

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, OCTOBER 13, 2010

4:00 p.m.

-Convene

-Consider approval of a proclamation for "Kansas Family and Community Education Week" October 10 – 16, 2010. (Judy Wulfkuhle)

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders; and
- (b) Consider approval to purchase an AEV ambulance for the Fire Department (Mark Bradford)

REGULAR AGENDA

- (2) Consider recommendation to purchase a hydraulic excavator for Public Works. (Jackie Waggoner)
- (3) Consider options for disposition of current excavator. (Jackie Waggoner)
- (4) Consider approval of a Lease Agreement with Community Wireless Communications Co. for the use of a Douglas County communications tower. (Josh Montgomery/Jim Denny)
- (5) Discussion on SmartStar program from Westar Energy. (Eileen Horn)
- (6) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Miscellaneous
 - (d) Public Comment
- (7) Adjourn

WEDNESDAY, OCTOBER 20, 2010

-Consider approval of a proclamation declaring October 2010 as "Disability Employment Awareness Month" (Peggy Wallert/Sharon Spratt)

-Consider approval of a CUP for a private airstrip for George Maxwell.(Sheila Stogsdill)

-Consider approval of solar photovoltaic system for Douglas County Extension Office at 2110 Harper (Eileen Horn)

FRIDAY, OCTOBER 22, 2010

-Dedication ceremony for KU School of Pharmacy (one or more Commissioners may attend)

8:30-10:30 a.m. continental breakfast; 9:30-10:30 a.m. tour; 11:00 a.m. dedication ceremony

WEDNESDAY, OCTOBER 27, 2010

4:00 p.m.

Consent:

CPA-4-2-10: Consider amending Chapter 14 – Specific Plans to change references made to the previous Chapter 13 – Implementation regarding the adoption process for plans. The reference needs to be updated to refer to Chapter 17 – Implementation. This was an identified work item in the annual review of the Comprehensive Plan. *Initiated by Planning Commission on 4/26/10.* (Michelle Leininger) (Approved 10-0 on 6/23/10)

CPA-4-3-10: Consider amending Chapter 7 – Industrial and Employment Related Land Uses to be consistent with the approved K-10 & Farmer's Turnpike Plan to include the expanded Santa Fe Industrial Area and I-70 and K-10 industrial area identified in the sector plan. This was an identified work item in the annual review of

the Comprehensive Plan. *Initiated by Planning Commission on 4/26/10.* (PC Item 3; approved 8-0 on 7/26/10)
(Michelle Leininger)

-Consider approval of a vacation of Utility Easements for Ed and Katherine Manda

WEDNESDAY, NOVEMBER 3, 2010

-No Commission Meeting

MONDAY, NOVEMBER 8, 2010

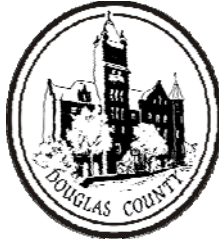
-9:00 a.m. Canvass for Election

WEDNESDAY, NOVEMBER 10, 2010

-Update on Destination Management Inc. (DMI) (Judge Deanell Tacham, Chair of DMI)

-Consider rezoning and adoption of resolution rezoning for property in the unincorporated area for Berry Plastics project

Note: *The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*



Office of the County Commission
PROCLAMATION
For Douglas County, Kansas

WHEREAS: *Kansas Association of Family and Community Education is an independent nonprofit organization instituted for the purpose of enriching Kansas families; and*

WHEREAS: *The mission of Family and Community Education is strengthening individuals, families and communities through: Continuing Education, Developing Leadership and Community Action; and*

WHEREAS: *In Kansas during the past year, more than 54 councils with 155 FCE units and approximately 1,561 members received continuing education through family and community education;*

NOW, THEREFORE, *the week of October 10 through 16, 2010 is hereby proclaimed as:*

“KANSAS FAMILY AND COMMUNITY EDUCATION WEEK”

in recognition and appreciation of Kansas Association for Family and Community Education members' contributions to the State of Kansas, all residents are urged to take proper cognizance thereof.

Dated this 13th day of October, 2010.

**BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS**

Nancy Thellman, Chairman

Jim Flory, Vice-Chair

Mike Gaughan, Member

Memorandum

City of Lawrence
Fire Medical

**To: The Board of County Commissioners
Craig Weinaug, County Administrator**

From: Mark Bradford, Fire Chief

Date: October 7, 2010

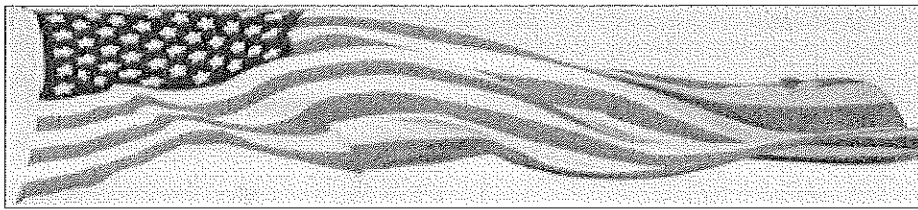
Re: Purchase of Medic Unit

Background:

Per your direction we have located a 2011 GMC 4500 chassis as the result of a canceled order. AEV / American Response Vehicles have extended the Leavenworth Cooperative Bid to us for this purchase. By purchasing this chassis now will save approximately \$31,000 to \$36,000 in costs from having to purchase a 2012 International / Freightliner chassis in late 2011.

Action Request:

Fire Medical Department staff requests approval from the County Commission to purchase one AEV ambulance from American Response Vehicles for a purchase price of \$199,885.00.



AMERICAN RESPONSE VEHICLES

Helping Emergency Services Save Lives

September 30, 2010

Mark Bradford, Chief
Lawrence – Douglas County Fire & Medical
1911 Stewart Avenue
Lawrence, Kansas 64064

Dear Chief Bradford,

Thank you for this opportunity to provide you with additional ambulance. We have located one remaining new Chevrolet C4500 chassis.

Your last ambulance was purchased off our currently held the ambulance contract with Leavenworth County. The specifications for this ambulance allows for Leavenworth County and any other Governmental agency to purchase additional units for a period of two year without the obligation to rebid. We are still within the two year period.

Therefore, we would like to make the following proposal for your consideration:

2011 AEV <i>TRAUMAHAWK</i> CUSTOM TYPE III ambulance conversion	\$1,420.00
2009 Chevrolet C4500 Duramax Diesel chassis price increase	\$3,782.00
Leavenworth Contract Base Price	\$137,431.00
L.D.C.F.M. Options	\$57,252.00
TOTAL PRICE	\$199,885.00

This chassis is in stock and is subject to availability. The prices shown above include all available discounts. Delivery will be 120 to 150 days after receipt of order. Terms are net on delivery or active Lease-Purchase.

Warranties are 20 years on our all aluminum modular body and 7-years or 70,000 miles on our conversion including the electrical system and graphics. The standard Chevrolet chassis warranties will apply.

Thank you for your consideration of AEV. If I may be of any assistance, please contact me anytime at 1-888-448-8881.

Sincerely,

Blake Clifton, President

521 HILLSDALE RD. SUITE 101, COLUMBIA, MO 65201
573-443-8881 TOLL FREE 888-448-8881 FAX 573-815-0051

MEMO TO: The Board of County Commissioners
 Craig Weinaug, County Administrator

FROM: Jackie Waggoner, Purchasing Director
 Division of Purchasing

SUBJECT: Consider Recommendation to Purchase Hydraulic Excavator

DATE: September 23, 2010

Back in August we had prepared a memo comparing Coffey County and HGAC (Houston-Galveston Area Council) contracts to purchase a hydraulic excavator for Public Works.

The equipment attachments for Coffey County's bid were sole sourced to one manufacturer. After reviewing this further we elected to pull our recommendation from the agenda and solicit formal bids. We believed that a different approach could offer considerable cost savings. The table summarizes the bids received:

	Murphy Tractor	Foley Equipment	Berry Tractor & Equipment	Victor L. Phillips	G.W. Van Keppel
Make, Model, and Year	2010/11 John Deere 240DLC	2010 Caterpillar 324DL	2011 Komatsu PC-220LC-8	2011 Case CX240B	2010 Volvo ECZ40C
Basic Bid Price	\$342,954	\$211,900	\$215,400	\$218,845	\$269,410
Less Gov. Discount	\$139,654	NA	NA	Included	\$ 41,000
Delivered Cost with Warranty (full machine 6 years/6,000 hours)	\$203,300	\$211,900	\$215,400	\$218,845 no warranty	\$228,410
5 Year/5,000 Hrs. Buy Back	\$105,000	\$100,000	\$ 90,000	NA	\$108,425
Exception to Specifications	None	No auto reversing fan	None	10 exceptions	None
Exceeds Specifications	Hydraulic Breaker Ready	Quick Evac	None	None	None
Five Year Cost of Ownership	\$98,300	\$111,900	\$125,400	NA	\$119,985

Comparing the low bid to the original option of using Coffey County's contract demonstrates a total cost savings of \$51,814.

Please see the separate memo that outlines options for the Board to consider for the disposition of the existing excavator. Mike Perkins and I will be at the meeting to answer questions you may have.

RECOMMENDATION: The Board of County Commissioners accepts the low bid of \$203,300 from Murphy Tractor for a hydraulic excavator.

MEMO TO: The Board of County Commissioners
Craig Weinaug, County Administrator

FROM: Jackie Waggoner, Purchasing Director
Division of Purchasing

SUBJECT: Consider Options for Disposition of Excavator

DATE: September 23, 2010

The excavator we are purchasing is replacing Public Works existing 1987 John Deere 690D excavator with approximately 10,393 hours. Its current value is \$6,000 - \$10,000 which was determined by one supplier providing us a trade-in allowance and estimating the auction cost. The equipment is currently not operational and would cost approximately \$10,000 to restore.

Below are options to consider for the disposition of the excavator:

- Townships have expressed a need for this type of equipment. The County would have to invest the cost to restore the equipment and maintain it. A rental fee could be established to offset some of the County's expenses.
- Sell the equipment as is in an auction for \$6,000 - \$10,000.
- Ask the dealer who offered the trade-in allowance if they want to purchase the equipment for the price (\$6,000) offered. This dealer was not the low bidder.

Mike Perkins and I will be available to discuss these options.

INTEROFFICE MEMORANDUM

TO: DOUGLAS COUNTY BOARD OF COMMISSIONERS
FROM: JAMES DENNEY, DOUGLAS COUNTY EMERGENCY COMMUNICATIONS
SUBJECT: LEASE OF TOWER SPACE TO COMMUNITY WIRELESS COMMUNICATIONS CO.
DATE: 9/29/2010
CC: CRAIG WEINAUG

Mr. Weinaug has asked that I coordinate and draft a contract allowing Community Wireless Communications Co. to lease space on the county owned tower at 111 E. 11th St. (JLE parking lot). The purpose is to allow this company to install and maintain a CWC owned wireless internet access point in order to provide coverage to part of the City of Lawrence.

I believe this contract and its conditions to be appropriate for the purpose intended.

The contract has been reviewed by legal council.

The Commission is asked to consider and approve the attached contract for that purpose.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**") is signed and entered into on the dates stated below, by and between DOUGLAS COUNTY, KANSAS, having a mailing address of 1100 Massachusetts Street, Lawrence KS 66044 (hereinafter referred to as "**Landlord**") and COMMUNITY WIRELESS COMMUNICATIONS CO., a Kansas corporation, having a mailing address of P.O. Box 3532, 4105 W 6th St., Lawrence KS 66049 (hereinafter referred to as "**Tenant**").

BACKGROUND

WHEREAS, Landlord owns that certain tract of land, together with all rights and privileges arising in connection therewith, generally located at 111 E. 11th Street, Lawrence, Douglas County, Kansas (the "**Property**").

WHEREAS, Landlord owns and maintains a communications tower (the "**Tower**") on the Property and Tenant desires to use the Tower to install and maintain equipment, transmitters, and antennas for use in Tenant's authorized communications business of providing wireless Internet access.

WHEREAS, Landlord is willing to grant to Tenant the right to use a portion of the Tower in accordance with this Agreement.

Therefore, the parties agree as follows:

1. **LEASE OF PREMISES.** Landlord leases to Tenant portions of the Property consisting of (a) contiguous ground area near the base of the Tower of approximately 40 square feet, at a location approved by Landlord; (b) space on the Tower between the level of 50 feet and 190 feet above ground level, together with such easements as are reasonably necessary for installation and maintenance of equipment, transmitters, and antennas; and (c) such easements as are reasonably necessary for the installation and maintenance of equipment, transmitters, and antennas for Tenant's Permitted Use (collectively, the "**Premises**").

2. **PERMITTED USE.** Tenant may use the Premises (collectively, the "**Permitted Use**") solely for the installation, maintenance, and operation of equipment for the transmission and reception of Internet communications ("**Access Point**"). Significant modifications to the equipment or the operation shall require Landlord's prior written approval. Tenant shall be solely responsible for installing, maintaining, operating and repairing its equipment on the Tower. Before installing any equipment on the support structure, Tenant shall provide Landlord with a certification acceptable to Landlord as to the structural integrity of the proposed installation. Tenant shall comply with all federal, state, and local laws, rules, statutes, and regulations applicable to its use of the Access Point and the Premises. It is understood and agreed that Tenant's use of the Premises shall in all matters be subordinate to the Landlord's and/or any governmental entity's use of the Property, including the Tower, for any public purpose. Tenant, at Tenant's sole cost, shall relocate or adjust its equipment or adjust its operations to accommodate Landlord's use within 7 calendar days of when such relocation or adjustment is requested by Landlord to accommodate the Landlord's use or the Property, or any governmental entity's use of the Tower for any public purpose.

3. **COMMENCEMENT DATE.** The "**Commencement Date**" of this Agreement is _____, 2010.

4. **TERM.** The initial lease term will be 5 years (the "**Term**"), commencing upon the Commencement Date and terminating upon the last day of the Term. Thereafter, the lease will continue on a month-to-month basis. By mutual consent of Landlord and Tenant, however, the Term may be extended for a fixed duration. Tenant agrees to notify Landlord in writing at least 180 days in advance of the expiration of the Term if Tenant desires to negotiate an extension of the Term.

5. **RENT.** Tenant shall pay Landlord rent annually in the amount of \$5,000.00, in annual payments with the annual payment being made on or before the Commencement Date and each subsequent annual payment being made on or before the anniversary of the Commencement Date.

6. **TERMINATION.** In the event of material default under this Agreement that remains after the applicable cure period, this Agreement may be terminated by the non-breaching party, without penalty or further liability.

7. **INTERFERENCE.** Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord as long as the existing radio frequency user(s) and Tenant operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Tenant further warrants that its use of the premises shall not interfere with Landlord's future emergency operations or emergency communications equipment on the Property. If at any time during the Term of this Agreement, Tenant's use of the Premises interferes with any existing radio frequency user's operations or any future emergency operations, then, after Landlord has notified Tenant of such interference, Tenant shall take all necessary actions to immediately discontinue the interference.

8. **WAIVERS.** Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives, releases, and discharges the other from (i) any claims that each may have against the other with respect to consequential, incidental, or special damages, and each party, and anyone claiming by or through them, expressly waives all claims for any such damages; and (ii) all rights of recovery against the other party in connection with any damage covered by an insurance policy, but only to the extent that such waiver does not impair coverage under such policy. Further, Tenant waives, releases, and discharges Landlord from any claims relating to damage or destruction of all or any part of Tenant's equipment located or installed at the Premises, resulting from any cause. Including negligence of Landlord or its employees.

9. **ACCESS.** Authorized Tenant representatives, meaning those persons covered by Tenant's general liability insurance policy, will have access to the Premises at reasonable times for the installation, maintenance, and operation of the Access Point, provided that Tenant's authorized representative(s) notify Landlord's appropriate staff representative at least one hour before access is sought or any work commences. Landlord's staff will provide access to the secured area surrounding the Tower. During a period of public emergency, determined in Landlord's sole discretion, Landlord may require

supervision by a Douglas County Emergency Communications Services representative as a condition of Tenant's access to the Premises.

10. **INDEMNIFICATION.** Tenant agrees to indemnify, defend, and hold Landlord, its officers, commissioners, agents, employees, grantees, and assigns, harmless from and against any and all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorney's fees, which relate to or arise from Tenant's use or occupancy of the Premises or any part of the Property and which result from any cause other than the gross negligence or willful acts of Landlord or its employees.

11. **MAINTENANCE; UTILITIES.** Tenant shall keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenable condition, subject to reasonable wear and tear and damage from the elements. Tenant shall not cause any waste, damage, or injury to the Property, including the Tower and any of Landlord's equipment or property, including shrubbery, trees, sidewalks, paving, fences, or other improvements on the Property. In addition, Tenant shall not install, maintain, or use any materials that may cause corrosion, rust, or deterioration of the Tower or any other appurtenances thereto. Tenant shall pay for electric, telephone and other utility services used or consumed by Tenant in connection with this Agreement. If electricity to Tenant's own equipment is not separately metered, Tenant agrees to reimburse Landlord, within 15 days after invoice, such amount that Landlord determines to be a reasonable approximation of the cost of Tenant's electrical usage.

12. **DEFAULT AND RIGHT TO CURE.** The following will be deemed a default by Tenant and a breach of this Agreement: Tenant's failure to perform any term or condition under this Agreement within 10 days after receipt of written notice from Landlord specifying the failure. The foregoing notice period, however, shall not apply to interference in violation of paragraph 7 or anything that causes or creates a health or safety hazard, in which case Landlord may immediately, and without prior notice to Tenant, terminate this Agreement, cure the default, and/or suspend Tenant's access to the Premises, and, in any such case, Tenant shall immediately reimburse Landlord for any costs Landlord incurs in doing so. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

13. **NO ASSIGNMENT/SUBLEASE.** Tenant shall not transfer or assign this Agreement or sublease the Premises and its rights herein, without Landlord's prior written consent.

14. **NOTICES.** All notices, requests, demands, and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused, or returned undelivered. Notices will be addressed to the parties as follows:

If to Landlord: County Administrator's Office
1100 Massachusetts Street
Lawrence, KS 66044

If to Tenant: Community Wireless Communications Co.
P.O. Box 3532

4105 W. 6th St.
Lawrence, KS 66049

Either party hereto may change the place for the giving of notice to it by 30 days' written notice to the other as provided herein.

15. **SEVERABILITY**. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on 10 business days' prior written notice to the other party hereto.

16. **CASUALTY**. Landlord will provide notice to Tenant of any casualty affecting the Property within 48 hours of the casualty. If any part of the Tower is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, and such termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof. In the event of any such casualty, Landlord shall have no obligation to Tenant to rebuild the support structure or any part of the Tower. Landlord shall provide written notice to Tenant of its intention not to rebuild, and this Agreement shall terminate, effective as of the date notice is received by Tenant.

17. **INSURANCE REQUIREMENTS**. Tenant shall procure and maintain at all times this Agreement is in effect general liability insurance for the Premises, with Landlord as an additional insured party, in the amount of \$1,000,000 of coverage for each occurrence, \$1,000,000 of coverage for personal injury, \$2,000,000 for general aggregate coverage, and \$300,000 coverage for damage to the Tower or Landlord's property at the Tower. Any insurance policy carried pursuant to this Section shall provide that cancellation will not occur without at least 30 days' prior written notice to Landlord.

18. **MISCELLANEOUS**.

(a) **Amendment/Waiver**. This Agreement cannot be amended, modified, or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Bind and Benefit**. The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(c) **Entire Agreement**. This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(d) **Governing Law**. This Agreement will be governed by the laws of the State of Kansas.

(e) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned, or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace, and cure periods.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the date of the last party to sign.

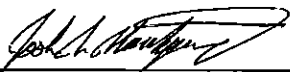
"Landlord"

Douglas County, Kansas, by
Board of Douglas County Commissioners

By: _____
Print Name: Nancy Thellman
Its: County Commission Chairman
Date: _____

"Tenant"

Community Wireless Communications Co.,
a Kansas corporation

By: 
Print Name: Joshua Montegomery
Its: President
Date: Sept. 21, 2010