURPOSES ONLY]

By:__________________________________
Name: ____________________________
Title: _____________________________

EXHIBIT I

ESCROW AND ACCOUNT CONTROL AGREEMENT

RESOLUTION NO. ___2026___

A RESOLUTION PROVIDING FOR THE FORMAL ACCEPTANCE OF A DONATION TO THE CITY OF CARTHAGE'S PARKS & RECREATION DEPARTMENT BY THE CITY COUNCIL OF THE CITY OF CARTHAGE, MISSOURI PURSUANT TO CITY POLICY.

WHEREAS, periodically, private individuals and agencies would like to make donations and grants to the City of Carthage for general or specific purposes; and

WHEREAS, the City has adopted a policy to formalize the conditions and procedures to be followed by the City in accepting said donations and grants, and to assist the City Council in evaluating the impact of proposed donations and grants on the resources of the City of Carthage; and

WHEREAS, This policy also establishes guidelines that ensure donations occur at arm's length from any City decision-making process, and provide criteria and process for the acceptance of donations; and

WHEREAS, The City Administrator has prepared and submitted a report evaluating the impact of the proposed donations or grants on the resources of the City.

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

That the City of Carthage, Missouri accepts a donation of twenty (20) marble slabs from the Pat and Carolyn Phelps family, to be used exclusively for creation of Parks signage, pursuant to the attached letter.

PASSED AND APPROVED THIS ______ DAY OF ___________, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

CITY ADMINISTRATOR DONATION REPORT:

The City Administrator shall prepare a report evaluating the impact of all proposed donations or grants on the resources of the City. This report must include both the immediate costs of placing said donation into service or program into action and the costs required to maintain or continue the program in future budget years. Such costs may include analysis of annual personnel, repair and maintenance and equipment expenditures and any future capital improvements required by the donation. The report must be submitted to Council at the same time acceptance of the donation or grant is to be considered. If additional operating costs are associated with the acceptance of the donation, the Council shall identify the source of revenues to defray the additional costs at the time of acceptance.

As a component of the Parks Master Plan, funding for Parks signage has been allocated within the current budget. The marble slabs will serve as material for these signs. There is no adverse impact or additional operating costs in reference to this donation. Small plaques will be incorporated to commemorate the donations.

RESOLUTION NO. ___2027___

A RESOLUTION PROVIDING FOR THE FORMAL ACCEPTANCE OF A DONATION TO THE CITY OF CARTHAGE'S PARKS & RECREATION DEPARTMENT BY THE CITY COUNCIL OF THE CITY OF CARTHAGE, MISSOURI PURSUANT TO CITY POLICY.

WHEREAS, periodically, private individuals and agencies would like to make donations and grants to the City of Carthage for general or specific purposes; and

WHEREAS, the City has adopted a policy to formalize the conditions and procedures to be followed by the City in accepting said donations and grants, and to assist the City Council in evaluating the impact of proposed donations and grants on the resources of the City of Carthage; and

WHEREAS, This policy also establishes guidelines that ensure donations occur at arm's length from any City decision-making process, and provide criteria and process for the acceptance of donations; and

WHEREAS, The City Administrator has prepared and submitted a report evaluating the impact of the proposed donations or grants on the resources of the City.

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

That the City of Carthage, Missouri accepts a donation of $925 in memory of Jerad Housh, to be used exclusively for the Carthage Little League, pursuant to the attached letter.

PASSED AND APPROVED THIS ______ DAY OF ___________, 2024.

____

Dan Rife, Mayor

ATTEST:

____

Miranda Deal, City Clerk

CITY ADMINISTRATOR DONATION REPORT:

The City Administrator shall prepare a report evaluating the impact of all proposed donations or grants on the resources of the City. This report must include both the immediate costs of placing said donation into service or program into action and the costs required to maintain or continue the program in future budget years. Such costs may include analysis of annual personnel, repair and maintenance and equipment expenditures and any future capital improvements required by the donation. The report must be submitted to Council at the same time acceptance of the donation or grant is to be considered. If additional operating costs are associated with the acceptance of the donation, the Council shall identify the source of revenues to defray the additional costs at the time of acceptance.

The funds will be appropriated for use by the Carthage Little League. There is no adverse impact or additional operating costs in reference to this donation.

RESOLUTION NO. ___2028___

A RESOLUTION PROVIDING FOR THE FORMAL ACCEPTANCE OF A DONATION TO THE CITY OF CARTHAGE'S POLICE DEPARTMENT BY THE CITY COUNCIL OF THE CITY OF CARTHAGE, MISSOURI PURSUANT TO CITY POLICY.

WHEREAS, periodically, private individuals and agencies would like to make donations and grants to the City of Carthage for general or specific purposes; and

WHEREAS, the City has adopted a policy to formalize the conditions and procedures to be followed by the City in accepting said donations and grants, and to assist the City Council in evaluating the impact of proposed donations and grants on the resources of the City of Carthage; and

WHEREAS, This policy also establishes guidelines that ensure donations occur at arm's length from any City decision-making process, and provide criteria and process for the acceptance of donations; and

WHEREAS, The City Administrator's Office has prepared and submitted a report evaluating the impact of the proposed donations or grants on the resources of the City.

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

That the City of Carthage, Missouri accepts a donation of $44,073.00 from the Law Enforcement Sales Tax Grant Board for ODET Fees, MDT's with docking stations and mounting, FTO software, First Two software, and gun light for the police department, in the City of Carthage.

PASSED AND APPROVED THIS _____ DAY OF ______, 2024.

____

Dan Rife, Mayor

ATTEST:

____

Mirand Deal, City Clerk

CITY ADMINISTRATOR'S OFFICE DONATION REPORT:

The City Administrator shall prepare a report evaluating the impact of all proposed donations or grants on the resources of the City. This report must include both the immediate costs of placing said donation into service or program into action and the costs required to maintain or continue the program in future budget years. Such costs may include analysis of annual personnel, repair and maintenance and equipment expenditures and any future capital improvements required by the donation. The report must be submitted to Council at the same time acceptance of the donation or grant is to be considered. If additional operating costs are associated with the acceptance of the donation, the Council shall identify the source of revenues to defray the additional costs at the time of acceptance.

There will be no adverse impact of acceptance of the cash contributions. The Budget Ways & Means Committee will meet to determine a recommendation on the appropriation of these funds. It is recommended that the funds be placed in the Public Safety Fund budget pending Budget Ways & Means Committee recommendations for City Council action regarding appropriations of said funds.

RESOLUTION NO. ___2029___

RESOLUTION OF THE CITY OF CARTHAGE, MISSOURI, CONFIRMING THE PLANNING AND ZONING DECLARATION OF THE "WALK THIS WAY" SIDEWALKS AS BLIGHTED, IN THE CITY OF CARTHAGE MISSOURI.

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

WHEREAS, the City of Carthage has applied for a grand to rehabilitate and replace the downtown sidewalks in the city of Carthage, through a Community Development Block Grant,

WHEREAS, the grant requires any project to comply with the objectives of the grant, to aid in the prevention of blight,

WHEREAS, the city project meets the grant definition of blight since at least 25% of the property has physical deterioration,

WHEREAS, the declaration of bight for the purposes of this grant has no effect on taxation or taxing authorities.

WHEREAS, the planning and zoning commission met at their meeting on February 5, 2024 and declared the property as blighted pursuant to the grant requirements and definitions.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CARTHAGE, JASPER COUNTY, MISSOURI, the land described in the "walk this way" grant application is blighted in accordance with the Planning and Zoning commission and the Community Development Block Grant.

PASSED AND APPROVED THIS ______ DAY OF ________________, 2024.

____
Dan Rife, Mayor

ATTEST:

____
Miranda Deal, City Clerk

Sponsored by: Planning and Zoning

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

January 16, 2024

Jana Schramm
1521 Grand Avenue
Carthage, MO 64836

Re: Sunshine Law Complaint – Closing Response

Dear Mr. Schramm,

This letter concerns the complaint you filed with the Missouri Attorney General's Office alleging violations of the Sunshine Law against the City of Carthage. We have concluded our review of this matter and we cannot conclude that the city has not complied with the Sunshine Law. Our office takes no position on this matter and we will not be taking any further action.

Our office will continue to review complaints for potential investigation and opportunities to promote compliance with the Sunshine Law. You may file additional complaints on our website at www.ago.mo.gov.

Please note that the above material is not an official opinion of the Attorney General of the State of Missouri. In providing this response, we do not suggest that we are providing you legal advice or otherwise treating you as a client of the Attorney General or any of his assistants. If you are seeking legal advice or representation, please contact a private attorney.

Sincerely,

/s/ Jay Turner
Jay Turner
Director of Sunshine Law Compliance
Telephone: 573-751-8905
SunshineComplaint@ago.mo.gov

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
www.ago.mo.gov

The City of Carthage

"America's Maple Leaf City"

FROM THE DESK OF CITY ATTORNEY NATHANIEL DALLY

December 11, 2023

Jay Turner
Jay.Turner@ago.mo.gov
sunshinecomplaint@ago.mo.gov

Dear Mr. Turner,

I am writing in response to the two Sunshine Law complaints filed by Jana Schramm and wish to address each point specifically.

Regarding Ms. Schramm's request for my schedule, it is important to note that I do not maintain a written schedule that can be provided. This was communicated to Ms. Schramm by the city clerk, who clarified that no such document exists pursuant to her request. During the City Council meeting on November 14, 2023, I explained my dual roles as an assistant prosecuting attorney and city attorney, a position I have held while still working for the prosecuting attorney's office. My current full-time status with the city, compensated based on a 30-hour week arrangement, was a decision made by the council, factoring in various employment scenarios from the last salary study. I emphasized at the meeting that despite unconventional hours, I diligently fulfill my 30-hour commitment to the city, as evidenced during the week of trial I still worked 30 hours that week in preparation of and attendance at City Court. As such, there is no written record of my schedule to provide to Ms. Schramm.

Concerning the allegation of my involvement in a year-long murder trial, the reality differs significantly. The trial in question was a concise, three-day event with three witnesses, as clarified in the November 14 meeting. Ms. Schramm was informed of my balanced work hours between the city and the prosecutor's office that week and it was noted that I often exceed 40 hours of work for the city. Her complaint regarding the absence of a written schedule and my activities during that particular week was addressed comprehensively before her formal complaint.

Regarding Ms. Schramm's other complaint about the employment contracts of the Assistant City Administrator and the City Administrator. When our clerk inquired of the Missouri Municipal League, she was informed that she was to provide the information contained in their personnel file and contained in the contract that pertained to name, position, salary and length of service and this was provided. Any information that was included in the "contract" that pertained to those items was provided.

It is important to clarify that these documents do not address wages but outline the terms [redacted], for cause. Salary and benefits are addressed annually as part of the budget and passed by council bill. These "contracts" mention a [redacted]. [redacted]. These agreements, traditionally are not ratified by the city council until departure and should not be considered contracts. They contain personal information not subject to disclosure under the Sunshine Law.

Our past City Administrator's situation exemplifies this process. His agreement, effective upon council approval after, his resignation, included a severance package that was subsequently ratified by the council. Prior to the council's decision, it was an unexecuted agreement and not subject to sunshine disclosure.

I trust this clarifies the concerns raised by Ms. Schramm and demonstrates our adherence to the principles and requirements of the Sunshine Law.

Sincerely,

Nathaniel Dally
City Attorney

Sincerely,

Nathaniel Dally
City Attorney

The City of Carthage

"America's Maple Leaf City"

FROM THE DESK OF CITY ATTORNEY NATHANIEL DALLY

December 27, 2023

Jay Turner
Jay.Turner@ago.mo.gov
sunshinecomplaint@ago.mo.gov

RE: Sunshine Law Complaint – City of Carthage
Follow up to December 14, 2023 Letter

Dear Mr. Turner,

I wanted to follow up after we spoke and after reviewing your letter dated December 14, 2023. I am aware of both the cases that you cited in your response. In fact those are the only two cases I had in my file on this matter. My objection to disclosing purported offers in the employees file are as follows. In order for the documents in the files to be binding contracts they would have to have been authorized by the City Council prior to the mayor signing them. As previously stated this was not how the previous city administrator did these contracts and the city continued to follow this practice of signing a document that would or would not be approved and followed after the employee left employment.

Section 610.021 provides specific exceptions to the Sunshine Law that would be applicable to prevent the disclosure of certain contracts or portions thereof at certain stages of negotiation. N. Kansas City Hosp. Bd. of Trustees v. St. Luke's Northland Hosp., 984 S.W.2d 113, 122 (Mo. Ct. App. 1998)

After reviewing what is in the personnel files it is my opinion [redacted]. The two employees who have written statements from the Mayor [redacted] and disclosure at this point would be detrimental to these negotiations. [redacted].

What we have in the files of the [redacted] are letters from the mayor saying they [redacted] [redacted]. For the [redacted] it says if he is fired without cause [redacted]. The City code say they can be let go for any reason and the [redacted] is only entitled to 2 weeks pay.

The provisions go against our city code and therefor would require council approval for the mayor to execute a contract. So, what we have at this point is simply negotiations [redacted]n. We currently do not have valid offer and acceptance. [redacted]

[redacted]. I agree once that is done they are contracts and then are open to the public but releasing them now would be premature [redacted].

Sincerely,

Nathaniel Dally
City Attorney