



*Note – This meeting may be transmitted via Facebook Live on the City of Tonganoxie page

Honorable Jason K. Ward, Mayor
Council Members

Rocky Himpel

Curtis Oroke

Kara Reed

Loralee Stevens

Open Regular Meeting – 7:00 p.m.

Administration of Oath of Office to fill City Council Vacancy – David Bennett

I. Pledge of Allegiance

II. Approval of Minutes – Regular meeting dated April 2, 2018

III. Consent Agenda

- a) Review bill payments

IV. Open Agenda

Members of the public are welcome to use this time to comment about any matter relating to City business. The comments that are discussed under Open Agenda may or may not be acted upon by the Council during this meeting. In order to speak during open agenda, you must sign up with your name and address with the city clerk or designee **before the meeting**. Comments will be limited to 3 minutes. Please wait to be recognized by the Mayor and **state your name and address** for the record.

V. Old Business

VI. New Business

- a) Ordinance 1437: Addition of Chapter XV, Article 7, Entitled Storm Water Management Program and Utility to the Tonganoxie City Code
- b) Resolution 04-18-04: Establishing the Flat Storm Water Utility Fees for Residential and Non-Residential Property
- c) Ordinance 1438: Repealing Ordinance 1433 (Voluntary Annexation)
- d) Resolution 04-18-05: Approving First Amendment to Antenna Site Lease at South Water Tower with T-Mobile Central LLC
- e) Resolution 04-18-06: Authorizing Consumption of Alcoholic Beverages at Tonganoxie Days 2018
- f) Resolution 04-18-07: Authorizing Consumption of Alcoholic Beverages at Tonganoxie Public Library monthly artist sessions in 2018
- g) Request for Approval of Lease Agreement with Tongie Tidal Waves for 2018 Pool Season
- h) Request for Award of Bid and Authorizing Agreement for Repairs to City Hall Roof
- i) City Manager Agenda
 - 1. Update on interagency discussions with Leavenworth County
 - 2. Business Park Development Update
 - 3. March Financial Report

4. Quarterly Treasurer's Report – Q1 2018

j) City Attorney Agenda

k) Mayor Pro Tem Agenda

l) City Council Agenda

m) Mayor Agenda

1. Executive session for the preliminary discussion of the acquisition of real property

VII. Information & Communications (No Action Required)

VIII. Adjourn

CITY COUNCIL MEETING DRAFT MINUTES

April 2, 2018

7:00 p.m. Regular Meeting



I. PLEDGE OF ALLEGIANCE

- Mayor Ward opened the meeting at 7:00 p.m.
- Roll Call: Council members present were Mayor Ward, Mr. Himpel, Ms. Reed, Ms. Stevens, and Mr. Oroke. City Manager George Brajkovic, Assistant City Manager Dan Porter, and City Attorney Shannon Marcano were also in attendance.
- Mayor Ward led the Pledge of Allegiance.

II. APPROVAL OF MINUTES – REGULAR MEETING DATED MARCH 19, 2018 AND SPECIAL MEETING DATED MARCH 24, 2018

- Ms. Reed made a motion to approve the minutes from the March 19, 2018 and March 24, 2018 City Council meetings.
- Mr. Oroke Seconded.
- Vote of all ayes, motion carried.

III. APPROVAL OF CONSENT AGENDA

a) REVIEW BILL PAYMENTS

- Mr. Himpel made a motion to approve the consent agenda.
- Ms. Stevens Seconded.
- Vote of all ayes, motion carried.

IV. OPEN AGENDA

- No members of the public signed up to address the City Council in open agenda.
- Mayor Ward closed the open agenda portion of the agenda.

V. OLD BUSINESS

a) REQUEST FOR AUTHORIZATION TO END PARTICIPATION IN DOWNTOWN REVOLVING LOAN PROGRAM GRANT WITH THE KANSAS DEPARTMENT OF COMMERCE

- Mr. Brajkovic introduced the item and explained that it had been presented to City Council at the March 26 continuation of the March 19 meeting. He also noted the staff recommendation.
- Mr. Porter noted that the state requested a response from the City Council by April 6 indicating the Council's decision on the direction of the program.
- Ms. Stevens noted that other assistance methods are now available that weren't at the time of the activity within this program and that the conditions placed on the program have changed significantly to the point that it would place a large burden on staff.

- **Ms. Reed made a motion to motion to authorize the Mayor to execute a letter to the Kansas Department of Commerce indicating the City's decision to return the entirety of the remaining funds associated with Grant 99-CP-002.**
- **Mr. Himpel Seconded.**
- Mayor Ward asked whether the caveat would be given in the letter that the City would cease to act as the loan administrator for the current loan.
- Mr. Porter noted that this would be negotiated with the Kansas Department of Commerce based on Council's preference.
- **Ms. Reed amended her motion to include a caveat in the letter that the City would ask to not continue to collect and remit payments for the existing loan with a local business.**
- **Vote of all ayes, motion carried.**

VI. NEW BUSINESS

a) RESOLUTION 04-18-01: AUTHORIZING ENGAGEMENT LETTER WITH LOCAL LAW, LLC

- Mr. Brajkovic explained the item acts as a summary of the scope of services and noted that the letter of engagement was prepared and delivered by Shannon Marcano.
- **Mr. Himpel made a motion to adopt Resolution 04-18-01, authorizing the Mayor to execute an engagement letter with Local Law LLC.**
- **Mr. Oroke Seconded.**
- **Vote of all ayes, motion carried.**

b) RESOLUTION 04-18-02: APPOINTING MUNICIPAL COURT JUDGE AND CITY ATTORNEY

- Mr. Brajkovic introduced the item and described the item as formalizing the appointment of the Municipal Court Judge and City Attorney.
- **Mr. Oroke made a motion to adopt Resolution 04-18-02, authorizing the appointment of Municipal Court Judge and City Attorney.**
- **Ms. Stevens Seconded.**
- **Vote of all ayes, motion carried.**

c) RESOLUTION 04-18-03: APPROVING REAL ESTATE CONTRACT OF SALE OF FORMER CITY GARAGE FACILITY

- Mr. Brajkovic described the publication of availability of the property and the submittal review and evaluation process. He presented the staff recommendation to move forward with a proposal submitted by Robbins Acquisitions Inc. He also outlined the elements of the real estate contract of sale.
- Mayor Ward asked about the relative size of the two partitions of the building and the zoning designation.
- Mr. Brajkovic described the relative size of the two sections of the building as approximately split 60/40 and stated that he believed the zoning was general business district.
- **Mr. Himpel made a motion to adopt Resolution 04-18-03, authorizing the execution of the real estate contract of sale for the former city garage facility with Robbins Acquisition.**
- **Ms. Reed Seconded.**
- **Vote of all ayes, motion carried.**

d) ORDINANCE 1436: VOLUNTARY ANNEXATION OF REAL PROPERTY

- Mr. Brajkovic introduced the item.
- Mr. Porter noted that this property was previously part of an annexation ordinance but that further conversations with the County brought to light that the certificate of survey process was not completed by the applicant prior to the voluntary annexation. The County process has now been completed.
- Ms. Marcano noted that the next meeting will include an ordinance to repeal the earlier adopted ordinance.
- Mr. Porter noted that the April 5 Planning Commission meeting agenda does include several items related to the property being annexed and the timeline of this annexation would result in the annexation being completed prior to any consideration of items related to the project by the City Council.
- **Mr. Himpel made a motion to adopt Ordinance No. 1436, approving the voluntary annexation of real property.**
- **Mr. Oroke Seconded.**
- **Vote of all ayes, motion carried.**

e) CITY COUNCIL VACANCY APPLICATIONS REVIEW

- Mr. Brajkovic explained the process developed upon review of the legal procedures to fill the current City Council vacancies. Two applications were received by City staff but the governing body can nominate anyone for the position.
- Michael (Andy) Pierson, who had submitted an application, spoke before the Council and discussed his interest in the vacant position.
- **Mr. Oroke made a motion to appoint Dave Bennett to fill the current City Council vacancy.**
- **Mr. Himpel Seconded.**
- Mr. Himpel requested a roll call vote be taken.
- **Roll Call Vote – Aye: Himpel, Stevens, Oroke Nay: Reed, Ward**
- **Vote of 3-2, motion carried.**
- Mr. Brajkovic clarified that the next Council meeting will include the oath of office being administered at the beginning of the meeting.
- Ms. Marcano noted that the appointments approved earlier in the meeting by resolution serve as the formalization of the action.

f) CITY MANAGER AGENDA

- No items.

g) CITY ATTORNEY AGENDA

- No items.

h) MAYOR AGENDA

1. EXECUTIVE SESSION FOR THE PRELIMINARY DISCUSSION OF THE ACQUISITION OF REAL PROPERTY

(Items i and j were completed prior to item h)

- **Mr. Himpel made a motion to recess the City Council into executive session to discuss property acquisition pursuant to the preliminary discussion of the acquisition of real property exception, K.S.A. 75-4319 (b) (6) at 7:51 p.m. The open meeting will resume in the City Council chambers after 25 minutes. The executive session will include the City Attorney, City Manager, Assistant City Manager, and City Council.**

- **Ms. Reed seconded the motion.**
- **Vote of all ayes, motion carried.**
- ...
- **Ms. Reed made a motion to return from executive session at 8:16 p.m., noting that no action was taken during the executive session.**
- **Mr. Oroke seconded the motion.**
- **Vote of all ayes, motion carried.**

i) MAYOR PRO TEM AGENDA

- No items.

j) CITY COUNCIL AGENDA

- Mr. Himpel noted the recent increase in animal control requests and raised the question of how to improve animal control services offered by the City.
- Mr. Brajkovic described the current approach to animal control and resources available to the public.
- Mr. Himpel asked if the resources available online can be updated to make the information more readily available to the public.
- Mr. Brajkovic stated that staff will update the information online.
- Monica Gee, 17685 214th Street, reminded the City Council of the upcoming rabies vaccination and microchip event to be held on April 14 in Chieftain Park and how the microchip is being used as a registration element for some cities.
- Ms. Stevens introduced the idea to potentially partner with the Tonganoxie Business Association to add a bicycle repair station to a community location like a pocket park. She described the contents of a typical station.
- Elizabeth Mullins, 20077 199th Street, introduced herself to the City Council and commented that she is the County representative on the Northeast Kansas Library System Board (NEKLS).

VII. INFORMATION AND COMMUNICATIONS (NO ACTION REQUIRED)

VIII. ADJOURN

- **Mr. Himpel made a motion to adjourn the meeting.**
- **Ms. Reed seconded the motion.**
- **Vote of all ayes, motion carried.**
- **Meeting adjourned at 8:18 p.m.**

Respectfully submitted,



Dan Porter, Assistant City Manager



City of Tonganoxie, KS

My Check Report

By Check Number

Date Range: 03/30/2018 - 04/10/2018

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP Bank-AP Bank						
0001	911 CUSTOM	04/10/2018	Regular	0.00	75.00	44691
0025	APAC-KANSAS, INC	04/10/2018	Regular	0.00	415.38	44692
0034	AT&T ACCESS TRANSPORT SERVICES	04/10/2018	Regular	0.00	74.49	44693
0038	B & W FIRE LLC	04/10/2018	Regular	0.00	761.70	44694
0041	BARCO MUNICIPAL PRODUCTS INC	04/10/2018	Regular	0.00	548.00	44695
0051	BG CONSULTANTS INC	04/10/2018	Regular	0.00	13,453.00	44696
0886	CREATIVE PRODUCT SOURCE, INC.	04/10/2018	Regular	0.00	118.95	44697
0136	DELTA DENTAL PLAN OF KANSAS,IN	04/10/2018	Regular	0.00	2,105.06	44698
0192	FOLEY INDUSTRIES	04/10/2018	Regular	0.00	24.09	44699
0250	HONEYCREEK DISPOSAL SERVICE	04/10/2018	Regular	0.00	25,886.18	44700
0330	KANSAS GAS SERVICE	04/10/2018	Regular	0.00	220.83	44701
0335	KANSAS MUNICIPAL JUDGES ASSOC.	04/10/2018	Regular	0.00	25.00	44702
0373	KS HEALTH & ENVIROMENT LAB	04/10/2018	Regular	0.00	348.00	44703
0397	LEAGUE OF KANSAS MUNICIPALITIE	04/10/2018	Regular	0.00	100.00	44704
0914	LOCAL LAW, LLC.	04/10/2018	Regular	0.00	7,870.00	44705
0772	LV CO PORT AUTHORITY	04/10/2018	Regular	0.00	10.00	44706
0429	MARC	04/10/2018	Regular	0.00	1,800.00	44707
0857	MIDCONTINENT COMMUNICATIONS	04/10/2018	Regular	0.00	268.34	44708
0888	NATIONWIDE	04/10/2018	Regular	0.00	100.00	44709
0477	NAVRATS	04/10/2018	Regular	0.00	276.98	44710
0479	NEW DIRECTIONS BEHAVIORAL HEAL	04/10/2018	Regular	0.00	232.29	44711
0491	OLATHE WINWATER WORKS	04/10/2018	Regular	0.00	631.50	44712
0495	OMNI-SITE	04/10/2018	Regular	0.00	215.51	44713
0496	ONE CALL CONCEPTS	04/10/2018	Regular	0.00	128.40	44714
0500	OREILLY AUTO PARTS	04/10/2018	Regular	0.00	301.78	44715
0536	PUBLIC AGENCY TRAINING COUNCIL	04/10/2018	Regular	0.00	450.00	44716
0562	S & S AUTOMOTIVE	04/10/2018	Regular	0.00	420.00	44717
0579	SECURITY BENEFIT - 457	04/10/2018	Regular	0.00	2,181.92	44718
0581	SHILLING ELECTRIC CO.	04/10/2018	Regular	0.00	175.00	44719
0594	SMITHEREEN PEST CONTROL	04/10/2018	Regular	0.00	198.00	44720
0614	T-MOBILE	04/10/2018	Regular	0.00	535.25	44721
0628	TODD'S TIRE LLC	04/10/2018	Regular	0.00	22.00	44722
0641	TYLER TECHNOLOGIES	04/10/2018	Regular	0.00	23,256.00	44723
0642	U S POSTAL SERVICE	04/10/2018	Regular	0.00	1,082.88	44724
0651	USA BLUE BOOK	04/10/2018	Regular	0.00	507.76	44725

Bank Code AP Bank Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	41	35	0.00	84,819.29
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	41	35	0.00	84,819.29

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	41	35	0.00	84,819.29
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	41	35	0.00	84,819.29

Fund Summary

Fund	Name	Period	Amount
998	Gen Fund-Pooled Cash	4/2018	84,819.29
			84,819.29



Office of the City Manager
AGENDA STATEMENT

DATE: April 16, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Dan Porter, Assistant City Manager
SUBJECT: Ordinance No. 1437: Addition of Chapter XV, Article 7, Entitled Storm Water Management Program and Utility to the Tonganoxie City Code

DISCUSSION:

The 2018 Annual Budget approved by the City Council in 2017 included newly identified funding for the maintenance of storm water infrastructure, which resulted in the subsequent need for the creation of a utility. The 2018 Adopted Budget included \$40,000 in revenue from monthly fees of \$1.50 for residential and \$3.00 for commercial water customers, with the opportunity to re-examine the rate structure in future years.

Charter Ordinance No. 28 was presented to City Council as an initial step in the process of creating a Storm Water Management Utility in the City of Tonganoxie on January 22, 2018. The Charter Ordinance allowed the City to set up the Storm Water Management Utility, which is a prerequisite to applying the fees to customers. Following approval, the Charter Ordinance was published for two consecutive weeks in the City's official newspaper (January 31 & February 7) and it went into effect 61 days after the final publication (April 8). A referendum petition was not filed, in which case the Charter Ordinance would have required approval by the majority of voters to become effective.

Ordinance No. 1437 amends the Tonganoxie City Code to add Chapter XV, Article 7, which includes an outline of the City's storm water management program and utility. The outline includes clear definitions of terms, a statement of policy governing the utility, formal establishment of the storm water management program and utility, administrative powers for staff to execute activities within the utility, and information regarding the Storm Water Utility Fee and its application to various types of property within the City of Tonganoxie. A complete copy of the contents of Chapter XV, Article 7 is included in the attached Ordinance No. 1437.

BUDGET IMPACT:

Approval of Ordinance No. 1437 will take another step towards initiating collection of revenues budgeted in the newly-created Storm Water Fund in 2018. The budget in this fund for 2018 is aimed at establishing a level of fund balance with inaugural revenue collections, which are authorized to begin soon after approval of this Ordinance the related Resolution 04-18-04.

ACTION NEEDED:

Make a motion to approve Ordinance No. 1437.

ATTACHMENTS:

Ordinance No. 1437

cc: George Brajkovic, City Manager
Shannon Marcano, City Attorney

ORDINANCE NO. 1437

AN ORDINANCE APPROVING AMENDING THE TONGANOXIE CITY CODE WITH THE ADDITION OF CHAPTER XV, ARTICLE 7, ENTITLED STORM WATER MANAGEMENT PROGRAM AND UTILITY.

WHEREAS, the Governing Body of the City of Tonganoxie, Kansas, wishes to create a Storm Water Utility for the City of Tonganoxie, Kansas.

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

Section 1. That the Tonganoxie City Code be amended with the addition of Chapter XV, Article 7, which reads as follows:

CHAPTER XV. UTILITIES

ARTICLE 7. STORM WATER MANAGEMENT PROGRAM AND UTILITY

15-701. Definitions. For the purposes of this Article, the following words and phrases shall have the meanings indicated:

- (a) Billing Period means the service period identified on the utility bill. Each account shall be billed monthly in arrears of the service period. A developed property that receives a City of Tonganoxie water or sewer utility service shall be billed monthly in arrears of the service.
- (b) City Manager means the City Manager for the Tonganoxie, Kansas or his or her designee.
- (c) Customer means anyone receiving and being billed for utility services from the City.
- (d) Developed Property means real property which has been altered from its natural state by the addition of any improvements such as buildings, structures, or other impervious area.
- (e) Dwelling Unit means a singular unit or apartment providing complete, independent living facilities for one or more persons including provisions for living, sleeping, eating, cooking, and sanitation.
- (f) Exempt Property means public rights of way, public streets, public alleys, and public sidewalks, as well as any property that the Governing Body classifies as exempt.



Office of the City Manager
AGENDA STATEMENT

DATE: April 16, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Dan Porter, Assistant City Manager
SUBJECT: Resolution No. 04-18-04: Establishing the Flat Storm Water Utility Fees for Residential and Non-Residential Property

DISCUSSION:

This item is directly related to Ordinance No. 1437, which amended the Tonganoxie City Code to add Chapter XV, Article 7. This outline of the City's storm water management program and utility included clear definitions of terms, a statement of policy governing the utility, formal establishment of the storm water management program and utility, administrative powers for staff to execute activities within the utility, and information regarding the Storm Water Utility Fee and its application to various types of property within the City of Tonganoxie.

BUDGET IMPACT:

See agenda item VI. a).

ACTION NEEDED:

Make a motion to approve Resolution 04-18-04, establishing the Flat Storm Water Utility Fees for Residential and Non-Residential Property.

ATTACHMENTS:

Resolution 04-18-04

cc: George Brajkovic, City Manager
Shannon Marcano, City Attorney

RESOLUTION NO. 04-18-04

A RESOLUTION ESTABLISHING THE FLAT STORM WATER UTILITY FEES FOR RESIDENTIAL AND NON-RESIDENTIAL PROPERTY

WHEREAS, pursuant to the Code of the City of Tonganoxie at Chapter XV, Article 7, the City Council has the authority to establish the Flat Storm Water Utility Fee for Residential Property and the Flat Storm Water Utility Fee for Non-Residential Property.

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

Section 1. That the monthly Flat Storm Water Utility Fee for Residential Property is established at \$1.50, as defined in the Tonganoxie City Code Section 15-706.

Section 2. That the monthly Flat Storm Water Utility Fee for Commercial Property is established at \$3.00, as defined in the Tonganoxie City Code Section 15-706.

Section 3. That this resolution shall become effective upon passage.

ADOPTED by the Governing Body this 16th day of April, 2018.

SIGNED by the Mayor this 16th day of April, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

(g) Fee or Storm Water Utility Fee means the charge established under this ordinance to be billed to customers/owners to fund the costs of Storm Water Management Program and of operating, maintaining, and improving the Storm Water system in the City.

(h) Fiscal Year means the twelve-month period commencing on the first day of January of any year.

(i) Governing Body means the Mayor and elected City Council members as set out in Chapter I of the Code of the City of Tonganoxie, KS.

(j) Impervious Area means the number of square feet of hard surfaced areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as Undeveloped Property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as Undeveloped Property, including, but not limited to, roofs, sidewalks, patios, most conventionally surfaced streets, pavement, driveways, parking lots, athletic courts and any other oiled, graveled, or compacted surface.

(k) Non-Residential Property means any property that is designated by the Utility Billing System as non-residential.

(l) Property Owner means the property owner of record as listed in the County Assessment Roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

(m) Residential Property means any property designated by the Utility Billing System as residential.

(n) Storm Water Management Fund or Fund means the enterprise Fund created by this ordinance to operate, maintain, and improve the City's Storm Water system and for such other purposes as stated in this Ordinance.

(o) Storm Water Management Program means the planning, design, construction, regulation and enforcement, improvement, repair, maintenance, control measures, public education, citizen participation, and operation of facilities and programs relating to water, flood plains, flood control, grading erosion, tree conservation, and sediment control.

(p) Storm Water System means the system or network of storm and surface water management facilities including but not limited to inlets, conduits, manholes, channels, ditches on City property, drainage easements, City owned retention and detention basin, infiltration facilities and other components.

(q) Undeveloped Property means real property that has not been altered from its natural state by dredging, filling, removal of trees and vegetation, or other activities which have disturbed or altered the topography or soils on the property.

(r) Utility Billing System means the system utilized by the City of Tonganoxie to create a periodic utility bill and any or all upgrades or modifications to that system.

(s) Storm Water Utility Fee System means the utility created by this ordinance for the purpose of implementing and funding the Storm Water Management Program.

(t) Water means any Storm Water, surface water, snow melt or ground water.

(u) Vacant Improved Property means unoccupied developed property that contains impervious area

15-702. Findings and Statements of Policy.

(a) The City maintains a system of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, City owned retention and detention basins, infiltration facilities, and other components. The Storm Water system in the City needs regular maintenance and improvements.

(b) All developed property in the City either uses or benefits from the maintenance of the Storm Water system. The extent of use of the Storm Water system by each property is dependent on factors that influence runoff, including land use and the amount of impervious surface on the property.

(c) The costs of improving, maintaining, operating, and monitoring the Storm Water system should be allocated, to the extent practicable, to all developed properties based on the impact of runoff from the impervious areas of the property on the Storm Water management system.

(d) Management of the Storm Water system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance Storm Water management adequately with a user fee system that is reasonable and equitable so that each user of the system pays to the extent to which the user contributes to the need for it. The City is responsible for the provision of a planned and orderly system for managing and mitigating the effects of development on Storm Water and appropriate balancing between development and preservation of the natural environment. To accomplish these ends, the City desires to create a Storm Water Management Program and Storm Water Utility pursuant to Charter Ordinance No. 28.

(e) The Storm Water Management Program will also initiate innovative and proactive approaches to Storm Water management within the City to address problems in areas of the City that currently are prone to flooding, protect against replication of these types of problems and the creation of similar problems in newly developing areas of the City, and assist in meeting the mandates of the National Pollutant Discharge Elimination System as created by the Federal Clean Water Act and associated State and federal laws and their supporting regulations.

(f) The Storm Water Utility Fee imposed by this ordinance is neither a tax nor a special assessment, but a charge (in the nature of tolls, fees or rents) for services rendered or available.

15-703. Establishment of Storm Water Management Program and Storm Water Utility. Pursuant to the City Charter Ordinance No. 28, the City's general home rule authority, its nuisance abatement authority, its police powers and all other authority, the Governing Body does hereby

establish both a Storm Water Management Program and a Storm Water Utility and hereby declares its intention to operate the same.

15-704. Administration of the Storm Water Management Program; the Storm Water Utility. The City Manager, not in contravention of any City Ordinance, resolution or regulation, shall have the power to undertake the following activities to administer the Storm Water Management Program: (a) To advise the Governing Body on matters relating to the Storm Water Management Program and to make recommendations to the Governing Body concerning the adoption of ordinances, resolutions, policies and regulations in furtherance of the objectives of the Storm Water Management Program. (b) The acquisition by gift, purchase or eminent domain of real and personal property, easements thereon and/or interests therein, necessary to construct, operate, and maintain Storm Water control facilities. (c) To undertake the engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities, operation and maintenance of the Storm Water system. (d) Regulate, establish standards, review and inspect land use or property owner activities when such activities have the potential to affect the quantity, timing, velocity, erosive forces, quality, environmental value or other characteristics of Storm Water which would flow into the Storm Water Management System or in any way effect the implementation of the Storm Water Management Program. (e) Monitoring, surveillance, and inspection of Storm Water control devices. (f) Water quality monitoring and water quality programs. (g) Retrofitting developed areas for pollution control. (h) Inspection and enforcement activities. (i) Analyze the cost of services and benefits provided by the Storm Water Utility and the structure of fees, service charges, credits, and other revenues on a regular basis and make recommendations to the Governing Body regarding the same. (j) To undertake expenditures as required to implement these activities, including costs of Capital Improvements, Operations and Maintenance and other costs as may be required. (k) Other activities which are reasonably required.

15-705. Classification of Property for Purposes of Determination of the Storm Water Utility Fee. For purposes of determining the Storm Water Utility Fee, all properties in the City are classified into one of the following classes:

(a) Residential property. (1) Residential Fee. The Council has determined that a flat Storm Water Utility Fee shall be charged against all Residential Properties classified as a dwelling unit. The Council reserves the right to amend or adjust this Storm Water Utility fee or to establish a formula for calculating the Storm Water Utility fees at any time.

(b) Non-Residential Property. (1) Non-Residential Property Fee. The Council has determined that a flat Storm Water Utility Fee shall be charged against all Non-Residential Properties. The Council reserves the right to amend or adjust this Storm Water Utility fee or to establish a formula for calculating the Storm Water Utility fees at any time.

(c) Vacant Improved Property. (1) Vacant Improved Property Fee. The Storm Water Utility fee for vacant improved property shall be the same as the fee applied to property if it were occupied. The Storm Water Utility fee shall be assessed to the owner of record according to the billing procedures provided for in Section 15-708.

(d) Undeveloped Property. (1) Undeveloped Property Fee. There shall be no fee for undeveloped property.

(e) Exempt Property. (1) Exempt Property Fee. There shall be no fee for undeveloped and exempt property.

15-706. Storm Water Utility Fee. Effective April 30, 2018, a monthly service charge is imposed upon all developed property in the City to fund Storm Water management programs. Thereafter, the monthly service charge shall be calculated annually on January 1 and assessed monthly during the following 12 month period. This service charge shall be known as the Storm Water Utility Fee ("Fee"). The fee shall be calculated to insure adequate revenues to fund the costs of the Storm Water Management Program and to provide for the operation, maintenance, and capital improvements of the Storm Water system in the City. The City Manager shall make an annual recommendation to the Governing Body as to the monthly charge necessary to fulfill the proposed purpose of the Storm Water Management Program. The fees shall be as approved by the City Council.

15-707. Charges for Tax-Exempt Properties. The Governing Body finds that all real property in the City contributes to runoff and either uses or benefits from the maintenance of the Storm Water system. Therefore, except as otherwise provided in Section 15-705 all developed property in the City, including property that is tax exempt from property tax shall be charged the Storm Water Utility Fee. Chapter XVI. Utilities

15-708. When Storm Water Utility Fee Payable; Interest and Penalties; Lien on Real Property; Abatement of Small Amounts Due. The Storm Water utility fee shall become part of the monthly utility bill sent to utility customers to be paid in accordance with Sections 15-110:106 and/or if the fee is not paid within the 30-day period following the date of the utility bill, the cost shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments against the lot or parcel of land from which the bill is due, and the City Clerk, at the time of certification of other City taxes, shall certify the costs and the County Clerk shall extend the same on the tax rolls of the County against such lot or parcel of land and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. The City may pursue collection both by levy of a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest are paid in full. Any account that is inactive in the Utility Billing System shall not be charged for the Storm Water utility fee until the account becomes activated.

15-709. Requests for Appeal or Correction of the Storm Water Management Fee. A customer/owner may request an appeal or correction of the Fee by submitting the request in writing to the City Manager within thirty (30) days after the date of the contested bill. Grounds for appeal or correction of the Fee include: (a) Incorrect classification of the property for purposes of determining the Fee; (b) Errors in the identification of the property subject to the Fee. The City Manager shall make a determination within thirty (30) days after receipt of the customer/owner's completed written request for appeal or correction of the Fee. The City Manager's decision on a request for appeal or correction of the Fee shall be final. A

customer/owner must comply with all rules and procedures adopted by the City when submitting a request for appeal or correction of the Fee and must provide all information necessary for the City Manager to make a determination on a request for correction of the Fee. The burden of proof shall be on the customer/owner to demonstrate, by clear and convincing evidence, that the determination of the City Manager, from which the appeal is being taken, is erroneous. The City Manager shall notify the customer/owner in writing of the decision. Failure to comply with the provisions of this Subsection shall be grounds for denial of the request. The filing of a notice of appeal shall not stay the imposition or duty to pay the fee. If the City Manager determines that the fee should not be paid or the amount is less than the amount appealed, the City shall issue a refund in the appropriate amount to the customer/owner. All refunds shall be without interest.

Section 2. That this ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Tonganoxie, Kansas, as provided by law.

PASSED by the City Council this 16th day of April, 2018.

APPROVED by the Mayor this 16th day of April, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney



Office of the City Manager
AGENDA STATEMENT

DATE: April 16, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Dan Porter, Assistant City Manager
SUBJECT: Ordinance No. 1438; repealing Ordinance No. 1433

DISCUSSION:

Through communications with Leavenworth County following the passage of Ordinance No. 1433 on January 22, 2018, City staff determined that the legal description included in the Ordinance was incorrect and that a County process was required to occur prior to the annexation of approximately of 1.3 acres of land connected to the City limits boundary. The applicant completed said process and resubmitted the annexation petition, which was annexed into the City of Tonganoxie with Ordinance No. 1436 on April 2, 2018.

The action proscribed with Ordinance No. 1438 is repealing Ordinance No. 1433, which contained the incorrect legal description, and effectively completes the final element of the annexation effort for the property.

BUDGET IMPACT:

None.

ACTION NEEDED:

Make a motion to approve Ordinance No. 1438, repealing Ordinance No. 1433.

ATTACHMENTS:

Ordinance No. 1438

cc: George Brajkovic, City Manager
Shannon Marcano, City Attorney

ORDINANCE NO. 1438

AN ORDINANCE REPEALING ORDINANCE NO. 1433 ANNEXING CERTAIN PROPERTY TO THE CITY OF TONGANOXIE, KANSAS

WHEREAS, the City desires to repeal Ordinance 1433 annexing certain property to the City of Tonganoxie, Kansas, which Ordinance contained an incorrect legal description and was not effective as to the annexation.

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

Section 1. That Ordinance No. 1433 is hereby repealed.

Section 2. That this ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Tonganoxie, Kansas as provided by law.

PASSED by the City Council this 16th day of April, 2018.

APPROVED by the Mayor this 16th day of April, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney



Office of the City Manager
AGENDA STATEMENT

DATE: April 16, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Dan Porter, Assistant City Manager
SUBJECT: First Amendment to Antenna Site Lease at the South Water Tower

DISCUSSION:

The City made an agreement in 2007 with T-Mobile Central LLC, a Delaware Limited Liability Company, for a 5 year lease of space for nine cellular antennas on the City's South Water Tower located at 801 E 12th Street. That agreement included a 5 year renewal option with a 15% increase in the rent amount. The renewal period will end in July 2018.

The attached resolution and First Amendment to the Antenna Site Lease at the South Water Tower represents a negotiated outcome including three optional 3 year renewal terms which require 30 days notice to be terminated. The first 5 year renewal term includes rent of \$2,000 per month, which is increased by 15% for each of the two subsequent renewal terms. The total value of the first amendment over the 3 potential renewal terms is \$83,340.

City staff worked to negotiate the contract terms with representatives from T-Mobile and believe that the increased rent and other elements of the first amendment reflect a fair value in line with the market demand for cellular service in the immediate area.

BUDGET IMPACT:

Positive. The terms of this lease agreement reflect an increase of 39%, or \$6,750 per year, in revenue from the lease terms in 2018. In addition, the lease includes subsequent rent increases of 15% in each renewal period which will help realign revenues with growing demand throughout the community.

ACTION NEEDED:

Make a motion to approve Resolution 04-18-05, approving the First Amendment to Antenna Site Lease at the South Water Tower.

ATTACHMENTS:

Resolution 04-18-05

cc: George Brajkovic, City Manager
Shannon Marcano, City Attorney

RESOLUTION NO. 04-18-05

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THAT CERTAIN FIRST AMENDMENT TO ANTENNA SITE LEASE AT SOUTH WATER TOWER BETWEEN THE CITY OF TONGANOXIE, KANSAS, AND T-MOBILE CENTRAL, LLC.

WHEREAS, the City of Tonganoxie and T-Mobile Central, LLC., wish to enter into that certain First Amendment to Antenna Site Lease at South Water Tower, attached hereto as Exhibit A.

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

Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute that certain First Amendment to Antenna Site Lease at South Water Tower between the City of Tonganoxie and T-Mobile Central, LLC, attached hereto as Exhibit A.

Section 2. That this resolution shall become effective upon passage.

ADOPTED by the Governing Body this 16th day of April, 2018.

SIGNED by the Mayor this 16th day of April, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

EXHIBIT A

First Amendment to Antenna Site Lease at South Water Tower

FIRST AMENDMENT TO ANTENNA SITE LEASE AT SOUTH WATER TOWER

This First Amendment to Antenna Site Lease at South Water Tower (the "**Amendment**") is effective as of the date of execution by the last party to sign (the "**Effective Date**") by and between The City of Tonganoxie, Kansas, a municipal corporation ("**Lessor**") and T-Mobile Central LLC, a Delaware limited liability company ("**Lessee**") (collectively, the "**Parties**").

Lessor and Lessee (or their predecessors-in-interest) entered into that certain Antenna Site Lease at South Water Tower dated July 13, 2007, the "**Lease**") regarding Lessor's leased area ("**Premises**") located at 801 East 12th Street (South Water Tower), Tonganoxie, Kansas 66086 (the "**Property**").

NOW, for good and valuable consideration, Lessor and Lessee agree as follows:

1. The Lease is in full force and effect and neither Lessor nor Lessee is in breach under the terms of the Lease.
2. At the expiration of the Lease, the Term of the Lease will automatically be extended for three (3) additional and successive five (5) year terms (each a "**Renewal Term**"), provided, that Lessee may elect not to renew by providing Lessor thirty (30) days' notice prior to the expiration of the then current Renewal Term.
3. At the commencement of the first Renewal Term provided for in this Lessee shall pay Lessor Two Thousand and 00/100 Dollars (\$2,000.00) per month ("**Rent**") in advance, by the fifth day of each month. Any Rent previously paid from and after the commencement of the first Renewal Term provided for in this Amendment shall be offset against the new Rent. Rent shall be adjusted, effective on the first day of the second Renewal Term and each subsequent Renewal Term, by an amount equal to fifteen percent (15%) over the Rent for the immediately preceding Renewal Term.
4. Lessee and its employees and agents will have 24/7 access to the Premises.
5. Lessee may complete upgrades and additions of new equipment within the leased Premises in compliance with required permits.
6. Lessee shall have the right to transmit and receive on any and all frequencies for which Lessee has been granted a license by the FCC.
7. Lessee may terminate the Lease by providing Lessor at least three (3) months advance written notice of termination due to technological, regulatory, or economic reasons.
8. Lessee shall have the right to assign, or otherwise transfer the Lease, upon Lessee's delivery to Lessor of prior written notice of any assignment, or transfer by Lessee. Lessee shall be relieved of all liabilities and obligations and Lessor shall look solely to the assignee, or transferee for performance under the Lease. Upon receipt of a written request from Lessee, Lessor shall promptly execute an estoppel certificate.

9. All notices, requests, demands and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via a nationally recognized courier to the addresses set forth below. Lessor or Lessee may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Lessee:
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/A5D0096C

If to Lessor:
City of Tonganoxie, Kansas
Attn: Mayor
526 East 4th Street
Tonganoxie, KS 66086

10. Lessee and Lessor will reasonably cooperate with each other's requests to approve permit applications and other documents related to the Property.
11. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified. To the extent any provision contained in this Amendment conflicts with the terms of the Lease, the terms and provisions of this Amendment shall control. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.
12. This Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic copies of this Amendment will legally bind the Parties to the same extent as originals.
13. Each of the Parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Amendment.

IN WITNESS, the Parties execute this Amendment as of the Effective Date.

Lessor:

The City of Tonganoxie, Kansas, a municipal corporation

By: _____

Print Name: _____

Title: _____

Date: _____

Lessee:

T-Mobile Central LLC, a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Date: _____

Kelly Dunham 4/9/18
T-Mobile Contract Attorney
as to form



Office of the City Manager
AGENDA STATEMENT

DATE: April 16, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: George Brajkovic, City Manager
SUBJECT: Authorizing Tonganoxie Days Special Event and Consumption of Alcohol

DISCUSSION:

The Tonganoxie Days 2018 planning committee desires to secure a temporary liquor license to sell alcohol during the Tonganoxie Days event. The area where consumption of alcohol will be permitted is planned to be on the blocks along Main Street, from 2nd Street to 4th Street, 3rd Street from Pleasant Street to Delaware Street, and Pleasant Street from 2nd Street to 3rd Street.

In order to secure a temporary liquor license, the City Council must pass a resolution that authorizes the special event and consumption of alcohol in the proposed barricaded area listed above. To ensure that the committee is abiding by all state and local liquor laws, the designated area will be barricaded. To consume alcohol in the barricaded area, a person must purchase drink tickets and be issued a wristband. In doing so, the individual must show a valid form of identification. Revenue from alcohol sales will go towards offsetting event costs. From the proceeds of drink ticket sales, the City will be required to remit the liquor drink tax to the Kansas Department of Revenue following the event.

Attached to this memo is the resolution for approval by the City Council.

BUDGET IMPACT:

None.

ACTION NEEDED:

Make a motion to approve Resolution 04-18-06, authorizing the City of Tonganoxie event planning committee to obtain a temporary liquor license and sell alcohol during the Tonganoxie Days event.

ATTACHMENTS:

Resolution 04-18-06

cc: Dan Porter, Assistant City Manager
Shannon Marcano, City Attorney

RESOLUTION NO. 04-18-06

**A RESOLUTION APPROVING A SPECIAL EVENT KNOWN AS
TONGANOXIE DAYS**

WHEREAS, the Governing Body may approve special events and exempt public areas, streets and sidewalks from the prohibitions concerning drinking or consuming of alcoholic liquor and cereal malt beverages in public areas, streets and sidewalks; and

WHEREAS, the Tonganoxie Days planning committee has requested the approval of the Tonganoxie Days special event by the Governing Body; and

WHEREAS, prior to the special event, the Tonganoxie Days planning committee shall secure the appropriate license from the State of Kansas to sell alcoholic liquor and cereal malt beverages in accordance with all applicable state laws and municipal ordinances in a designated area.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE
CITY OF TONGANOXIE, KANSAS:**

Section 1. That Tonganoxie Days be approved and designated as a special event on June 8, 9 and 10, from 11:00 a.m. to 11:00 p.m. each day, and that the following streets and alleys shall be closed to motor vehicle traffic during the special event along Main Street from south of 2nd Street to 4th Street, 3rd Street from Pleasant Street to Delaware Street, and Pleasant Street from 2nd Street to 3rd Street.

Section 2. That authorization is given for the sale and consumption of alcoholic liquor and cereal malt beverages, in the designated barricaded area on the blocks along Main Street, from 2nd Street to 4th Street, 3rd Street, from Pleasant Street to Delaware Street, and Pleasant Street, from 2nd Street to 3rd Street, provided the Tonganoxie Days planning committee secures a temporary permit from the Kansas Alcohol and Beverage Control and complies with all state laws and ordinances, and that event attendees who are 21 years of age and older and can provide proof of age with a valid ID may purchase, possess, and consume alcoholic beverages within the Designated Barricaded Area, and that pursuant to KSA 41-719, no alcoholic liquor may be removed from the Designated Barricaded Area or consumed inside vehicles while on public streets or alleys at the event.

Section 3. That this resolution shall become effective upon passage.

ADOPTED by the Governing Body this 16th day of April, 2018.

SIGNED by the Mayor this 16th day of April, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney



AGENDA STATEMENT

DATE: April 16, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Nicole Holifield, Director of the Tonganoxie Public Library
SUBJECT: Resolution No. 04-18-07: Serving Alcoholic Beverages at the Tonganoxie Public Library for Adult Art Night which Focuses on Promoting the Arts and Education to the Tonganoxie Community

DISCUSSION:

The Tonganoxie Library hosts regular monthly events such as Adult Art Night Out that caters and provides learning opportunities to the Tonganoxie community. In addition, the library would like to add a component to the specific program called Adult Art Night Out that would allow the staff to serve alcoholic and cereal malt beverages on the library premises. The Tonganoxie Public Library is requesting that the City Council approve the following special dates; May 10, June 14, July 12, August 9, September 13, October 11, November 8, and December 13 from 5:30 pm to 8:00 pm.

BUDGET IMPACT:

None

ACTION NEEDED:

Make a motion to approve Resolution 04-18-07, establishing that alcoholic beverages is approved for the special dates listed above.

ATTACHMENTS:

Resolution 04-18-07

cc: George Brajkovic, City Manager
Shannon Marcano, City Attorney

Resolution No. 04-18-07

A RESOLUTION APPROVING A SPECIAL EVENT KNOWN AS ADULT ART NIGHT AT THE TONGANOXIE PUBLIC LIBRARY

WHEREAS, the Tonganoxie Public Library is a not for profit organization promoting the arts, literacy and education in Tonganoxie through regular monthly art events at the Tonganoxie Public Library located at 303 S. Bury; and

WHEREAS, the Tonganoxie Public Library hosts regular art sessions the 2nd Thursday of each month in 2018 between the hours 5:30 to 8:00 p.m. and desires to serve alcoholic and cereal malt beverages on the following dates: May 10, June 14, July 12, August 9, September 13, October 11, November 8, and December 13.

WHEREAS, the Governing Body may approve special events and exempt public areas, streets and sidewalks from the prohibitions concerning drinking or consuming of alcoholic liquor and cereal malt beverages in public areas, streets and sidewalks;

WHEREAS, the Tonganoxie Public Library will secure the appropriate license from the State of Kansas to serve alcoholic liquor and cereal malt beverages in accordance with all applicable state laws and municipal ordinances in the area designated by the Division of Alcoholic Beverage Control within the enclosed designated area during the event;

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

Section 1. That Tonganoxie Public Library monthly artist sessions are hereby designated as a special event and authorization is given by the Governing Body of the City of Tonganoxie for the consumption of alcoholic liquor and cereal malt beverages during the specified dates and times at 303 S Bury Street.

ADOPTED by the Governing Body this 16th day of April, 2018.

SIGNED by the Mayor this 16th day of April, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney



Office of the City Manager
AGENDA STATEMENT

DATE: April 16, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Dan Porter, Assistant City Manager
SUBJECT: Lease Agreement with Janet Falk on behalf of Tongie Tidal Waves

DISCUSSION:

Janet Falk has submitted a request to City staff to utilize the Tonganoxie Water Park for swim team practice and meets held by Tongie Tidal Waves, a community swim team. For the past 9 years the group has rented the Water Park during the summer season, which runs from the end of May through the beginning of July. The nature of the rental is a series of scheduled private events that are closed to the public.

Attached for the City Council's consideration is a lease agreement, which defines the terms of private use, including; schedule, payments, insurance requirements, and pool rules. This year's agreement contains identical terms as leases from the prior three years.

Practices are anticipated to occur early Monday through Thursday mornings prior to public hours, with three home meets scheduled. Total estimated rental time of the Water Park is approximately 55 hours.

BUDGET IMPACT:

None. Revenues and expenditures for the Water Park are budgeted according to historical data and trends in usage. Historical data includes use of a similar nature to this lease agreement.

ACTION NEEDED:

Make a motion to approve the lease agreement with Tongie Tidal Waves for the 2018 season.

ATTACHMENTS:

2018 Lease Agreement with Tongie Tidal Waves

cc: George Brajkovic, City Manager
Darren Shupe, Pool Manager

FACILITY USE LEASE

THIS LEASE is made this 16th day of April, 2018 (Effective Date), between the City of Tonganoxie (City), a constitutionally chartered municipal corporation in the state of Kansas, and Janet Falk (Lessee), whereby Lessee shall lease the Tonganoxie Water Park (Premises) under the terms and conditions contained in this Lease.

In consideration of the covenants and agreements hereinafter set forth, it is hereby agreed as follows:

PART I SPECIAL TERMS AND CONDITIONS

Sec. 1 Leased Space

The City grants to Lessee permission to use the Premises upon the terms and conditions specified in this Lease and will otherwise close the Premises to the public. "Premises" is further defined as the Tonganoxie Water Park, which is bounded by 2nd Street on the north, Main Street on the west, Pleasant Street on the east, and 3rd Street on the south, including the buildings, swimming pool, furnishings, parking spaces, green spaces, and appurtenances.

Sec. 2 Lease Schedule

The event of the Lessee (Event) under the terms of this Lease on the Premises shall only take place upon the dates and specified times as defined in Addendum A.

Sec. 3 Payment

- A. The Lessee agrees to pay as and for rental of the Premises the rate(s) as defined in Addendum A. Lessee shall pay for any City staff time that is required beyond the time limits of this Lease at a rate of time and one half per half-hour increment due to any cause or act by Lessee or Lessee's guests.
- B. Rental includes the time that City staff open the Premises for the leased purposes until the Event is completed.
- C. A refundable cleaning and damage deposit of \$100.00 will be required upon execution of this Lease.
- D. Lessee will make payments in accordance with the terms of Addendum A.
- E. At 12:01 AM seven days prior to the first date of occupancy under the terms of this Lease, Lessee shall have no right to any refund of rent payments due to cancellation by Lessee. However, the City may refund the cleaning and damage deposit to the extent that Lessee or Lessee's guests made no use of the Premises.

Sec. 4 Cancellation

Lessee agrees and understands that the City has the right to cancel and terminate this Lease if the payment schedule or all other obligations of Lessee hereunder are not strictly performed. In the event of any cancellation or termination by the City or Lessee, the City has the right to retain the non-refundable deposit, not as liquidated damages but as payment for administrative costs associated with negotiation and preparation of this Lease. Otherwise, the deposit shall be applied against funds due the City under this Lease. Should Lessee cancel or fail to hold scheduled event, or if Lessee fails to make the necessary payments as provided

herein, without prior written approval from the City Manager, all payments previously received from Lessee as a deposit or rental shall become the property of the City and shall not be refunded or transferred.

Sec. 5 Notices

All notices required by this Lease shall be in writing sent by regular U.S. mail, postage prepaid or commercial overnight courier to the following:

To City:

Pool Manager
P.O. Box 326
Tonganoxie, Kansas 66086
Phone: (913) 845-2620 Facsimile: (913) 845-9760

To Lessee:

Janet Falk
Tonganoxie Tidal Waves
11263 230th Street
Linwood, Kansas 66052
Phone: (913) 369-5208
tongieswim@gmail.com

All notices are effective on the date mailed or deposited with courier.

Sec. 5 Merger

This Lease consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This Lease, including any Attachments and incorporated documents, constitutes the entire Lease between the City and Lessee with respect to this subject matter.

Sec. 6 Conflict between Lease Parts

In the event of any conflict or ambiguity between the Special Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Lease, Part I will be controlling.

Sec. 7 Term of Lease

This Lease shall begin on the Effective Date and shall terminate at the end of the day July 31, 2018. The term of this Lease may be extended by mutual, written consent of the City and Lessee for a time not to exceed the 2018 season.

Sec. 8 Responsibilities of City

- A. The City will provide sufficient staff, as determined by the Pool Manager or Pool Manager's superior, to ensure the safety of guests of the Event.
- B. The City will provide for proper and adequate functionality of the Premises as is customary for general public use, including, but not limited to, water chemistry, showers and restrooms, utilities, and secure access.

Sec. 9 Attorney Services Certification

Lessee certifies that at the time of the issuance of the Lease, either in an individual or firm capacity, Lessee does not represent any part in litigation against the City, exclusive of representation in municipal court, exclusive of those attorneys employed by a not-for-profit legal services corporation and exclusive of where the City is named as a nominal part, where the litigation has been filed with the Lease of the City and the party represented by the attorney, or where the council has otherwise waived this requirement.

**PART II
STANDARD TERMS AND CONDITIONS**

Sec. 1. Indemnification: Definitions

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

- i. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.
- ii. **Lessee's Agents** means Lessee's officers, employees, sub-consultants, subLessees, successors, assigns, invitees, and other agents.
- iii. **City** means City of Tonganoxie and its agents, officials, officers and employees.

B. Lessee's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of the City, shall be limited to the coverage and limits of insurance that Lessee is required to procure and maintain under this Lease. Lessee affirms that it has had the opportunity to recover the costs of the liability insurance required in this Lease in its contract price.

C. Lessee shall defend, indemnify and hold harmless the City from and against all claims arising out of or resulting from all acts or omissions in connection with this Lease caused in whole or in part by Lessee or Lessee's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of the City. Lessee is not obligated under this Section to indemnify the City for the sole negligence of the City.

D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Lease.

Sec. 2. Independent Agency.

Lessee is an independent agent and is not the City's agent. Lessee has no authority to take any action or execute any documents on behalf of the City.

Sec. 3. Insurance.

A. Unless otherwise waived by the City in writing, Lessee shall procure and maintain in effect throughout the duration of this Lease insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Lease, Lessee shall supply such insurance at the City's cost. Policies containing a Self-Insured Retention are unacceptable to the City.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds

b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000

c. No Contractual Liability Limitation Endorsement

d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.

2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:

\$500,000 disease-policy limit

\$100,000 disease-each employee

3. If applicable, Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Lease, by Lessee.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

A. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to the City, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that the City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Lease. Lessee shall provide to the City at execution of this Lease a certificate of insurance showing all required endorsements and additional insureds.

B. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Kansas to do business in Kansas.

C. Regardless of any approval by the City, liability is the responsibility of Lessee and should maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Lessee's failure to maintain the required insurance in effect, the City may order Lessee to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Lease as provided for herein and by law.

Sec. 4. Governing Law.

This Lease shall be construed and governed in accordance with the law of the State of Kansas. The parties submit to the jurisdiction of the courts of Leavenworth County and the State of Kansas and waive venue.

Sec. 5. Compliance with Laws.

Lessee shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Lease.

Sec. 6. Default and Remedies.

If Lessee shall be in default or breach of any provision of this Lease, the City may terminate this contract, suspend the City's performance, withhold payment or invoke any other legal or equitable remedy after giving Lessee notice and opportunity to correct such default or breach.

Sec. 7. Waiver.

Waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Lease can be waived except by written consent of the City, and forbearance or

indulgence by the City in any regard whatsoever shall not constitute a waiver of same to be performed by Lessee to which the same may apply and, until complete performance by Lessee of the term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Lease or by law despite any such forbearance or indulgence.

Sec. 8. Modification.

Unless stated otherwise in this Lease, no provision of this Lease may be waived, modified or amended except in writing signed by the City.

Sec. 9. Headings; Construction of Lease.

The headings of each section of this Lease are for reference only. Unless the context of this Lease clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 10. Severability of Provisions.

Except as specifically provided in this Lease, all of the provisions of this Lease shall be severable. In the event that any provision of this Lease is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Lease shall be valid unless the court finds that the valid provisions of this Lease are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Lease could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 11. Audit.

- A. The City Manager or designee shall have the right to audit this Lease and all books, documents and records relating thereto.
- B. Lessee shall maintain all its books, documents and records relating to this Lease during the contract period and for three (3) years after the date of final payment.
- C. The books, documents and records of Lessee in connection with this Lease shall be made available to the City Manager or designee within ten (10) days after the written request is made.

Sec. 12. Assignability or Subcontracting

Lessee shall not subcontract, assign or transfer any part or all of Lessee's obligations or interests without the City's prior approval. If Lessee shall subcontract, assign, or transfer any part of Lessee's interests or obligations under this Lease without the prior approval of the City, it shall constitute a material breach of this Lease.

Sec. 13. Conflicts of Interest.

Lessee certifies that no officer or employee of the City has, or will have, a direct or indirect financial or personal interest in this Lease, and that no officer or employee of the City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Lessee in this Lease.

THIS LEASE CONTAINS INDEMNIFICATION PROVISIONS

IN WITNESS WHEREOF, Lessee and the City have caused this Facility Use Lease to be duly executed as set forth below.

Lessee

I hereby certify that I have authority to execute this document

By: _____

Printed: _____

Title: _____

City of Tonganoxie, Kansas

a constitutionally chartered municipal corporation

By: _____

Darren Shupe

Title: Water Park Manager

Addendum A

Sect. 1 Usage Schedule

Lessee is the organizer and responsible party for a private community swim team for children, Tongie Tidal Waves. The Lessee will use the Premises up to 55 hours according to the following year 2018 schedule:

- 2018 Proposed Schedule: (\$10.00 per practice hour and \$30.00 per swim meet hour)



Swim Schedule 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		May 29 1st practice 8:00—10:00 2 hrs.	May 30 Practice 8:00—10:00 2 hrs.	May 31 Practice 8:00—10:00 Stroke clinic 7:00 2 hrs.	June 1 Practice 8:00—10:00 2 hrs.	2 = \$80.-
3 Stroke clinic @ 3:00 p.m. @ Lansing Aquatic Center—LHS	June 4 Practice 8:00—10:00 2 hrs.	June 5 Practice 8:00—10:00 (Team pictures) 2 hrs.	June 6 Practice 8:00—10:00 2 hrs.	June 7 Practice 8:00—10:00 2 hrs.	June 8 Swim Meet 7am @ Lansing	June 9 = \$80.-
10	June 11 Practice 8:00—10:00 2 hrs.	June 12 Practice 8:00—10:00 2 hrs.	June 13 Practice 8:00—10:00 2 hrs.	June 14 Practice 8:00—10:00 2 hrs.	June 15 Swim Meet 7am @ Tongie Vs LF/LQ 5 hrs x \$30	June 16 = \$230.-
17	June 18 Practice 7:00—9:00 2 hrs.	June 19 Practice 7:00—9:00 2 hrs.	June 20 Practice 7:00—9:00 2 hrs.	June 21 Practice 7:00—9:00 2 hrs.	June 22 Swim Meet 7am @ Tongie Vs Leavenworth 3 hrs x \$30	June 23 = \$230.-
24	June 25 Practice 7:00—9:00 2 hrs.	June 26 Practice 7:00—9:00 2 hrs.	June 27 Practice 7:00—9:00 2 hrs.	June 28 Practice 7:00—9:00 2 hrs.	June 29 Swim Meet -7am @ Tongie Vs Eudora Tube-O-Rama 5 hrs x \$30	30 = \$230.-
July 1	July 2 No Practice	July 3 No Practice	July 4 Independence Day No Practice	July 5 End of the Season Award Night/ Swim Party 6:30	July 6	July 7 = \$850.-

Team Award Night/Party July 5, 2018 6:30 pm

03/11/2018

Total 2018 Fees = \$850.00

Sect. 2 Fee Rate

The fee for reserving the Premises will be \$10 per hour for swim practice and \$30 per hour for swim meets for a total fee of \$850. Lessee is not required to pay standard rental rates or for the costs of City staff time during the scheduled times as described in Section 1 herein.

Sect. 3 Payment Schedule

One half of the total fee due, or \$425, shall be paid to the City, in a form acceptable to the City, no later than the close of business May 26, 2017. The balance shall be paid no later than July 31, 2017. The City will send the payment invoice pursuant to Part 1, Section 5 of this Lease herein.

Sect. 4 Rain Provision

If the City Manager or Pool Manager determines that inclement weather or an act of God would unduly hinder or pose unreasonable risk to holding the Event or part of the Event, the City will reduce the total amount of rent due by Lessee in applicable hourly increments for such determined time. However, if the Lessee schedules, with City approval, an alternate day and time in lieu of the missed time, the Lessee will not be entitled to reduced rent.

If the Lessee believes that this Rain Provision applies to the Event, the Lessee must call by telephone or e-mail, with reasonable expediency, the Pool Manager (dshupe@tonganoxie.org) and either the Assistant City Manager (dporter@tonganoxie.org) or the City Manager (gbrajkovic@tonganoxie.org) to request a cancellation pursuant to Section 4 herein. The City will make the final determination of the applicability of this Rain Provision and respond to Lessee as promptly practicable.

Sect. 5 Water Park Rules

A. The following are **prohibited on the Premises**:

- | | |
|--------------------------------------|----------------------------------|
| 1. Fighting | 8. "Chicken" fighting |
| 2. Stealing | 9. Dunking |
| 3. Inappropriate language | 10. Over sized rafts |
| 4. Skate boarding | 11. Running on the pool deck |
| 5. Throwing people into the pool | 12. Drinking alcoholic beverages |
| 6. Disobeying lifeguards | 13. Smoking |
| 7. Flotation devices in the deep end | |

B. The following are **required on the Premises**:

1. Following all diving rules
2. Following all slide rules
3. Respect for all staff and visitors



Office of the City Manager
AGENDA STATEMENT

DATE: April 16, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: George Brajkovic, City Manager
SUBJECT: Request for award of bid and approval to authorize agreement for repairs to City Hall roof

DISCUSSION:

Precipitation events occurring in the past 8-10 months resulted in conditions in the City Hall building located at 526 E 4th Street that indicated issues with the waterproofing of the roof on the building. Leaks in at least three specific areas of the building resulted in damage to ceiling tiles and deterioration of the metal decking structures located directly underneath the roof seal. After gathering information and providing City Council with periodic updates over the past several months, City staff request approval to accept the low bid received for repairs and the replacement of several elements of the City Hall roof. These repairs include removal of the existing built up roof system, installation of a new fully-adhered roof system suited for the building, and the replacement of any deteriorated metal decking materials required due to deterioration linked to moist conditions.

The tabulation of the 4 bids collected for performance of these services is listed below. Each bid amount reflects an increase from the attached formal bid documents corresponding to the projected replacement of 200 square feet of deteriorated metal decking located beneath the roof. The full extent of this material in the condition to require replacement is not able to be known until the roof is removed, but this measurement reflects the anticipated requirements of the level of repair based on inspection during the walk through process.

2018 Repairs to City Hall Roof

Midwest Coating Inc. -	\$28,845.93
Christian Brothers Roofing LLC -	\$30,129.60
Redhammer Roof Group LLC -	\$33,855.32
Delta Commercial Roofing -	\$37,740.00

Based on the bids and consideration of the project requirements, staff recommends approval of the low bid received for the repairs to the City Hall roof with Midwest Coating Inc. At this time it is anticipated that the work could commence in May 2018 and be completed in June 2018.

BUDGET IMPACT:

While the expense is unanticipated and of an urgent nature, the impact of the expense on the 2018 budget is minimal due to bid outcomes and the financial impact of decisions authorized by the City Council earlier in 2018. The expenditure will be made out of the General Fund contractual services budget and is anticipated to be approximately offset by the portion of the proceeds (85%) from the sale of the Former City Garage Facility not set aside for fund balance policy requirements.

ACTION(S) NEEDED:

Make a motion to approve execution of an agreement with Midwest Coating Inc. to repair the City Hall roof and replace any necessary materials for an amount not to exceed \$28,845.93.

ATTACHMENTS:

City Hall Roof Repair Quotes (4)
Midwest Coating Inc. Insurance & Certification Documents
Midwest Coating Inc. draft contract agreement

cc: Dan Porter, Assistant City Manager
Kent Heskett, Public Works Director



Phone: (785) 232-4276
Fax: (785) 232-2856
3830 NW 16th
Topeka, KS 66618
MidwestCoating.us

PROPOSAL - # QUO-03243-C1J5

Rev: 1

Work To Be Performed for:

Midwest Coating, Inc.
3830 NW 16th St
Topeka, KS 66618
Ph #:785-232-4276
Fax #:785-232-2856

City of Tonganoxie
321 So. Deleware
Tonganoxie, KS 66086
(913) 417-7050

We hereby propose to furnish the materials and perform the labor necessary for the completion of a White 60 mil Mule-Hide TPO roof system to be installed at 526 East 4th Street, Tonganoxie KS 66086 - approximately 3,624 sq. ft. of material. The work will include the following:

- * Prepare jobsite and surrounding area for installation of the White 60 mil Mule-Hide TPO Roofing System.
- * Remove and dispose of gravel on roof area.
- * Remove and dispose of existing roof down to deck.
- * Install 2" inches of flat Poly-ISO insulation of roof area.
- * Install new mechanically fastened 60 Mil Mule-Hide TPO roofing system in accordance to manufacturer's specifications.
- * Install roofing membrane up and / or over parapet walls with edge detail as shown on C.A.D. and in accordance with manufacturer's specifications.
- * Install custom made and / or prefabricated flashings over all roof penetrations.
- * Install new drain flashings per manufacturer's specifications and re-use existing dome strainers.
- * Install new 2 piece metal edge.
- * Owner is responsible for calibrating satellite receiver or antenna after roof is completed.
- * Given that the deck integrity cannot be completely observed beneath the existing roof, if any rotten or deteriorated decking is discovered during the roofing process the owner will be notified ASAP and a replacement or overlay price will be negotiated at that time.
- * Midwest Coating, Inc. does not guarantee ponding water will be completely eliminated when using a tapered insulation system.

** Option: Metal decking will be replaced at a price of \$5.00 per sq ft. (On full tear off only)

A 20-year warranty on material and labor, furnished by manufacturer will be provided.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of:

TPO	\$27,845.93
Tax	_____
Total	\$27,845.93



City of Tonganoxie

\$27,845.93

PROPOSAL - # QUO-03243-C1J5

Payments to be made as follows:

Payment due upon completion of job.

A finance charge of 1.5% per month (18% per annum) will be charged to past due accounts.

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent on strikes, accidents or delays are beyond our control. Owner shall purchase and maintain builders risk or other property and liability insurance to protect his own investment. Midwest Coating, Inc. shall purchase and maintain such commercial General Liability, Workers Compensation and other insurance as is appropriate for the project, whether it is to be performed or furnished by Midwest Coating, Inc., by any direct sub-contractor, or by anyone directly or indirectly employed by Midwest Coating, Inc.

Respectfully Submitted by:

Note: This proposal may be withdrawn by us if not accepted within 15 days.

Randy Morris

Wednesday, March 14, 2018

Randy D. Morris - President

Date

Midwest Coating, Inc.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date: _____

Signature: _____



Triple excellence award winner



Years Awarded 2014, 2015 & 2016



Previous Awards 2010, 2011, 2012, 2013, 2014 & 2015



6309-3 NW Kelly Drive · Parkville · Missouri · 64152 · Phone 816-453-ROOF (7663) · Fax 816-581-6484

SUBMITTED TO:

Tonganoxie City Hall
526 E 4th St
Tonganoxie, KS 66086
913-208-6590

kheskett@tonganoxie.org

On:

2/28/2018

By (Estimator):

Dion Stroble
816-809-8281 Text or Call
dion@453roof.com



Synchrony Financing Available - 0%, 5.99%, 7.99% Or 9.99%

We hereby propose to furnish all the materials and perform all the labor necessary for the completion of:

- Tear off 2 existing roofs down to original metal deck.
- Inspect metal roof deck over front restroom roof area and cut out rotted metal replace with new 20 Gauge metal decking
- Install GAF Energy Guard 2" Polyiso roof insulation.
- Mechanically fasten with 3" Rhinobond plates and screws.
- Install GAF Everguard 60 mil TPO Rhinobond adhered roofing system, to meet FM I-90, 105 lbs per sq. ft wind uplift.
- Mechanically fasten new 22 Gauge fabricated metal roof edge painted Kynar 500 finish, customer choice of color.
- Install TPO pipe boot flashings and heat weld TPO to all protrusions.
- Heat weld 2-way cover strip to terminate roof edge detail.
- Install pads for HV/AC existing frames to rest on to keep from damaging new roof due to vibration.
- Heat weld new pitch pocket and seal HV/AC condensing lines and electrical lines thru roof with TPO 2-part liquid sealant.

Clean up daily and haul away all job related debris protect existing roof area below roofs being repaired.

Note : If any rotted metal decking other then over restroom area needs replaced additional cost is \$ 5.50 per sq. ft. photos will be taken and work will have to be approved by customer before we proceed with repairs.

Roof Installation Includes The GAF Integrated Roof System Warranty - Up To 20 Years

Includes Material Replacement & Labor Cost To Replace The Material - Flashings & Accessories NOT Included

Option To Include GAF Diamond Pledge NDL Warranty For Additional Charge 0 Of \$ 875.00

10 Year Workmanship Warranty from Christian Brothers Roofing, LLC

Project Total Cost is \$30520.73. If Purchase Is Paid By Cash/Check The Day Of Completion There Is A Discount Applied Of \$1591.13 Bringing Total Due The Amount Of \$28929.6 As Indicated On The Line Below. All Options Listed Above Reflect Cash/Check Pricing

With payment to be made as follows:

Cash Or Check Due At Completion dollars **\$28,929.60**

Any alterations or deviation from above specifications involving extra costs will become an extra charge over and above the estimate. All proposals are subject to approval of management. Any representations or other communications, not written in this Proposal are agreed to be immaterial, and not relied on by either party and do not survive the execution of this Contract. You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date below. Cancellation must be in writing and received at the business address above.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Authorized

Signature

Contractor

Dion Stroble
Dion Stroble

2/28/18

Signature

Date Accepted:

Buyer

Note: This proposal may be withdrawn by us if not accepted within 10 days

THIS PROPOSAL CONTAINS THE FOLLOWING WARRANTIES AND PROVISIONS AND IS SUBJECT TO ALL APPROPRIATE ORDINANCES, LAWS AND REGULATIONS.

1. This proposal pertains to roofing services provided by Christian Brothers Roofing, LLC, hereinafter "CBRLLC".
2. This Proposal shall be valid for ten (10) days after the date of the proposal. If not accepted by delivering a signed original to CBRLLC within that period, along with any applicable down payment, the Proposal shall be deemed void. Any subsequent proposals will depend on the availability of supplies and personnel.
3. Unless rejected for "Management Approval" this proposal constitutes the entire contract between the parties and may be changed only by mutual written agreement of the parties.
4. Final payment is due upon the completed roof system. Payment is to be made to CBRLLC in Parkville, MO. CBRLLC must be notified of an alleged defect in writing within seven days after a roof system completion.
5. Payment not received upon completion may be deemed in default. In the event of a default, interest shall accrue from the date of default at the lesser of 1.5% per month (18% PER ANNUM) or the maximum allowed by law, with a minimum charge of five dollars (\$5.00) per month. In the event CBRLLC employs attorneys or other experts in connection with the enforcement of this contract, then to the extent not prohibited by applicable law, the customer agrees to pay promptly upon demand by CBRLLC, all the attorneys' fees, costs and expenses incurred by CBRLLC with respect to said services, whether or not suit is brought.
6. We assume no responsibility for damage due to high speed winds, tornados, hurricanes, fire, vandalism, terrorist activity, war, or other hazards absent a mutual written agreement executed by the parties. Any such agreement must be executed by an officer of CBRLLC.
7. Except as found within this proposal, replacement of roof jacks, ventilators, decking, fascia boards, flashing or other materials is not covered by the terms of this Proposal. If it is determined in the course of performance that such work is necessary, it will be performed on a time and material cost basis. CBRLLC assumes no responsibility for the performance of such work by another contractor.
8. Proper installation of the roof system may require replacement of existing flashing. During such replacement, siding adjacent to this flashing which has deteriorated may crack, break or tear. CBRLLC will make every commercially reasonable effort to avoid damage but will not be held responsible for any consequential damage to siding.
9. During the application of the roof system, vibration from the roof may be transmitted throughout the building. The customer assumes responsibility for all objects hung from exterior and interior walls and from ceilings and soffits. These have been known to fall during installation and CBRLLC will not be held responsible if any damage occurs.
10. CBRLLC is considerate of the customer's gardening, flower beds and landscaping, however, due to the nature of roof system installation some damage may occur. We attempt to minimize any damage and will not be held responsible if any damage occurs.
11. Customer shall not walk under work area while roof work is in progress. Construction is a danger to person(s) on the ground from falling debris.
12. In the event that CBRLLC removes a satellite dish from said roof in order to complete work, the homeowner shall be solely responsible for hiring a qualified technician to reinstall such equipment. Any cost arising from such work shall be the sole responsibility of the homeowner.
13. CBRLLC shall not be liable for preexisting structural deficiencies. We will make an effort to inform the customer of any deficiency of which we become aware. We are not responsible for conducting an inspection for any such deficiencies. The installation of the new roof system may intensify the appearance of any deficiency that previously existed in the roof. CBRLLC will not take responsibility for solving preexisting structural deficiencies or the appearance of those deficiencies.
14. It is the responsibility of the customer to notify CBRLLC within seventy-two (72) hours of the discovery of a leak.
15. With regard to completed repair work, CBRLLC shall have no warranty liability except for the area(s) which we performed repair work to, as agreed upon in this contract.
16. If a warranty claim is made, CBRLLC will send a representative to inspect and investigate any reported leak. More than one inspection may be necessary to isolate the cause. It is the responsibility of the customer to provide acceptable times and dates for such inspections and access.
17. If material(s) are delivered or must be restocked or reordered due to a customer's cancellation, the customer is responsible for paying the restocking fee of 20%, or 100% of any special order material, no later than 15 days from the date of cancellation. This fee is charged to CBRLLC, by the roofing material distributor, and will be passed on to the customer, should the cancellation occur.
18. Each provision of this proposal is separate and independent. The invalidity or unenforceability of any one provision shall have no effect on the remaining provisions.
19. We will not wire electrical accessories attached to the roof system. Our installers are not licensed electricians.
20. Customer must provide copy of this contract for warranty work.
21. Customer must advise our office of any cancellation in writing postmarked no later than three (3) business days from the date the contract is accepted and signed by the customer.
22. CBRLLC shall not be liable for failure to complete the job or to deliver the goods or for delays in completion or delivery occasioned by acts of God, war, terrorist activity, embargoes, strikes or other labor difficulties, lockouts, riots, fires, inability to obtain materials or shipping space, breakdowns, delays of carriers or suppliers, governmental acts and regulations, and/or other causes beyond CBRLLC's reasonable commercial control. Any estimated completion dates are only estimates and CBRLLC shall not be liable in any manner whatsoever for failing to complete the job by such date. Customer shall remain liable as long as the job is completed within a commercially reasonable time after the estimated completion date which in all events shall not be more than one hundred and eighty days after the estimated completion date.
23. Christian Brothers Roofing, LLC, warrants its roofing systems to be free from leaks for the duration specified. CBRLLC assumes liability for repair of any workmanship and defects in installation causing leakage. Roofing material is warranted by the manufacturer under a separate warranty which is issued to the customer. CBRLLC shall have no liability for any interior or exterior damage to the customer's building. CBRLLC's liability to the customer under this warranty in no case will be greater than the original cost of the proposal. In no event shall CBRLLC be liable for lost profits, or any incidental, special or consequential damages. These limitations apply whether liability is based on contract, negligence, or otherwise. When this warranty expires, all liability under the warranty ends. This warranty does not apply and is void if the roof has been altered without CBRLLC's written authorization, or otherwise damaged unless customer can show that the alterations were not the cause of the defect. CBRLLC shall not be liable for customary variances from specifications.

"NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE."

Redhammer Roof Group, LLC
1401 Kansas Avenue
Kansas City, MO 64127
Phone: (816) 965-6220
Fax: (816) 241-4847
www.redhammerroof.com



Kent Heskett
526 E 4th St
Tonganoxie, KS 66086 USA

Date: 02/19/2018

Building:
Tonganoxie City Hall,
526 E 4th St, Tonganoxie, KS 66086

Proposal

Job: PRJ #2268:Tonganoxie City Hall

Tonganoxie City Hall:

SCOPE OF WORK:

- Remove existing built up roof system down to metal decking.
- Remove all existing gravel stop metal flashing from perimeter edge around entire building.
- Remove existing gutters and down spouts.

NOTE: MECHANICALLY FASTEN SYSTEM:

- Install one layer of 2" ISO.
- Install 1/4" 4'x8' Secure Rock over existing built up roof.
- Fasten to manufacturers specifications.
- Mechanically fasten 60 mill VERSICO TPO single ply roof system over new cover board to manufacturers specifications.
- Re install new metal edging around entire perimeter of building.
- Install 6" cover strip around perimeter edge.
- Flash all HVCA/ and other penetrations to manufacturers specifications.

PRICE:\$25,663.14

NOTE:FULLY-ADHERED ROOF SYSTEM:

- Install one layer of 2" ISO
- Install 4'x4' primed dens-deck over built up roof.
- Fasten to manufacturers specifications.
- Fully adhere 60 mill VERSICO TPO roof system.
- NOTE: Both systems to be installed with same scope of work for the
- exception of cover boards and bonding will change pricing.
- Both roof system will carry a 20 yr. manufacturers warranty.
- Bid includes labor, materials and clean up.
- **Contractor guarantees workmanship for(2) years from date of job completion.

PRICE:\$27,145.32

Redhammer Roof Group, LLC

1401 Kansas Avenue
Kansas City, MO 64127
Phone: (816) 965-6220
Fax: (816) 241-4847
www.redhammerroof.com



EDGE METAL

- Add* • 24 gauge metal flashing for perimeter.

PRICE:\$5,000.00

GUTTERS

- 6" gutters and down spouts

PRICE:\$710.00

*NOTE:ANY METAL DECK REPLACEMENT WILL A ADDITIONAL CHARGE AT \$1,000.00 PER SQ WHICH WILL DEPEND ON THE STYLE OF DECKING TYPE A/B OR C

David M Facticeau
Redhammer Roof Group, LLC

Kent Heskett

From: dfacteau@redhammerroof.com
Sent: Tuesday, March 13, 2018 10:39 AM
To: Kent Heskett
Cc: 'Eric'
Subject: Tonganoxie city hall

Kent

Good morning

I have looked into the decking for this project.

It seems that the deck you have on the building at this time

Is a old style which they don't make any more.

We can us style A deck which should work for the repairs.

I believe we are still going to use 4- 20' panels to replace bad areas.

We are still looking at \$10 a sq' but we can keep it to a not exceed Price of \$1,000.00

If you have any further questions feel free to give me a call.

Thanks,

David Facteau

Mobile (913) 238-7409

816-965-6220





508 S 14th St



Kansas City, KS 66105



phone (913) 371-7100
fax (913) 371-7107
www.deltaservices.com

March 5, 2018

City of Tonganoxie
526 E 4th Street
Tonganoxie, KS 66086

via email: kheskett@tonganoxie.org

Attn: Kent Heskett

Re: City Hall Roof Replacement.

Please find below our prices and brief scope of work to replace the existing roof at the new city hall.

Price: \$ 32,021.00

Add to replace the gutters and downspouts. \$ 3,719.00

Unit Costs:

Remove and replace rusted metal deck: \$ 10.00 per square foot

Scope of Work:

- Remove and dispose of the existing roofing and roof insulation.
- Remove and dispose of the existing edge metal.
- One (1) layer of 2" Polyisocyanurate insulation board will be attached to the metal deck.
- A new 60 mil TPO mechanically attached roof and flashing system will be installed.
- New prefinished sheet metal fascia and edge metal will be fabricated and installed. Color to be selected from the manufacturer's standard colors.
- A manufacturer's 20 year material and labor warranty and 2 year contractor warranty will be issued when the project is completed.

Respectfully Yours,

David B. Marr

David B. Marr
Project Manager



STATE OF KANSAS REGISTRATION CERTIFICATE



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:
KNOW YE, THAT I, DEREK SCHMIDT, ATTORNEY GENERAL OF THE STATE OF KANSAS,
do hereby certify that

MIDWEST COATING, INC.
13-115009

**IS A REGISTERED ROOFING CONTRACTOR, AS PRESCRIBED IN
KANSAS ROOFING REGISTRATION ACT
THIS CERTIFICATE IS VALID FROM JULY 1, 2017, THROUGH JUNE 30, 2018**

IN TESTIMONY WHEREOF, I have hereunto subscribed
my name this 29th day of March, AD 2017

Derek Schmidt

ATTORNEY GENERAL DEREK SCHMIDT





STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-3751 • FAX (785) 291-3699
TOLL FREE IN KANSAS (800) 432-2310
WWW.INYOURCORNERKANSAS.ORG

March 29, 2017

Mr. Randall D. Morris
Midwest Coating, Inc.
3830 NW 16th Street
Topeka, KS 66618

Re: Roofing Certificate of Registration

Mr. Morris:

Thank you for filing your application for registration pursuant to the Kansas roofing registration act. Enclosed with this letter please find your 2017 Certificate of Registration No. **13-115009**.

Your Certificate of Registration may not be shared or used by any other individual or business, except that business entities acting as one unit may be granted a single registration certificate. Your registration number shall be submitted when applying for any permit issued by the state, or any of its subdivisions, for commercial or residential roofing services or projects, if a permit is required by such authority. Your registration number shall be written on each permit issued.

Your registration number shall be displayed on each commercial vehicle used for roofing services and upon every business sign, card, correspondence, and contract used to solicit and conduct roofing services in this state as stated per the Kansas Roofing Registration Act.

This Certificate of Registration allows you/your company to engage in the roofing business within Kansas from July 1, 2017, through June 30, 2018, pursuant to the limitations listed in the Kansas roofing registration act.

If you should have any questions, please contact the Kansas Attorney General's Office at (785) 296-3751.

Sincerely,

Kyle Strathman

Kyle Strathman
Investigator
Roofing Registration Unit

Enclosure

CONSTRUCTION & TECHNICAL SERVICES AGREEMENT

THIS AGREEMENT is dated this 12th day of April, 2018, between the City of Tonganoxie (City), a constitutionally chartered municipal corporation in the state of Kansas, and Midwest Coating Inc. (Contractor), whereby Contractor shall provide construction services to the City in accordance with the terms and conditions contained in this Agreement.

PART I SPECIAL TERMS AND CONDITIONS

Sec. 1

Compensation

- A. The amount the City will pay Contractor under this Agreement will not exceed \$28,845.93. Contractor will be paid by corporate check.
- B. Contractor will bill the City by itemized invoice, in a form acceptable to the City, upon completion of work as certified by the Public Works Director.
- C. It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all terms, covenants and conditions of the Agreement. If damages are sustained by the City as a result of breach or default by Contractor, the City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due the City from Contractor may be determined.
- D. No request for payment will be processed unless the request is in proper form, correctly computed, completely itemized, and is approved as payable under the terms of the Agreement.
- E. The City is not liable for any obligation incurred by Agreement except as approved under the provisions of the Agreement.

Sec. 2

Responsibilities of Contractor

Contractor shall perform the following Scope of Services:

- A. Provide specialized and technical work as further described in Addendum A herein.
- B. Use reasonable construction practices of modern industry standards as to ensure reasonable quality, functionality, and durability of final product.
- C. Comply with direction and coordination of the Public Works Director.
- D. Ensure that Contractor is sufficiently certified, equipped, and staffed to fully satisfy Contractor's responsibilities under the terms of this Agreement.

Sec. 3

Notices

All notices required by the Agreement shall be in writing sent by regular U.S. mail, postage prepaid or commercial overnight courier to the following:

To City:

City Manager
City of Tonganoxie
P.O. Box 326
Tonganoxie, Kansas 66086
Phone: (913) 845-2620 Facsimile: (913) 845-9760

To Contractor:

[person of contact, title] *Matt Frydondall, Sales*
Midwest Coating Inc.
3830 NW 16th St
Topeka, KS 66618
Phone: (785) 232-4276 Facsimile: (785) 232-2856

All notices are effective on the date mailed or deposited with courier.

Sec. 4

Merger

This Agreement consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This Agreement, including any Attachments and incorporated documents, constitutes the entire agreement between the City and Contractor with respect to this subject matter.

Sec. 5

Conflict between Contract Parts

In the event of any conflict or ambiguity between the Special Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Agreement, Part I will be controlling.

Sec. 6

Term of Agreement

This Agreement shall begin on May, 2018, and shall end on June, 2018. The term of this Agreement may be extended an additional 1 months upon to prior written approval by the City.

Sec. 7

Responsibilities of City

- A. The City will provide sufficient and clear direction to Contractor for the adequate fulfillment of the scope of services under the terms of this Agreement.
- B. The City will provide prompt payment to Contractor, upon receipt of acceptable documentation and approval by the City Council, provided that Contractor has performed all work, in a timely manner, to the satisfaction of the City Superintendent.
- C. The City will provide adequate notice to affected residents and businesses of any interruption to normal and reasonable automotive traffic flow.

Sec. 8

Subcontracting

Contractor must provide in writing to the City the name of any and all subcontracted companies and independent contractors that will perform work on behalf of Contractor under the terms of this Agreement.

Sec. 9

Performance Bond

If this Agreement is in the amount of \$40,000.00 or greater, Contractor shall furnish a performance bond to the City executed by a surety for the contract amount, guaranteeing Contractor's faithful performance of each and every term of this Agreement and all authorized changes. Surety must:

- A. Be qualified to issue bonds at amounts specified in the Department of the Treasury Circular 570; and
- B. Be licensed by the State of Kansas to do business in the State of Kansas; and
- C. If applicable, retain an A.M. Best rating of "B+, Class V" for Bonds in excess of \$200,000.

Sec. 10 Incorporation of Federal/State Laws and Regulation

Contractor shall administer and use the funds provided hereunder in conformance with all federal/state laws and regulations applicable to the use of those funds. The federal/state laws and regulations applicable to the use of funds provided under this Agreement are incorporated and made a part of this Agreement by reference. Contractor agrees that it is its responsibility to obtain and familiarize itself with those laws and regulations. All laws and regulations incorporated into this Agreement shall include all subsequent amendments.

Sec. 11 Attorney Services Certification

Contractor certifies that at the time of the issuance of the Agreement, either in an individual or firm capacity, Contractor does not represent any part in litigation against the City, exclusive of representation in municipal court, exclusive of those attorneys employed by a not-for-profit legal services corporation and exclusive of where the City is named as a nominal part, where the litigation has been filed with the agreement of the City and the party represented by the attorney, or where the council has otherwise waived this requirement.

PART II

STANDARD TERMS AND CONDITIONS

Sec. 1. Indemnification: Definitions

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

- i. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.
- ii. **Contractor's Agents** means Contractor's officers, employees, sub-consultants, subcontractors, successors, assigns, invitees, and other agents.
- iii. **City** means City of Tonganoxie and its agents, officials, officers and employees.

B. Contractor's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of the City, shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. Contractor shall defend, indemnify and hold harmless the City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission,

including negligence, of the City. Contractor is not obligated under this Section to indemnify the City for the sole negligence of the City.

D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Contract.

Sec. 2. Independent Contractor.

Contractor is an independent contractor and is not the City's agent. Contractor has no authority to take any action or execute any documents on behalf of the City.

Sec. 3. Insurance.

A. Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at the City's cost. Policies containing a Self-Insured Retention are unacceptable to the City.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000
- c. No Contractual Liability Limitation Endorsement
- d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.

2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:
\$500,000 disease-policy limit
\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by Contractor.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

A. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to the City, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that the City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Contractor shall provide to the City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.

B. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Kansas to do business in Kansas.

C. Regardless of any approval by the City, it is the responsibility of Contractor to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Contractor's failure to maintain the required insurance in effect, the City

may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

Sec. 4. Governing Law.

This Contract shall be construed and governed in accordance with the law of the State of Kansas. The parties submit to the jurisdiction of the courts of the State of Kansas and waive venue.

Sec. 5. Compliance with Laws.

Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement.

Sec. 6. Default and Remedies.

If Contractor shall be in default or breach of any provision of this Contract, the City may terminate this contract, suspend the City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor notice and opportunity to correct such default or breach.

Sec. 7. Waiver.

Waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of same to be performed by Contractor to which the same may apply and, until complete performance by Contractor of the term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 8. Modification.

Unless stated otherwise in this Contract, no provision of this Contract may be waived, modified or amended except in writing signed by the City.

Sec. 9. Headings; Construction of Contract.

The headings of each section of this Contract are for reference only. Unless the context of this Contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 10. Severability of Provisions.

Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. In the event that any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 11. Audit.

A. The City Manager or designee shall have the right to audit this Contract and all books, documents and records relating thereto.

B. Contractor shall maintain all its books, documents and records relating to this Contract during the contract period and for three (3) years after the date of final payment.

C. The books, documents and records of Contractor in connection with this Contract shall be made available to the City Manager or designee within ten (10) days after the written request is made.

Sec. 12. Tax Compliance.

Contractor shall provide proof of compliance with the City's tax ordinances administered by the City Manager as a precondition to the City making the first payment under this contract or any contract renewal when the total contract amount exceeds \$10,000. If contractor performs work on a contract that is for a term longer than one (1) year, the contractor also shall submit to the City proof of compliance with the City's tax ordinances administered by the City Manager as a condition precedent to the City making final payment under the contract.

Sec. 13. Assignability or Subcontracting

Contractor shall not subcontract, assign or transfer any part or all of Contractor's obligations or interests without the City's prior approval. If Contractor shall subcontract, assign, or transfer any part of Contractor's interests or obligations under this Contract without the prior approval of the City, it shall constitute a material breach of this Contract.

Sec. 14. Conflicts of Interest.

Contractor certifies that no officer or employee of the City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of the City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Contract.

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

IN WITNESS WHEREOF, Contractor and the City have caused this CONSTRUCTION Agreement to be duly executed as set forth below.

Contractor

I hereby certify that I have authority to execute this document on behalf of Midwest Coating Inc.

By: Randall Morris

Printed: Randall Morris

Title: President

Approved as to form:

Shannon M. Marcano
City Attorney

City of Tonganoxie, Kansas

a constitutionally chartered municipal corporation

By: _____

Jason K. Ward

Title: Mayor

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, 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 hereby incurred.

By: _____

George Brajkovic

Title: City Manager

Addendum A

Scope of Work

Sec. 1 Contractor will purchase all MP and associated materials that are necessary for complete performance under the terms of this Agreement.

Sec.2 Contractor will [install/construct/apply/repair] MP under the direction of the Public Works Director.

Sec. 3 The total amount of this agreement includes all labor, equipment, and materials.

Sec. 4 Contractor commits to performing work and staging equipment, materials, and personnel, under the direction of the Public Works Director, at allowable locations, allowable times, and in such a manner as not to negatively impact normal operations of City staff, automotive traffic, neighboring properties, and other field work.

Sec. 5 Contractor's quote is hereby incorporated by reference and made part of this Agreement.

[INSERT FULL QUOTE from Midwest Coating Inc.]