

# BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Amended Agenda

## WEDNESDAY, JUNE 3, 2015

4:00 p.m.

-Consider approval of proclamation declaring June 7-13 and "Relay Life Week." (Betty Parks)

## CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider approval of Engineering Services Contract for the Project No. 2015-67 Replacement of Bridge No. 09.58-09.00E (Keith Browning); and
- (c) Authorize payment of half of the costs of the security project for the Community Health Facility as specified below. (Craig Weinaug)

## REGULAR AGENDA

- (2) **CUP-15-00060**: Consider a Conditional Use Permit for a micro-distillery, a *Value-added Agricultural Business*, located on approximately 20 acres at 1743 N 200 Rd, Baldwin city. Submitted by William R. Murphy for Sunwise Turn Farms, LLC, a.k.a. Maple Leaf Orchards, LLC, property owner of record. Mary Miller is the Planner.
- (3) (a) Consider approval of Accounts Payable (if necessary)
- (b) Appointments  
-**Douglas County Senior Services Board of Directors (1) positions**
- (c) Public Comment
- (d) Miscellaneous

## RECESS

## RECONVENE

6:00 p.m.

- (4) Consider approval of a county resolution amending the construction codes of Douglas County, Kansas, September 19, 2012 Edition, as codified at Chapter 13 of the Douglas County Code. (Jim Sherman)
- (5) Adjourn

**WEDNESDAY, JUNE 10, 2015** – Light Agenda

**WEDNESDAY, JUNE 17, 2015** – canceled

**THURSDAY, JUNE 18, 2015** - SPECIAL MEETING 4:00 P.M.

**WEDNESDAY, JUNE 24, 2015** - Canceled

**FRIDAY, JUNE 26, 2015**

-Public Works facility open house (Time TBA)

**MONDAY, JUNE 29, 2015**

6:00 p.m.-Jail Town Hall Meeting

**WEEK OF JULY 6-9, 2015** - BUDGET WEEK

**WEDNESDAY, JULY 22, 2015** – Light or canceled

**Note:** *The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:00 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

Relay for Life Week 2015  
For Douglas County, Kansas

**WHEREAS**, The American Cancer Society Relay For Life is a life-changing event that gives everyone in more than 5,000 communities across the globe a chance to celebrate the lives of people who have battled cancer, remember loved ones lost, and fight against the disease; and

**WHEREAS**, money raised during the Relay For Life of Douglas County, Kansas helps support research, education, advocacy, and patient services; and

**WHEREAS**, Relay For Life helps fund more than \$100 million in cancer research each year; and

**WHEREAS**, cancer survivors are honored with a victory lap as they lead the way around the track, followed by teams who keep a representative walking on the track from 7:00 p.m. until 5:00 a.m. because "cancer never sleeps"; and

**WHEREAS**, in 2014, Relay For Life of Douglas County welcomed 793 participants from 65 fundraising teams; 264 cancer survivors were honored; 2,884 luminaria lined the track with the hopeful glow to find a cure; \$172,377.25 was earned after expenses, which all add up to our local event ranking the largest Relay For Life in the state of Kansas in 2014 ; and

**WHEREAS**, an additional community project was served by the contribution of 2,562 pounds of canned food which replaced sand to give weight to the candle-lit luminaria, which was later donated to Just For Food.

**NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS**, do hereby proclaim June 7th through June 13th, 2015 as,

### "RELAY FOR LIFE WEEK"

in Douglas County and encourage citizens to participate in the American Cancer Society Relay For Life of Douglas County to be held at Free State High School Track, 4800 Overland Drive in with pre-opening at 5:00 p.m., Opening Ceremony and Survivor Walk at 7:00 p.m. with Luminaria Lighting Ceremony at 9:15 p.m. on Friday, June 12th, event to end at 5:00 a.m. on Saturday, June 13th.

**ADOPTED** this 3rd day of June, 2015.

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

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James E. Flory, Chairman

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Mike Gaughan, Vice-Chair

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Nancy Thellman, Member



## DOUGLAS COUNTY PUBLIC WORKS

3755 E. 25<sup>th</sup> Street  
Lawrence, KS 66046  
(785) 832-5293 Fax (785) 842-1201  
dgcopubw@douglascountyks.org  
www.douglascountyks.org

**Keith A. Browning, P.E.**  
Director of Public Works/County Engineer

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### MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer

Date : May 27, 2015

Re : Consent Agenda approval of Engineering Services Contract  
Replacement of Bridge No. 09.58-09.00E  
Project No. 2015-67

You will recall we were successful in obtaining \$120,000 in funding from KDOT's Local Bridge Improvement Program towards replacing Bridge No. 09.58N-09.00E. This bridge is on E 900 Road approximately 0.4 miles south of Route 458. It is a 24'-span concrete T-beam structure constructed in 1921 with a sufficiency rating of 59.6. It is classified as Functionally Obsolete. Replacement of this bridge is included in the CIP with an allocation of \$250,000 and with construction scheduled for 2016.

This department went through the standard process for selecting an engineering firm to provide design engineering services for this project. The selection committee rated Finney & Turnipseed as the highest rated firm who submitted proposals for this project. Subsequently, Finney & Turnipseed submitted a lump sum cost proposal of \$22,000, assuming no additional geotechnical study is required. If additional geotechnical study is required, the total lump sum cost will be \$24,500. We feel these alternate costs are reasonable.

The cost for additional geotechnical study may be required if we pursue construction of a Geosynthetic Reinforced Soil-Integrated Bridge System (GRS-IBS) bridge at this location. The following is an excerpt from an FHWA report on this bridge system: *"Geosynthetic Reinforced Soil (GRS) technology consists of closely-spaced layers of geosynthetic reinforcement and compacted granular fill material. GRS has been used for a variety of earthwork applications since the U.S. Forest Service first used it to build walls for roads in steep mountain terrain in the 1970s. Since then, the technology has evolved into the GRS Integrated Bridge System (IBS), a fast, cost-effective method of bridge support that blends the roadway into the superstructure. GRS-IBS includes a reinforced soil foundation, a GRS abutment, and a GRS integrated approach. The application of IBS has several advantages. The system is easy to design and economically construct. It can be built in variable weather conditions with readily available labor, materials, and equipment and can easily be modified in the field. This method has significant value when employed for small, single span structures ..."* We believe this location may be conducive to a GRS-IBS bridge, and this technology may be suitable for other bridge replacement projects in the county.

Attached are two (2) original copies of a lump sum contract with Finney & Turnipseed to provide engineering services for this bridge replacement project in the amount of \$22,000.00 without additional geotechnical study or \$24,500 with additional geotechnical study.

Action Required: Consent Agenda approval to award a lump sum contract in the maximum amount of \$24,500.00 to Finney & Turnipseed, Transportation & Civil Engineering, LLC to provide engineering services to replace Bridge No. 09.58N-09.00E, Project No. 2015-67.

## **ENGINEERING SERVICES AGREEMENT**

THIS Engineering Services Agreement is entered into by and between Douglas County, Kansas ("County") and Finney & Turnipseed, Transportation & Civil Engineering, L.L.C. ("Engineer"), as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (the "Effective Date").

### **RECITALS**

WHEREAS, County desires to employ Engineer to provide professional engineering services in the design of certain road(s) and/or bridge(s) in Douglas County, Kansas, in connection with Douglas County Project No. 2015-67, the replacement of Bridge No. 09.58N-09.00E (the "Project"); and

WHEREAS, Engineer agrees to provide such services.

### **TERMS OF AGREEMENT**

NOW THEREFORE, in consideration of the promises contained in this Agreement, County employs Engineer and Engineer agrees to provide professional engineering services as follows:

#### **I. DEFINITIONS**

In addition to other terms defined in the body of this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this Agreement, and other forms of any defined words shall have a consistent meaning:

"Additional Services" means any services requested by County which are not covered by Exhibit A.

"Agreement" means this contract and includes change orders issued in writing.

"County Engineer" means the person employed by County with the title of County Engineer, who is licensed to practice engineering in the State of Kansas.

"Engineer" means the company or individual identified in the preamble of this Agreement. Engineer shall employ for the services rendered engineers, architects, landscape architects, and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.

"Contract Documents" means those documents identified in the Contract for Construction of the Project, including Engineering Documents. All terms defined in the General Conditions of the Contract for Construction shall have the same meaning when used in this Agreement unless otherwise specifically stated, or in the case of a conflict, in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

"Engineering Documents" means all plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums and correspondence related to the Engineering Services.

“Engineering Services” and “Services” mean the professional services and other acts or duties required of Engineer under this Agreement, together with Additional Services as County may request and as evidenced by a supplemental agreement pursuant to the terms of this Agreement.

“Project” means the Douglas County project identified above in the Recitals.  
“Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment, and appropriate professional interpretations of all of the foregoing.

## **II. COMPENSATION**

Engineer’s compensation and related matters are as follows:

### **A. MAXIMUM TOTAL FEE AND EXPENSE**

Engineer’s fee shall be based on the Lump Sum Fee of \$22,000, assuming additional geotechnical investigation is not required, or \$24,500, assuming additional geotechnical investigation is required, as approved by the County. The Lump Sum Fee is based on the scope of Services outlined in Exhibit A, attached hereto and incorporated herein by reference, which Services shall be completed in accordance with the Project schedule as detailed in Exhibit D. Partial payments to Engineer toward the Lump Sum Fee shall not exceed the amounts for each phase as detailed in Exhibit B. Additional or alternative methods of compensation shall be paid only with written approval of the County Engineer.

### **B. BILLING**

Engineer may bill County for partial payments of the total Lump Sum Fee in accordance with Exhibit D. Partial pay requests must generally be received by the 5th day of the month. The bill submitted by Engineer shall stipulate the completed phase of the Services for which payment is requested, and shall be deemed to include a representation by Engineer to County that the Services have proceeded to the point stated in the bill and that amounts requested in the bill are due and owing pursuant to this Agreement. County agrees to pay Engineer within 10 days after approval by the governing body or 30 days after the invoice is received, whichever is later.

### **C. COUNTY’S RIGHT TO WITHOLD PAYMENT**

In the event County becomes credibly informed that any material representations of Engineer provided in its billing are wholly or partially inaccurate, County may withhold payment of disputed sums then, or in the future, otherwise due Engineer until the inaccuracy and the cause thereof is corrected to County’s reasonable satisfaction. In the event County questions some element of an invoice, that fact shall be made known to Engineer as soon as reasonably possible. Engineer will assist in resolution of the matter and transmit a revised invoice if necessary. County shall pay the undisputed portion of any invoice as provided in Paragraph E above.

### **D. PROGRESS REPORTS WITH PAY APPLICATIONS**

A written progress report, as set out in Exhibit C (attached hereto and incorporated herein by reference) must be submitted with each bill for partial payment, indicating the

percentage completion of each specific design task and those tasks that will be performed the following month. This report will serve as support for payment to Engineer.

**E. CHANGES IN SCOPE**

For substantial modifications in authorized Project scope and/or substantial modifications of drawings and/or specifications previously accepted by County, when requested by County and through no fault of Engineer, Engineer and County shall negotiate a written supplemental agreement which includes any increase in Lump Sum Fee or contract time prior to Engineer performing such Services. Engineer shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Engineer's negligence, error, or omission.

**F. ADDITIONAL SERVICES**

Engineer shall provide services in addition to those described in this Agreement, including Exhibit A, when such services are requested in writing by County. Prior to providing any such Additional Services, Engineer shall submit to County a cost proposal for the Additional Services for County's consideration and approval.

**III. RESPONSIBILITIES OF ENGINEER**

Engineer shall furnish and perform the Engineering Services in all phases of the Project, as specifically provided in Exhibit A and which are required for the completion of the Project, according to the Project Schedule set forth in Exhibit D, attached hereto and incorporated herein. Such services shall include the following services during the following Project phases:

**A. PRELIMINARY DESIGN PHASE**

Engineer shall do the following during the preliminary design phase:

1. Services: Engineer shall provide the services during this phase as described in Exhibit A.
2. Preliminary Design Documents: Engineer shall furnish County with 3 copies of the preliminary design documents for review as set out in Exhibit A.
3. Probable Cost: Engineer shall furnish County an opinion of probable Project cost based on Engineer's experience and qualifications. If the probable cost exceeds the amount budgeted for the Project, County may terminate this Agreement at the completion of this phase. If directed by County, Engineer shall modify the drawings and specifications as necessary to achieve compliance with the budgeted construction cost, and be compensated as Additional Services.

**B. FINAL DESIGN PHASE**

Engineer shall do the following during the final design phase:



1. Services: Engineer shall provide the services during this phase as described in Exhibit A.
2. Final Design Documents: Engineer shall furnish County with raster files and hard copies of the final plans in an accepted format as specified in Exhibit A. The raster files, as well as the hard copies, shall contain all required signatures from County and the signature and seal of the design engineer.
3. Contract Documents: County standard Contract Documents shall be used and Engineer shall furnish all details and specifications that are unique for the Project.

#### **C. BIDDING PHASE**

Engineer shall do the following during the bidding phase:

1. Services: Engineer shall provide the Services during this phase as described in Exhibit A.
2. Bids Exceeding Cost Estimate: If bids exceed the estimated probable Project cost, County may discuss with Engineer and the lowest responsible bidder ways to reduce the cost, and Engineer shall provide suggestions for reducing the Project costs. This discussion will be accomplished at no additional cost to County.

#### **D. CONSTRUCTION PHASE**

Engineer shall do the following during the construction phase:

1. Services: Provide the Services during this phase as described in Exhibit A.
2. Administration: County will provide in-house administration of the construction contract; however, Engineer shall consult with and advise County and act as County's representative when requested. If County requests, Engineer shall provide contract for construction administration and observation services as Additional Services.
3. Contract Interpretation: When requested by County, Engineer shall visit the site and issue necessary interpretations and clarifications of the Contract Documents. Engineer shall provide such services at no additional cost to County.
4. Additional Drawings: If, during construction, situations arise which require additional drawings or details, or revision of the plan drawings or details, Engineer agrees to provide such additional drawings or revisions at no additional cost to County when such changes are required to correct Engineer's errors or omissions in the original design and preparation of construction drawings. If additional drawings or details are required through no fault of Engineer, or are beyond its control, both parties agree to negotiate an equitable payment to Engineer for its services rendered, which shall be accomplished through a supplemental agreement.

5. Shop Drawings: Engineer shall review and take appropriate action on each contractor's shop drawings and samples, and the results of tests and inspections and other data which each contractor is required to submit for the limited purposes of checking for compliance with the design concept and information shown in the Contract Documents. Such review shall not extend to means, methods, sequences, techniques, quantities, fabrication processes, procedures of construction, coordination of the work with other trades, or to safety precautions and programs incident thereto, all of which are the sole responsibility of the contractor, unless an obvious defect or deficiency exists, in which case Engineer shall advise County of such defect or deficiency so the same can be prevented.

#### **E. GENERAL DUTIES AND RESPONSIBILITIES**

Engineer shall have the following general duties and responsibilities:

1. Personnel: Engineer shall assign only qualified personnel to perform the Engineering Services. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: Craig A. Mattox, P.E. ("Project Principal"). The Project Principal shall be the primary contact with County and shall have authority to bind Engineer. So long as the Project Principal remains actively employed or retained by Engineer, this individual shall continue to serve as the Project Principal.
2. Independent Contractor: Engineer is an independent contractor and as such is not an employee of County.
3. Special Services: Engineer may be called upon to serve as a witness in any litigation, arbitration, legal or administrative proceeding arising out of the Project. If Engineer is requested in writing by County to appear as a witness, Engineer will be paid its hourly fee as reflected on the Fee Schedule in Exhibit B; provided, however, that Engineer shall not be paid its hourly fee if the appearance is to defend Engineer's Engineering Services.
4. Subsurface Borings and Testing: If County requests subsurface boring or other tests for design, in addition to those described in Exhibit A, Engineer shall prepare specifications for the taking of the additional testing. Such testing may be provided by Engineer through other contractors. Payment to Engineer will be as stipulated in Article II.A.
5. Service by and Payment to Others: Any work authorized in writing by County and performed by a party other than Engineer or its approved subcontractors shall be contracted for and paid for by County directly to the third party. Fees for such work shall be subject to negotiation between County and the third party and shall be approved by County prior to the performance of any such work.
6. Subcontracting or Assignment of Services: Engineer shall not subcontract or assign any of the Engineering Services to be performed under this

Agreement without first obtaining the written consent of County regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Unless otherwise stated in County's written consent to a subcontract or assignment, no subcontract or assignment will release or discharge Engineer from any obligation under this Agreement.

7. Endorsement: Engineer shall sign and seal all final plans, specifications, estimates and engineering data furnished by Engineer. Any review or approval by County of any documents prepared by Engineer, including, but not limited to, the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with County's construction program and intent. No review of such documents shall relieve Engineer of its responsibility for their accuracy. It is Engineer's responsibility to verify the existence of any and all rights-of-way and easements, including temporary construction easements, that are necessary for the Project. Rights-of-way and easements shown on the plans shall have proper legal verification to prove their existence.
8. Professional Responsibility: Engineer will exercise reasonable skill, care and diligence in the performance of the Engineering Services as is ordinarily possessed and exercised by a licensed professional engineer performing the same services under similar circumstances. Engineer represents to County that Engineer is professionally qualified to provide such services and is licensed to practice engineering by all public entities having jurisdiction over Engineer and the Project.
9. Inspection of Documents: Engineer shall maintain all Project records for inspection by County during the term of this Agreement and for 3 years following the completion of the Project.

#### **IV. RESPONSIBILITIES OF COUNTY**

##### **A. GENERAL DUTIES AND RESPONSIBILITIES**

County shall have the following general duties and responsibilities:

1. Communication: County shall provide to Engineer information and criteria regarding County's requirements for the Project, examine and timely respond to Engineer's submissions, and give notice to Engineer whenever County observes or otherwise becomes aware of any defect in the Engineering Services.
2. Access: County shall procure and provide access agreements for Engineer to enter public and private property when necessary.
3. Program and Budget: County shall provide full information stating County's objectives, schedule, budget with reasonable contingencies, and necessary design criteria.
4. Other Engineers: County may contract with "specialty" engineers when such services are requested by Engineer.

5. Testing: County shall furnish any tests required to supplement the scope of services or tests required by law.
6. Bond Forms: County shall furnish all bond forms required for the Project.
7. Project Representative: County Engineer, or County Engineer's designee, shall represent County in coordinating the Project with Engineer, with authority to transmit instructions and define policies and decisions of County.
8. Payment: Pay Engineer its fees and reimbursable expenses in accordance with this Agreement.

## **V. PROJECT SCHEDULE**

The Project Schedule is set forth in Exhibit D, attached hereto and incorporated by reference. Engineer shall perform the Engineering Services in a timely manner; provided, however, if, during its performance, for reasons beyond the control of Engineer, protracted delays occur, Engineer shall promptly provide written notice to County describing the circumstances preventing continued performance and Engineer's efforts to resume performance.

## **VI. SUSPENSION OR TERMINATION OF THE CONTRACT**

### **A. SUSPENSION BY ENGINEER**

Engineer may suspend performance of the Services under this Agreement if County consistently fails to fulfill County's material obligations under this Agreement, including County's failure to pay Engineer its fees and costs, within 15 days of Engineer's delivery to County of written notice of such default; provided, however, that Engineer may not suspend performance of Services based upon non-payment of fees or costs that is subject to a bona fide dispute, for which this Agreement authorizes County to withhold payment. Any such suspension shall serve to extend the contract time on a day for day basis.

### **B. TERMINATION BY ENGINEER**

Engineer may terminate this Agreement upon 15 days written notice to County if (i) County suspends performance of the Services for its convenience for a period of 60 consecutive days through no act or fault of Engineer or a subcontractor or their agents or employees or any other persons or entities performing portions of the Engineering Services under direct or indirect contract with Engineer, or (ii) Engineer has suspended the performance of its Services for a period of 60 consecutive days pursuant to Section VI.A. above; and, during said 15 day written notice period, County has failed to cure its default. If Engineer terminates this Agreement, County shall pay Engineer such amounts as if County terminated this Agreement for its convenience pursuant to Section VI.E.

### **C. TERMINATION BY COUNTY FOR CAUSE**

County may terminate this Agreement for cause upon 7 days written notice to Engineer: (i) persistently or repeatedly refuses or fails to supply enough qualified workers or proper materials; (ii) assigns or subcontracts any part of the Engineering Services without County's

prior written consent; or (iii) otherwise is guilty of substantial breach of this Agreement; and, during said 7 day written notice period, Engineer fails to cure its default.

If County terminates this Agreement for cause, Engineer shall immediately transfer to County digital and mylar copies of all Engineering Documents completed or partially completed at the date of termination. In addition, County may without prejudice to any other rights or remedies of County, finish the Engineering Services for the Project by whatever reasonable method County may deem expedient, including through contract with an alternate engineer, and bill Engineer for the sum of the amounts County pays Engineer pursuant to this Agreement, plus the costs County incurs in completing the Engineering Services, reduced by the Total Lump Sum Fee. Upon request of Engineer, County shall furnish Engineer a detailed accounting of the costs incurred by County in completing the Engineering Services. If County terminates this Agreement for cause Engineer shall not be entitled to receive further payment until the Engineering Services are completed.

If the Engineer for any reason is not allowed to complete all the Services called for by this Agreement, the Engineer shall not be held responsible for the accuracy, completeness of constructability of the construction documents prepared by the Engineer if changed or completed by the County or by another party. Accordingly, the County agrees, to the fullest extent permitted by the law, to waive and release the Engineer, its officers, directors, employees, and subconsultants from any damages, liabilities or costs, including reasonable attorney's fees and defense costs arising from such change or completion by any other party of any construction documents prepared by the Engineer.

**D. SUSPENSION BY COUNTY FOR CONVENIENCE**

County may, without cause, order Engineer in writing to suspend, delay or interrupt the Engineering Services in whole or in part for such period of time as County may determine.

The Total Lump Sum Fee and contract time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption.

**E. TERMINATION BY COUNTY FOR CONVENIENCE**

County may, at any time, terminate this Agreement for County's convenience and without cause. Upon receipt of written notice from County of such termination for County's convenience, Engineer shall: (i) except for Engineering Services directed to be performed prior to the effective date of termination as stated in the notice, cease operations under this Agreement; and (ii) take actions necessary or that County may direct, for the protection and preservation of the Engineering Services and Engineering Documents.

If County terminates this Agreement for its convenience, Engineer shall immediately transfer to County digital and mylar copies of all Engineering Documents completed or partially completed at the date of termination. County shall compensate Engineer for all Services completed prior to receipt of the termination notice or performed pursuant to the termination notice. County need not pay, and Engineer waives, compensation for Engineering Services not actually provided, anticipatory profit or consequential damages.

**VII. GENERAL PROVISIONS**

**A. DISPUTE RESOLUTION**

County and Engineer agree that disputes relative to the Project should first be addressed by direct negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute and assuming County has not terminated this Agreement, Engineer shall proceed with the Services in accordance with this Agreement as if no dispute existed.

## **B. OWNERSHIP OF ENGINEERING DOCUMENTS**

All documents and electronic files prepared or furnished by Engineer pursuant to this Agreement are instruments of Engineer's professional service, and Engineer shall retain an ownership and property interest therein. Engineer grants the County a perpetual license to use and modify instruments of Engineer's professional services for the purpose of constructing, occupying, maintaining, altering and adding to the Project and future projects relating to, incorporating, or in the vicinity of the Project. Topographic data collected by the Engineer pursuant to this Agreement shall be considered a part of the instruments of Engineer's professional service and the County's license to use this information pertains only to the portions of this data directly related to this Project. Reuse or modification of any such licensed documents, electronic files or other data by the County, shall be at the County's sole risk and without liability to Engineer, and the County agrees to indemnify and hold Engineer harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse by the County or by others acting through the County, except the County does not agree to indemnify or hold engineer harmless from Engineer's own negligence.

## **C. INSURANCE**

Engineer shall maintain throughout the term of this Agreement the following insurance coverage:

1. Professional Liability: Professional Liability Insurance in an amount not less than \$1,000,000 per claim and in the annual aggregate, which insurance shall be maintained not only during the term of this Agreement but also for a period of 3 years after completion of the Project.
2. Commercial General Liability: Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the general aggregate. The policy shall include personal injury, products/completed operations, and contractual liability,
3. Worker's Compensation: Worker's Compensation Insurance in accordance with statutory requirements.
4. Employer's Liability: Employer's Liability Insurance in amounts not less than the following:

Bodily Injury by Accident	\$100,000	(each accident)
Bodily Injury by Disease	\$500,000	(policy limit)
Bodily Injury by Disease	\$100,000	(each employee)

5. Automobile Insurance: Automobile Liability Insurance in an amount not less than \$1,000,000 per accident to protect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.
6. Subcontractor's Insurance: If a part of this Agreement is subcontracted, Engineer shall either:
  - a) Cover all subconsultants in its insurance policies; or
  - b) Require each subconsultants not so covered to secure insurance which will protect against all applicable hazards or risks of loss in the amounts applicable to Engineer.
7. Valuable Papers Insurance. Valuable papers insurance to assure the restoration of any plats, drawings, notes or other similar data relating to the Engineering Services in the event of their loss or destruction.
8. Industry Ratings: Unless mutually agreed upon by County and Engineer to vary the requirements, Engineer shall provide County with evidence to substantiate that any insurance carrier providing insurance required under this Agreement satisfies the following requirements:
  - a) Is licensed to do business in the State of Kansas;
  - b) Carries a Best's Policyholder rating of A or better; and
  - c) Carries at least a Class X financial rating.

All general and automobile liability insurance shall be written on an occurrence basis. County shall be shown as an additional insured on all required insurance policies except professional liability, automobile, and worker's compensation. Each required insurance policy shall contain a provision by which County must be given 30 days notice prior to any insurance policy cancellation. Engineer shall provide County with acceptable certificates of such insurance evidencing the required insurance coverage before County issues its Notice to Proceed, at County's reasonable request, from time to time during the term of this Agreement.

#### **D. INDEMNITY**

Engineer hereby agrees to indemnify and hold harmless County and its departments, divisions, officers, employees and elected officials from all loss, damage, cost and expenses, including reasonable attorneys' fees and expenses, incurred by or on behalf of any of the foregoing arising out of or related to personal or bodily injury or property damage, that to the extent arise from or related to the wrongful acts or negligent acts, errors or omissions of Engineer or its employees, agents or subconsultants. The provisions of this section shall survive the termination of this Agreement.

#### **E. ENTIRE AGREEMENT; NO VERBAL AMENDMENTS**

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement, including the Lump Sum Fee and contract time and other terms and conditions, may be amended only by a written supplemental agreement signed by County and

Engineer, except in the case of an emergency situation, in which case County Engineer may give verbal and facsimile approval to be followed by a written and signed supplemental agreement. If notice of any change affecting the general scope of the Engineering Services or provisions of this Agreement, including, but not limited to, Lump Sum Fee and contract time, is a requirement of any insurance policy held by Engineer as a requirement of this Agreement, the provision of such notice shall be Engineer's responsibility.

**F. APPLICABLE LAW**

This Agreement shall be governed by, and is to be construed and enforceable in accordance with, the laws of the State of Kansas and the codes and established policies of County.

**G. ASSIGNMENT OF AGREEMENT**

This Agreement shall not be assigned or transferred by either party without the written consent of the other party.

**H. NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

**I. FEDERAL LOBBYING ACTIVITIES (Only applies to projects receiving federal funds via County)**

31 U.S.C. Section 1352 requires all subgrantees, contractors, and engineers who receive federal funds via County to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, grant, loan or cooperative agreement. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period. Engineer shall obtain the necessary forms from County, execute such forms, and return such forms to County. Engineer shall also obtain executed forms from any of its subcontractors who fall within the provisions of the statute and provide such forms to County.

**J. COVENANT AGAINST CONTINGENT FEES**

Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working for Engineer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County may terminate this Agreement without liability or may, in its discretion, deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**K. COMPLIANCE WITH LAWS**



Engineer shall abide by applicable federal, state and local laws, ordinances and regulations applicable to this Project that are in effect as of the date of Services rendered until the Engineering Services required by this Agreement are complete. Engineer shall secure all occupational and professional licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.

**L. NOTICES**

Any notice or other communication required or permitted by this Agreement shall be made in writing to the address specified below:

Engineer: Craig A. Mattox, PE, PLS  
Finney & Turnipseed  
Transportation & Civil Engineering, L.L.C.  
610 SW 10th Street, Suite 200  
Topeka, Ks. 66612-1674

County: Keith A. Browning, P.E.  
Douglas County Public Works  
3755 E. 25<sup>th</sup> St.  
Lawrence, KS 66046

Nothing contained in this Section, however, shall be construed to restrict the transmission of routine communications between Engineer and County.

**M. TITLES AND SUBHEADINGS**

Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement.

**N. SEVERABILITY CLAUSE**

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for any reason, such provision shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

**O. NON-DISCRIMINATION**

Engineer agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if Engineer is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be

cancelled, terminated or suspended, in whole or in part, by County; and (f) if it is determined that Engineer has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by County.

**P. WAIVER**

A waiver by either County or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

**Q. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of the parties.

**R. RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed to make County a partner, joint venturer, or associate of Engineer, nor shall either party be deemed the agent of the other.

**S. AUTHORITY TO SIGN**

The individual signing this Agreement on behalf of Engineer represents that such person is duly authorized by Engineer to execute this Agreement on behalf of Engineer and, in doing so, that Engineer becomes bound by the provisions hereof.

**IN WITNESS WHEREOF**, the parties have executed this Agreement, effective as of the Effective Date.

**ENGINEER:**

Finney & Turnipseed  
Transportation & Civil Engineering, L.L.C.

By: \_\_\_\_\_  
Craig A. Mattox, PE, PLS - Principal

**COUNTY:**

DOUGLAS COUNTY, KANSAS by the BOARD OF  
DOUGLAS COUNTY, KANSAS COMMISSIONERS

By: \_\_\_\_\_  
James E. Flory, Chair

ATTEST:

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Douglas County, Clerk

Exhibits:

- A. Scope of Services
- B. Fee Schedule
- C. Form of Progress Reports
- D. Project Schedule

**Douglas County Project No. 2015-67**  
**Replacement of Structure No. 0958-0900**  
**EXHIBIT A**  
**SCOPE OF SERVICES**

**I. PROJECT OVERVIEW**

The Engineer shall design and prepare construction documents for replacement of the existing bridge carrying E 900 Road over a tributary to Washington Creek, located 0.42 miles south of N 1000 Road.

The existing drainage structure is a single 24' span, cast-in-place concrete deck and girder bridge, constructed in 1921. E 900 Road is a rock surfaced township road that carries an average of 35 vehicles per day.

This project is located in a mapped floodplain Zone A. The drainage area above the structure is 965 acres. The new structure will be sized to convey the 10-year design storm, or the capacity of the existing bridge; whichever is greater. The project will be designed to avoid increased flood elevations on adjacent properties.

This project is in Douglas County's Capital Improvement Plan and is scheduled for construction in 2016. KDOT awarded Local Bridge Improvement Program funds to cover a portion of the cost of the project. The County will work with the Engineer to consider alternate structure types, with the goal of minimizing construction cost.

The design guidelines and standards for this project are listed in Section 5.2 of the KDOT, Bureau of Local Projects, Local Public Authority (LPA) Project Development Manual, December 2014 Edition.

**II. PRELIMINARY DESIGN PHASE (Field Check)**

The Engineer shall complete the tasks below to identify cost-effective options for replacement of the bridge and to obtain concurrence from the County on selection of the design concept.

1. Meet with County staff to obtain background information and identify specific concerns. The County will provide project budget information.
2. Meet with the property owners on each side of E 900 Road (Michael Curtis and Monica Curtis) to discuss the project and any concerns or issues they may have on their property. Schedule those meetings to include County staff.
3. Perform design and cadastral surveys as required to prepare plan and profile sheets. Provide sufficient control, location, and land information necessary to prepare a complete set of construction plans and to prepare any legal descriptions required for easement acquisition. All surveys and point coordinates for the Project must tie into and be in the Kansas State Plane (North Zone). Cadastral surveys shall include locating the position of pertinent PLSS corners

(including quarter and sixteenth corners) pertaining to the project and shall conform to the accuracy standards as set forth by the Kansas State Board of Technical Professions.

4. Include in the design survey the location of tree lines, fence lines, landscaping and other property improvements located within the potential Project limits. Include the location of individual trees greater than 12" in diameter.
5. Obtain information from utility companies who have overhead or underground facilities within the Project limits. Request field locates for all utilities present and verify that the applicable utility companies have located their facilities within the Project limits. Include utility locations in the field survey data and show the horizontal location on construction plans.
6. Obtain ownership and easement information on all properties adjacent to the Project site. Obtain copies of ownership maps and recorded plats from the Douglas County Public Works Department.
7. The County will provide a geotechnical report dated March 17, 2014 for use in the design of this project.
8. Prepare a hydrologic study and hydraulic analysis to establish recommendations concerning appropriate waterway opening for the drainage structure, structure type, length of the structure, and roadway profile. Estimate peak flows for the 10, 25 and 100-year storm events. Perform hydraulic modeling of the existing and proposed structure and stream channel using HEC-RAS. Provide a written summary of the results of the analysis with recommendations for the project and provide copies of computer digital data.
9. Submit a Preliminary Design Report, summarizing the geotechnical findings, hydrologic study, hydraulic analysis, landowner concerns, utility conflicts, design considerations and recommended alternative design concepts. Alternative concepts shall be discussed with the County to determine the best type of drainage structure, horizontal and vertical alignments of the road, type of grade control needed to stabilize the flowline of the drainage channel, and method to stabilize the stream banks. The County's concurrence in the selection of a design concept will be contingent on the accuracy and completeness of the background information provided by Engineer.
10. Once the design concept has been selected, prepare Field Check plans in sufficient detail for the County to review. These documents shall include horizontal and vertical alignments, drainage design data, and preliminary right-of-way and easement acquisition recommendations.
11. Field Check plans must meet the following requirements:
  - a) Prepare the base drawing to show existing structures, approach roadways, topography, contours, utility locations, property lines, easements, right-of-way lines, landowner names, section lines, tree lines, and property

improvements. Include the base drawing in all plan views shown in the construction drawings.

- b) Provide construction plan and profile views of the Project in sufficient detail to identify conflicts and estimate construction quantities.
  - c) The Field Check plans shall include proposed easement and right-of-way limits, limits of construction, a general outline of the construction staging, and other critical design items.
  - d) Plan views shall be drawn at a scale of 1 inch = 20 feet, or other appropriate scale agreed to by the County. Profile views shall be drawn at a scale of 1 inch = 20 feet horizontal and 1 inch = 5 feet vertical, or other appropriate scale agreed to by the County. All drawings must be prepared on 24"x36" sheets in general conformance with KDOT standards.
12. Verify, furnish, and record any legal land corners necessary for legal descriptions used in easement documents, and tie the approved centerline or corner to established land corners.
  13. Prepare a Field Check estimate of probable construction cost for the Project.
  14. Submit one full size set of the Field Check plans and the estimate of probable construction cost for County review. Also provide a digital file of the complete plans in pdf format. Allow two weeks for County review.
  15. Once the Field Check plans have been reviewed by County staff, the Engineer shall arrange a Field Check meeting with County staff to discuss all review comments. All review comments made by County staff shall be discussed and addressed. Changes to the plans required by these comments shall be considered part of this scope of services and shall not be a basis for additional design fees unless the original Project scope is changed.
  16. If the Project is over budget, a determination of design alternatives will be required. The Contract may be terminated if additional funds are not available or if project modifications cannot be made.

### **III. FINAL DESIGN PHASE (Office Check)**

The Engineer shall complete the tasks below to implement the design concept, obtain necessary permits and complete Office Check plans for review.

1. Update the Project plans to incorporate Field Check review comments provided by the County. Work with County staff to resolve specific design issues related to those comments. Provide individual plan sheets as needed to discuss specific revisions. Obtain concurrence from the County on those revisions prior to development of Office Check plans.

2. Identify all conflicts with existing utilities within the project limits. Contact each utility company to discuss the requirements for relocation and verify that all conflicts can be resolved within the proposed Project schedule. Provide a summary of this correspondence.
3. Contact each of the following agencies to obtain a determination of permit requirements for the project, and provide the County with written responses from each agency:
  - a) U.S. Army Corps of Engineers
  - b) Kansas Department of Agriculture, Division of Water Resources
  - c) Kansas Department of Health and Environment
  - d) Kansas Department of Wildlife, Parks and Tourism
  - e) Kansas State Historical Society
4. Prepare applications, exhibits, drawings, and specifications necessary to obtain all required permits. Permit applications shall be prepared for the County's execution and submittal. The County will submit permit applications and pay permit fees. Assist the County in obtaining permit approvals by furnishing additional information as required. If necessary, provide for inclusion in the specifications, a list of the permits which must be obtained by the construction contractor. Revise the construction plans as needed to address changes resulting from review and approval of required permits.
5. After all permit applications are completed, submit pdf copies of the current Project plans for use in landowner discussions.
6. Meet with each adjacent property owner to discuss the proposed improvements and their impact on the adjacent properties. Schedule those meetings to include County staff.
7. Provide original letter size (or 11"x17") exhibits and legal boundary descriptions of each property required for right-of-way or easement acquisition. Boundary descriptions shall be sealed by the land surveyor in responsible charge. Also provide these documents in pdf format.
8. Provide a drawing in AutoCAD file format of all easement or right-of-way acquisitions required for the project, with ties to section corners, existing property lines and existing right-of-way.
9. Revise the construction plans and the right-of-way and easement acquisition documentation as needed to address changes resulting from negotiations with the property owners. Provide updated copies to the County as needed.
10. Prepare the Office Check plans for review by the County. Office Check plans must meet the following requirements:
  - a) Include a detailed traffic control plan with an outline for construction staging conforming to the requirements of the Manual on Uniform Traffic Control Devices and the Kansas Department of Transportation standards. Obtain

the County's approval of the traffic control plan prior to inclusion in the Office Check plans.

- b) Include a detailed stormwater pollution prevention plan (SWPPP) as required by the State.
  - c) Provide detail drawings in the plans for all structures or improvements not covered by KDOT standard detail sheets or detail sheets provided by the supplier.
  - d) At a minimum, the Office Check plans shall include the following:
    - 1) Title Sheet
    - 2) Typical Sections
    - 3) Plan Sheets
    - 4) Profile Sheets
    - 5) Bridge Detail Sheets
    - 6) Traffic Control Plan Sheets
    - 7) Stormwater Pollution Prevention Plan
    - 8) Drainage Area Map
    - 9) Hydrologic and hydraulic data for drainage systems
    - 10) Permanent Signing Quantity Sheets
    - 11) KDOT Standard Detail Sheets
    - 12) Earthwork Quantities, Cross Sections and Entrance Sections with existing and proposed grades
    - 13) Miscellaneous Detail Sheets, non-standard details
    - 14) Summary of Quantities listed as bid items
  - e) Additional plans and information may be required to complete Office Check plans.
11. Prepare Office Check estimate of probable construction cost for the Project.
  12. Prepare any required Special Provisions to the KDOT standard specifications as needed for construction items on the plans.
  13. Submit one full size set of the Office Check plans, the estimate of probable construction cost, and any required Special Provisions for County review. Also provide digital files of these documents in pdf format. Allow two weeks for County review.
  14. Prior to the Office Check meeting, verify that all required permits have been obtained and approved. Contact permitting agencies as needed to resolve incomplete permits.
  15. Once the Office Check plans have been reviewed by the County, the Engineer shall arrange an Office Check meeting with County staff to discuss all review comments. Changes to the plans required by these comments shall be considered part of this scope of services and shall not be a basis for additional design fees unless the original Project scope is changed.



#### **IV. FINAL PLAN PREPARATION**

The Engineer shall complete the tasks below to prepare final plans for the Project.

1. Update the Project plans to address Office Check review comments provided by the County. Work with County staff to resolve specific design issues related to those comments. Provide individual plan sheets as needed to discuss specific revisions. Obtain concurrence from the County on those revisions prior to preparation of final plans.
2. Prepare the final plans and the final Engineer's estimate of probable construction cost.
3. Submit two full-size sets of final plans on 24"x36" bond paper which have been signed and sealed by the professional engineer responsible for the project. These two sets of plans will be signed by the County Director of Public Works. One set will be returned to the Consultant for their permanent records and one set will be retained by Douglas County for their permanent records.
4. Deliver to the County, three (3) full size copies and three (3) half size copies of the final signed and sealed plans, printed on 24" x 36" bond paper or 11" x 17" bond paper as appropriate. Also deliver one paper copy of the final Engineer's estimate of probable construction cost and the Special Provisions for the project.
5. Submit digital copies of the final signed and sealed plans, the final Engineer's estimate of probable construction cost and the Special Provisions for the project in pdf format.
6. Provide copies of the final signed and sealed plans to each utility company with facilities within the Project limits. Meet with each utility company to discuss the relocation of their facilities and the Project schedule. Provide the County with a summary of the proposed utility relocation schedule.

At any time prior to completion and final acceptance of the construction contract for this Project, the Engineer shall be responsible for correcting all errors and omissions due to the negligence of the Engineer, and submitting revised final plans to the County.

#### **V. BIDDING PHASE**

The County will administer the bidding phase for the Project. The Engineer shall complete the tasks below as required.

1. Answer questions from contractors regarding the final plans. If necessary, issue any requested addenda.

2. If requested by the County, attend a pre-bid meeting to explain any extraordinary conditions or designs and to answer questions regarding the plans.
3. Review and make recommendations regarding proposed alternates or value engineering proposals by the contractor.

## **VI. CONSTRUCTION PHASE**

The County will administer the construction phase for the Project. The Engineer shall complete the tasks below as required.

1. If requested by the County, attend a pre-construction meeting with the County and the contractor, to explain any extraordinary conditions or designs and to answer questions regarding the plans.
2. Answer all questions from the contractor regarding the design and interpretation of the plans. Provide consultation concerning conditions encountered during construction that conflict with or were not addressed by the final plans.
3. Review and comment, or approve, each contractor's shop drawings and samples, the results of tests and inspections, and other required submittals, to verify compliance with the design concept and conformance with the requirements of the Contract Documents.
4. Following construction, inspect the new structure (inventory inspection), prepare the initial SIA report on the structure's condition, and enter inspection data into KDOT's bridge inspection web portal. Also, complete National Bridge Inventory (NBI) Item 113 Scour Analysis using Rapid Assessment worksheet provided by KDOT, Bureau of Local Projects. Also, provide the County with inventory and operating ratings for the five standard truck configurations and FHWA mandated "Special Hauling Vehicles".

Construction inspection is not included in this scope of services. A separate agreement for construction inspection may be executed at a later date if requested by the County.

## **VII. GENERAL**

The Engineer shall meet these general requirements in the completion of this scope of services.

1. Prepare the design plans for the Project for such parts and sections, and in such order of completion, as designated by the County and in conformance with the Project schedule.
2. Complete all plan development phases no later than the due dates on the Project schedule (Exhibit D), exclusive of delays identified by the County.

3. Provide written monthly progress reports as detailed in Exhibit C.
4. Notify County of additional costs for service requested prior to performing the service. For example, if the Engineer is asked to attend a meeting not included in the scope of services, the cost must be determined before attending.
5. Provide the County with written notes from any meetings with state, federal, or other agencies to the County. These need not be "formal minutes" but notes on discussion topics and requirements imposed.

#### **VIII. ITEMS CONSIDERED AS ADDITIONAL SERVICES**

The following tasks are considered additional services and are not included in this scope of services.

1. Construction Inspection

To: County Commission  
From: G. Craig Weinaug, County Administrator  
Subject: Community Health Building Improvements

The City and the County have split the costs of the maintenance of the Community Health Building since it was completed. Over the last two years, city and county staff has been working with VNA, the Health Department and Bert Nash to make various security improvements to the building. The original set of bids received were more than double the anticipated cost, so the project scope was cut. Adequate funds have been set aside for this purpose in the building fund in 2014.

I concur with city staff's recommendations provided below.

Action recommended: Authorize payment of half of the costs of the security project for the Community Health Facility as specified below.

## Memorandum

### City of Lawrence

### Public Works

TO: Mark Thiel, Assistant Public Works Director.  
FROM: Steve Bennett, Facility Division Manager.  
CC: Charles Soules, P.E., Public Works director.  
Dale Seele  
Date: May 26, 2015  
RE: Award project PW-1343 – Community Health Building Improvements

Please include the following item on the City Commission agenda for consideration at the June 9th, 2015 meeting.

On May 26, 2015 the City of Lawrence opened construction proposals for the following:  
Project PW-1343 – City Bid No. B1524

#### **Background**

On January 25, 2013 the City, County and representatives from the several departments from the Community Health Facility met to discuss the Security Survey completed by the Lawrence Police Department (LPD). There were numerous meetings between the Police Department, Douglas County, City of Lawrence, and Treanor Architects to determine what the extent of the remodel should be, and what needed to be completed for security enhancement. The final plan was collaboratively decided by the group and a decision to split all approved costs between the City and County was made. Tenor Architects was directed to provide an estimate of costs for improvements to the facility.

#### **Project Description**

This project is for security update of several areas located within the Community Health Building. This work includes controlled access system upgrade, door modifications, and

casework and additional doors in hallways and security locks for tenant suites. The overriding them was to provide a secure barrier between clients and staff within the funds available.

**Project Funding**

The County, City and Community Health staff have reviewed the bid and are in favor of awarding to the low bidder.

<b>CONTRACTOR</b>	<b>TOTAL</b>
Engineer's Estimate	\$105,000.00
Simplex Grinnell	\$98,498.00

The project budget is \$120,000.00, this includes both design and construction costs. The cost of the project will be split with Douglas County. Each agency's cost will be \$49,249.00.

The City share will be funded through general obligation bonds. Resolution #7033 \$60,000.00. The county has agreed to be billed for their share of the final cost.

**Action Request**

Approve the award of the base bid, alt #1 and deduct alt #2 "Community Health Building Improvements" (PW1343) in the amount of \$98,498.00 to Simplex Grinnell LP provided they meet the requirements of the signed contract.

**PLANNING COMMISSION REPORT**  
**Regular Agenda –Public Hearing Item**

PC Staff Report  
5/18/15

**ITEM NO. 1      CONDITIONAL USE PERMIT FOR A MICRO-DISTILLERY; 1743 N 200 RD (MKM)**

**CUP-15-00060:** Consider a Conditional Use Permit for a micro-distillery, a *Value-added Agricultural Business*, located on approximately 20 acres at 1743 N 200 Rd, Baldwin city. Submitted by William R. Murphy for Sunwise Turn Farms, LLC, a.k.a. Maple Leaf Orchards, LLC, property owner of record. *Joint meeting with Baldwin City Planning Commission.*

**STAFF RECOMMENDATION:** Staff recommends approval of the Conditional Use Permit for a micro-distillery, a *Value-added Agricultural Business* use, subject to the following conditions:

1. The following standards apply to the use:
  - a. A maximum of 4 full-time equivalent employees are permitted.
  - b. The total area of the structures used for operation, production, or storage may not exceed 10,000 sq ft.
  - c. Noise, light, vibration, or odor associated with the production may not be perceptible beyond the site boundary/property lines.
  - d. The process must comply with EPA water and air quality standards.
  - e. All equipment used in production shall be located wholly within a building or structure or be screened from the public rights-of-way and adjacent residential buildings.
  - f. Product shall be enclosed within a building or structure so that it is not visible from the property lines.
  - g. Deliveries from vehicles with a GVW (Gross Vehicle Weight) that exceeds 5 tons in capacity are limited to no more than 2 trips (to and from the site) per day.
2. Provision of a revised CUP plan with the following changes:
  - a. Identify the areas where storage for the aging process may occur and add the following note *"If storage is to occur in any structure other than the Morton building, the Zoning and Codes Office shall be notified, all necessary building permits obtained, and the structure shall be brought into compliance with current building codes before use."*
  - b. Add the following notes:
    - i. *"The Conditional Use Permit will be administratively reviewed by the Zoning and Codes Office every 5 years following approval."*
    - ii. *"Prior to the commencement of the use, an additional septic system shall be installed for the Morton building or the Morton building will be connected to the existing septic system."*

**Reason for Request:**

(Applicant's Response)

*"The Douglas County zoning regulations were modified in 2012 to encourage growth of farm wineries and micro-breweries. However, "micro-distilleries" have never been specifically addressed at all in the regulations. Our understanding is that we need to request a "conditional use permit" under these circumstances. We respect the Boards input and want to work with the Board to get this project underway."*

**KEY POINTS**

- The subject property is located on, and takes access from, N 200 Road which is classified as a Minor Collector in the Douglas County Access Management Road Classification Map.
- The subject property is located within the Urban Growth Area of Baldwin City. A joint Baldwin City and Lawrence-Douglas Metropolitan Planning Commission meeting will be held on this request as it is within 3 miles of the city limits of Baldwin City.

**ASSOCIATED CASES/OTHER ACTION REQUIRED**

- Approval of the Conditional Use by the Board of County Commissioners.
- Applicant shall obtain a permit for the Conditional Use from the Zoning and Codes Office prior to commencing the use.
- Applicant shall obtain a building permit from the Zoning and Codes Office for any structures used in the micro-distillery business, except those which are solely for storage of commodities.

**ATTACHMENTS**

- CUP plans
- Supplemental information on the micro-distillery use

**GENERAL INFORMATION**

Current Zoning and Land Use:

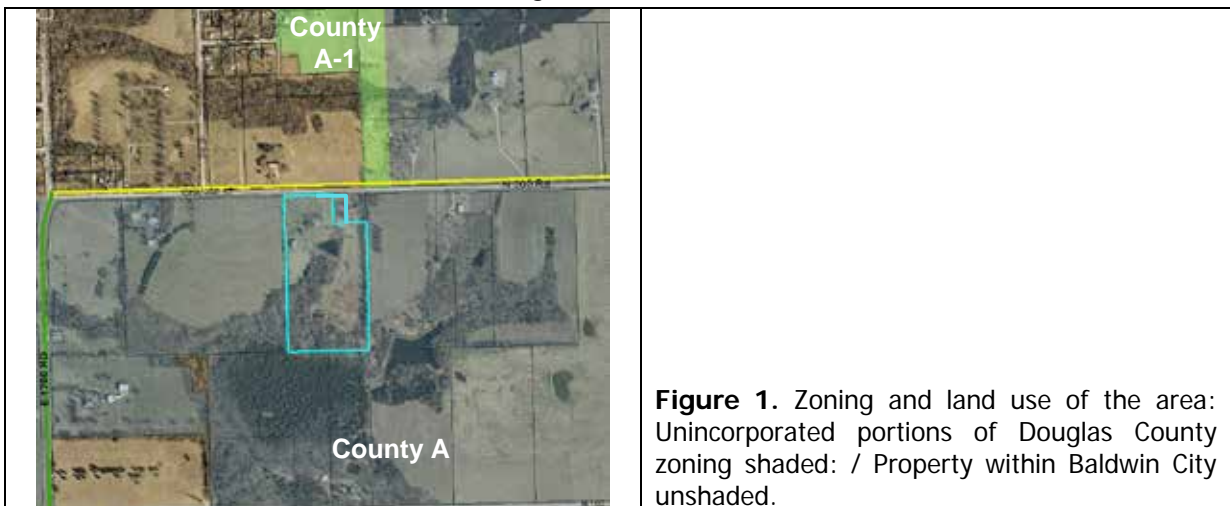
A (Agricultural) District; *Residential Detached Dwelling, Agriculture, and woodland.*

Surrounding Zoning and Land Use:

To the west, south, and east: A (Agricultural) District; *Residential Detached Dwellings, Agriculture, and woodland.*

To the north: Property to the north is located within the city limits of Baldwin City and has the Baldwin City Zoning Designation of RLD (Residential Low Density); *Residential Detached Dwelling and woodland.*

Property to the northeast is located in the unincorporated portion of Douglas County and is zoned A-1 (Suburban Home Residential) and A (Agricultural); *Residential Detached Dwelling, and Agriculture.* (Figures 1 and 2)





**Figure 2:** Location in relation to Baldwin City. Areas within the city limits are highlighted yellow. Subject property is outlined in blue.

### Site Summary

Subject Property: Approximately 20 acres, with a 3 acre apple orchard  
Structure for Micro-distillery: 2,520 sq ft

### Summary of Request

The Conditional Use Permit is requested to accommodate a *Value-added Agricultural Business* on the subject property. The proposed use, a micro-distillery, meets the definition of *Value-added Agricultural Business* provided in Section 12-319-7.35 of the County Zoning Regulations:

*"A business that economically adds value to an agricultural product as a result of a change in the physical state of an agricultural commodity that is not produced on the site, by manufacturing value-added products for end users instead of producing only raw commodities. Value-added products may include:*

- a. A change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam).*
- b. The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system)."*

The proposed micro-distillery will result in a change in the physical state of the product and fits example 'a' of the definition above.

The property consists of 2 separately deeded parcels. The larger parcel contains approximately 18.3 acres and includes an orchard, farmhouse and an outbuilding (commonly referred to as a Morton building). The property has been in operation as an orchard since the early 1960s. The applicant is working to reclaim the orchard and has approximately 80



remaining trees and have recently planted 24 additional trees. The applicant intends to plant about 100 apple trees this spring as well as other fruit trees.

The applicant plans to distill the hard apple cider into 500 to 1000 gallons of apple brandy a year and plans on branching out to other fruit brandies in the future. The smaller parcel contains approximately 1.7 acres and has several agricultural outbuildings. The applicant indicated they may be interested in using a basement on this parcel, or the basement of the residence for the storing/aging of the finished product. Building permits would be required for this use and the structures would need to comply with current building code. (Figure 3)



**Figure 3.** Buildings on the property include agricultural buildings on the smaller parcel, and a residence and outbuilding, proposed for micro-distillery, on the larger parcel.

The applicant provided the following information regarding the proposed use:

- They will use a 250 gallon copper pot still with an electrical heating element.
- The workforce is currently 2 part-time employees (the business owners) and one full-time employee. The applicant indicated that the business would require one or two more full-time employees at the most. This would be compliant with the *Value-added Agricultural Business* CUP limit of 4 full-time equivalent employees.

The applicant plans on producing all the apples and fruit needed for production and several hundred apple trees will be planted in the future; however, the trees will take time to mature and it may be necessary to purchase fruit when there are late freezes or other weather related issues. The apples will be pressed, and the cider stored in barrels and vats in the Morton Building. The cider will be distilled in a copper pot still and then aged in wooden barrels. The aging process may occur in the Morton Building if they can control the temperature or may occur in another structure on the property. The plan should identify where the aging process may occur and note that structures that are to be used for storage will require a building permit and shall be brought into compliance with current building codes before use.

In addition, the applicant provided the materials in Attachment B explaining the micro-distillery use and noted that additional information could be found in the Handbook for

Microdistilleries prepared by the Kansas Department of Revenue/Alcoholic Beverage Control at <http://www.ksrevenue.org/pdf/hbmicrodistilleries.pdf>

Future plans include Agritourism activities such as tours of the micro-distillery and a tasting room. Depending on the scale of the activities being proposed these could be permitted by a variety of processes: through registration with the Zoning and Codes Office, County Commission approval of a site plan, or a Special Event Permit or Conditional Use Permit for large scale activities.

#### DISCUSSION OF USE.

There are several use categories in the Zoning Regulations that are similar to a Micro-Distillery.

#### **Winery**

A winery and a tasting room can occur without site planning or obtaining a Conditional Use Permit due to the State's determination that a winery is an Agricultural use and therefore is not subject to the Zoning Regulations. When other uses are proposed, such as musical events or meals, additional approvals are required.

#### **Nano-Brewery**

The *Value-added Agricultural Business* Conditional Use Permit standards were developed following a request for a relatively large scale business use, which would compress straw into heating bricks. One of the standards was that the property must have access on a full-maintenance road. A text amendment was initiated for a proposed *Value-added Agricultural Business* use that was very small in scope, a nano-brewery. The nano-brewery was to be located on property that has access from a Private Road; therefore, it did not meet the conditions of the *Value-added Agricultural Business* CUP. A CUP use for nano-brewery was established, with standards, which included the possibility for access from a private road when approved by the County Engineer based on the anticipated traffic and the condition and configuration of the road, all properties with access to the private road sign an agreement, and a maintenance agreement is executed. The conditions for the nano-brewery use were geared to insuring that the use remained small in scope and scale.

#### **Agritourism**

Agritourism uses could be associated with the micro-distillery, such as tours, U-pick 'em activities, demonstrations, etc. These uses involve bringing tourists to the site. The micro-distillery is a producing business which would not, in itself, bring tourists to the site.

#### **Home Occupation**

The use may fit into the home occupation use category, but the applicant does not reside on the property full-time at this time. Applicants may choose to seek approval of a use as a Conditional Use rather than a Home Occupation as the CUP approvals are typically for longer time frames than Home Occupations which must be renewed annually.

### **I. ZONING AND USES OF PROPERTY NEARBY**

The subject property is located in close proximity to Baldwin City. Property to the west, south, east and northeast are located in the unincorporated portion of the County and are primarily zoned A (Agriculture) with a small amount of A-1 (Suburban Home Residential) Districts. This area contains rural residences, agricultural land uses, and woodland. The property to the north and northwest, is within the limits of Baldwin City and is zoned RLD (Baldwin City zoning designation for Low Density Residential Development). A residence is located to the north of the

property, across N 200 Road/Orange Street and a city cemetery is located to the northwest. Agriculture and rural residential are the primary land uses in the area. Given the small scale of the proposed micro-distillery use, it would be compatible with the zoning and uses of nearby properties.

**Staff Finding** – The area is at the boundary of Baldwin City Limits and contains low density residential City zoning, and agricultural and residential County zoning. The primary uses in the area are low density residential and agriculture. Given the small scale of the proposed micro-distillery, the use would be compatible with the zoning and uses of nearby properties.

## II. CHARACTER OF THE AREA



**Figure 4:** Map of area with street classifications: principal arterials shown in red, minor arterials in green, and minor collectors in yellow. Subject property marked with a star.

The subject property is in close proximity to the city of Baldwin City and is located on a minor collector road, N 200 Road, which provides convenient access to Highway 56 to the east, a principal arterial, and to E 1700 Road/County Route 1055 to the west, a minor arterial. The immediate area is rural in nature, with most of the urban development of Baldwin City being northwest of the intersection of N 200 Road/Orange Street and E 1700 Road (Figure 4). As noted earlier, the property is within the Urban Growth Area of Baldwin City. Figure 5 is the Future Land Use Map from the Baldwin City Comprehensive Plan. The subject property, marked with a red star, is in an area that is designated for single-family residential land uses.

**Staff Finding** – This is a rural area near the city limits of Baldwin City. Major thoroughfares in the area provide good access to the major transportation network. The proposed use would be compatible with the current land uses and character of the area.

## III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant's response:

*"Maple Leaf Orchards is a 20-acre farm that has been operated as an orchard for many decades, with some interruptions. It has a 3 bedroom farmhouse and several outbuildings, including a 42' x 60' Morton Building, a small smokehouse in which previous owners smoked meat for sale and a 16' x 24' greenhouse/utility building that was previously used for the sale of herbs, flowers, food and various retail items. It was also operated in the past as a U' Pick-Em orchard and watermelon patch with family attractions such as a pumpkin patch, hay rides, bean bag tosses, amusing photo opportunities, a butterfly gazebo and other family entertainment activities. It is located just outside the city limits of Baldwin City, and it once attracted many visitors during the annual Maple Leaf Festival. Visitors from Lawrence, Kansas City, Johnson County and Lee's Summit during its heyday sought its premium apples and a rural farm experience. Maple Leaf Orchards once boasted hundreds of apple trees of various varieties as well as pears, cherries and peaches, but later fell into disrepair. The restoration efforts of the current owners have managed to preserve eighty of the 160 fruit trees that were still alive when their efforts began in 2009. 24 new trees have been planted thus far, and the current owners are in the process of a major orchard replanting. This will consist of various fruit types, but primarily heritage apple varieties, especially cider cultivars. Eventually, a small vineyard may also be planted."*

The subject property is zoned A (Agricultural) District. Section 12-306 of the County Zoning Regulations notes "...the purpose of this district is to provide for a full range of agricultural activities, including processing and sale of agricultural products raised on the premises, and at the same time, to offer protection to agricultural land from the depreciating effect of objectionable, hazardous and unsightly uses." The A District is associated with a majority of the unincorporated portion of Douglas County.

Uses allowed in the A District include: farms, truck gardens, orchards, or nurseries for the growing or propagation of plants, trees and shrubs in addition other types of open land uses. It also includes residential detached dwellings, churches, hospitals and clinics for large and small animals, commercial dog kennels, and rural home occupations. In addition, uses enumerated in Section 12-319 which are not listed as permitted uses in the A District, may be permitted when approved as Conditional Uses. The property has been developed with a residence and is well suited for uses which are permitted in the A District.

It also includes residential detached dwellings, churches, hospitals and clinics for large and small animals, commercial dog kennels, and rural home occupations. In addition, uses enumerated in Section 12-319 which are not listed as permitted uses in the A District, may be permitted when approved as Conditional Uses. The property has been developed with a residence and is well suited for uses which are permitted in the A District.

The existing outbuilding on the larger parcel will be converted for the Micro-distillery use, but no new structures are required for the new use. Given the small scale of the proposed facility, the property is also well suited for the proposed conditional use, *Value-added Agricultural Business*. A Conditional Use Permit (CUP) does not change the base, underlying zoning.



**Figure 5.** Subject property shown on the Future Land Use Map of Baldwin City, with red star. The area is designated for single family residences with a pocket park proposed to the southeast.

As the property is located within the Urban Growth Area of Baldwin City, urbanization is expected in the future. A neighborhood park is recommended in this area and the apple orchard and tourism activities that have been suggested along with the micro-distillery should be compatible with the recommended future land uses.

**Staff Finding** – The property is suitable for the uses which are permitted within the A (Agricultural) District. The property is also suitable for the proposed *Value-added Agricultural Business* use, a micro-distillery, when approved as a Conditional Use, given the small scale of the facility.

#### **IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED**

**Staff Finding** – The Douglas County Appraiser’s records indicate that the residence was built in 1966, which was the year Zoning Regulations were adopted in the unincorporated portions of Douglas County. The outbuildings were constructed in 1980, a farm storage shed, and in 2011, a utility building. The property has been developed with residential and accessory structures since the adoption of zoning in the County.

#### **V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY**

Applicant’s Response:

*“We can’t envision any detrimental effects which would be caused by approving the proposed use. Douglas County zoning regulations currently allow properties such as Maple Leaf Orchards to be utilized by microbreweries and farm wineries. The proposed micro-distillery would actually be a smaller operation than either of those. The Douglas County zoning regulations simply do not address the question of micro-distilleries because nobody has ever asked before, as we understand it. It would be reasonable to say that, if either of those uses are appropriate, then there is no reason why using the property for a micro-distillery would be inappropriate. These uses amount to essentially the same thing, for all intents and purposes. It is a question of semantics, really.”*

Section 12-319-1.01 of the County Zoning Regulations recognize that *“certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited.”* The proposed use is included in the Conditional Uses enumerated in Section 12-319-4 of the Zoning Regulations for the Unincorporated Territory of Douglas County as a *Value-added Agricultural Business*.

The applicant provided information outlining the proposed use, which is included with this report as an attachment. Production would be fairly low, up to about 1,000 gallons of apple brandy per year, and would expand to include smaller batches of various fruit brandies in the future. The long term plans for the property include Agritourism activities, including tours of the micro-distillery and, if permitted, a small tasting room.

The subject property is adjacent to, and takes access from, a minor collector road with connections to a principal and minor arterial nearby. All processing will occur indoors and there will be no exterior storage of products or commodities. The applicant indicated that the by-product from the distilling process is in the form of pressed pulp which can be fed to livestock or composted.

**Staff Finding** – The use is small scale and should have no negative impacts to the adjacent properties.

**VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS**

Applicant's Response:

*"According to our understanding, the proposed use would pose no adverse effects to public health, safety or welfare. As far as that goes, there is reason to believe that the proposed use would improve local land values and might even benefit local businesses. Micro-distilleries have had that sort of impact in other parts of the country where they have sprung up in the last decade.*

*It is reasonable to consider whether the peace and privacy of our neighbors might be disturbed by the traffic of visitors to Maple Leaf Orchards (should we be successful). That seems improbable to us. We would be surprised (but happy) if Maple Orchards were to receive even half as many visitors as it formerly received during its heyday as a U-Pick-Em orchard and farm experience. That would only occur if the local area were to undergo a lengthy process of development involving wineries, micro-breweries and micro-distilleries, such that a weekend tourist trail of those attractions became popular, along the lines of Napa Valley, or the Kentucky Bourbon Trail. If that were to happen someday, any minor inconveniences would definitely be offset by the innumerable positive financial impacts which would occur simultaneously."*

Evaluation of the relative gain weighs the benefits to the community-at-large vs. the benefit of the owners of the subject property.

Approval of this request would allow the landowners to process apples they grow on the property, in addition to apples or other fruits that are produced off-site, as a *Value-added Agricultural Business*.

No benefit would be afforded to the public health, safety, or welfare by the denial of the request as the business operation is small scale, a low traffic generator and would be located on a minor collector in close proximity to a principal arterial.

**Staff Finding** – In staff's opinion, the approval of this request will result in a compatible project that will not harm the public health, safety or welfare. Denial of the request would provide no benefit to the public health, safety or welfare.

**VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN**

Applicant's Response:

*"The micro-distillery would make use of the concept of "apples to bottle" within the confines of the orchard, depending on apples produced by the orchard. To this end, we plan on putting in more apple trees that would in turn enhance the rural nature of the area. Every attempt will be made to landscape the area around the orchard to look as natural as possible. We have researched the different native prairie grasses (silver bluestem, switch grass or foxtail millet) that are currently growing on our property. Working with a landscape architect, we plan to make beds along the road*

*and leading to the farmstead that would blend the various structures with the natural surroundings. Our goal is to be eco-friendly, to get an “organic” designation, and to be conservative with what nature has to provide.”*

An evaluation of the conformance of a Conditional Use Permit request with the comprehensive plan is based on the strategies, goals, policies and recommendations contained within *Horizon 2020*. The comprehensive plan does not directly address Conditional Use Permits; however it does contain recommendations for properties within the Urban Growth Area in Chapter 4, Growth Management. At the time the comprehensive plan was written, Lawrence was the only city with an Urban Growth Area. Baldwin City has since established an Urban Growth Area and the recommendations would apply to this area as well. The plan recommends that the Urban Growth Area not be developed to urban densities until infrastructure is in place and recommends that developing properties be annexed. The CUP proposal will maintain the existing rural residence and agricultural uses and add a *Value-added Agricultural Business* use which would not require the extension of infrastructure. The proposed uses are compliant with the comprehensive plan recommendations for properties within an Urban Growth Area.

**Staff Finding** –A Conditional Use Permit can be used to allow specific uses that are not permitted in a zoning district with the approval of a site plan. This tool allows development to occur in harmony with the surrounding area and to address specific land use concerns. The proposed CUP is compliant with the recommendations in the comprehensive plan as it will maintain the rural/agricultural character of the area and won't require the extension of City infrastructure.

#### **CUP PLAN REVIEW**

The proposal is to convert the Morton Building on the property to a micro-distillery. No external site improvements are proposed at this time.

#### **Parking and Access:**

The site has 2 access drives, one to the parcel in the northeast which had previously been used for the sale of agricultural products and the other to the residence. Deliveries would occur on the parking lot on the small parcel to the northeast. The applicant indicated that fruit deliveries would be very infrequent and would occur only during the harvest season. Product would be delivered with a pick-up truck.

The employee parks in the residential driveway. The applicant indicated he may consider extending the drive to the Morton Building in the future but has concerns with how this would affect the aesthetics of the property. Given the small scale, and non-public use of the facility, an access to the building is not necessary at this time.

#### **Utilities**

Waterlines will be extended to the building for washing and processing, but there will not be a restroom installed. The employees will use the existing restroom in the residence. The Douglas County Health Department indicated that a small septic system should be installed to manage the wastewater or the Morton building should be connected to the existing septic system.

**Landscape and Screening:** The equipment and materials used in the business will be stored inside; therefore, no landscaping or screening is required.

#### **Limits and Conditions:**

The standards for the *Value-added Agricultural Business* use apply to this use and these are listed on the plan. Due to the long-term investment, it is not appropriate to impose an end date on this CUP. Five year administrative reviews are recommended to provide regular opportunities to assess changes in operation.

**Conclusion**

The *Value-added Agricultural Business* standards should insure compatibility with surrounding properties. A permit required for the Conditional Use may be obtained from the Douglas County Zoning and Codes Office following approval of the Conditional Use and release of the plans to the Zoning and Codes Office. The building used for the *Value-added Agricultural Business* must comply with minimum building code standards for non-residential uses and a building permit will be required for changes to the structure.



November 4, 2014

Hi Mr. Sherman,

Thanks so much for getting back to me on this.

My wife and I bought a 20 acre apple orchard/farm outside of Baldwin City about five years ago. This place had been known as Maple Leaf Orchards for decades. It was once a thriving orchard and "kiddie farm" destination, with a pumpkin patch, hay wagon rides and so on. Many locals have shared happy memories about their visits there! They are very excited that we are rehabilitating the orchard, for it had become very neglected and run-down.

Paul and Helene Gesink were the previous owners. Paul grew crops and sold produce, U-pick-'em fruit, hot dogs, slushies, bird feeders and so on from one of the buildings on the smaller parcel. The property actually consists of two separately deeded parcels. The 18.5 acre tract includes the orchard, farmhouse and a Morton Building. It has been in operation as an orchard since the early 60's. My understanding is that it has always been taxed and zoned as Agricultural land. The 1.5 acre tract was taxed as commercial land by the State until a few months before we bought it in 2009. My understanding is that it had some sort of mixed-use business zoning back then. Helene taught elementary school. The place fell apart after they divorced.

Our original intention was to plant grape vines and begin the process of establishing a winery while we waited for the vines to mature. (As you probably know, it generally takes 3-5 years for grape vines to produce.) As we evaluated the property and began designing the vineyard/winery - selecting grape varieties (mostly Crimson Cabernet, like Dennis Reynolds over at Somerset Ridge), acquiring tools and materials to build trellises, testing the soil, and so on - we discovered that the farm was in even worse shape than we thought.

The orchard, in particular, was more of a jungle than anything else, with hundreds of vines up to 4" in diameter covering the canopies and pulling the trees to the ground. Partly out of sympathy for the poor trees and partly in order to have fruit (even if not grapes) available to ferment sooner, rather than later, we began to rescue the orchard. Approximately 80 out of 160 trees survived the vine-clearing process and subsequent drought. We have since planted 24 additional trees, including some pears and cherries. We intend to plant at least 100 more apple trees this Spring, as well as a smaller number of plum and other fruit trees. You see, we had a change of plans along the way! My wife is a gardener and lifelong tree-lover. She fell in love with the orchard!

I am a physician who will be retiring in a few years. I will need a small retirement income to augment Social Security. Two years ago, we made about 50 gallons of hard apple cider, which is currently aging. Last year, a series of unusually warm March days alternating with freezing nights took out our entire crop. This summer, we had a good crop and fermented another 90-100 gallons. I can't make a profit selling hard apple cider

though, especially with so many large companies mass producing it these days. I just can't compete with their economies of scale. My price per bottle would simply be too high.

A micro-distillery is a different story. They are very popular these days! More and more of them are opening around the country every year. There is a growing market for boutique (aka "artisan") brandies. Our plan is to distill our hard apple cider into apple brandy. Eventually, we would like to distill 500-1000 gallons of brandy annually. According to my projections, that would result in \$10-20K revenue after expenses annually. We would make smaller batches of various fruit brandies (probably plum and pear to begin with) someday.

We are also interested in making the orchard a place for families to visit again. The details about that are still under consideration. We would like to offer tours of the micro-distillery and, if permitted, have a small tasting room. We are confident that we would attract many visitors during the annual Maple Leaf Festival in Baldwin City (we are just outside the city limits). It is likely to take a little longer to develop a plan for attracting Agritourists from greater distances. Our efforts in that direction thus far have included studying the State's Agritourism website and beginning to build relationships with other orchards and wineries. We plan to visit the two micro-distilleries currently operating in Kansas.

Our primary fruit processing, fermentation and distillation facility will be an existing 42' x 60' Morton Building on the large property, built in 2011. It is on the back half of the property and only partly visible from the road. We have been discussing electrical service with Baldwin City Public Works and interior finishing with the Morton Building people who constructed the barn. I have made inquiry with the manufacturer of a small hydraulic apple grinder/press. There are several options for a still.

Apple brandy has traditionally been distilled in 250 gallon batches using copper pot stills sometimes called alembics. In Normandy, where they call apple brandy "Calvados", portable pot stills are hauled from farm to farm where they are heated over wood-burning fires. Farmers will produce one or two barrels of "Calvados" annually, which they sell or trade to other farmers. The majority of farms in that part of France have a small orchard which generates this small but important income for them. Industrial distilleries are very different. There, column stills utilize an entirely different "continuous" distillation process. This continuous feed (as opposed to single batch) process enables them to produce tens of thousands of gallons (or even more!) of grain alcohol daily.

I hope I have been able to convey the difference between a distillery and a micro-distillery. What we have in mind is a micro-distillery. We would use a 250 gallon (possibly smaller, depending on cost) copper pot still with an electrical heating element. I believe our operation would be smaller than most micro-breweries and farm wineries in Kansas. Our current workforce consists of the two of us (part-time) and one full-time

employee. I would expect to hire one or two more full-time employees at the most, and that would happen only if we are successful.

Of course, all of this is dependent upon our ability to obtain a distillery permit from the TTB. They do not issue permits until the facility and machinery are all in place, have been approved by the appropriate local, county and state agencies and have passed TTB inspection. We have been encouraged by members of the Baldwin City Council to move forward. I have put all of these projects and purchases on hold pending a decision from you/the Douglas County Zoning department.

I have never been involved with a project like this in my life and am eager to obtain your guidance as to how to do things properly from the County's point of view. How should I proceed? Since micro-distilleries are not even specifically addressed in the zoning regulations currently, but are closer to micro-breweries or farm wineries than anything else, is it a matter left to your discretion? Or would a micro-distillery fall under the general category of distillery even though they are actually very different? If that is the case, I fear I must abandon the project entirely, for distilleries are allowed only in heavy industrial zones.

Thank you for your time in reading this and for any guidance you may give me. Please let me know if you have any questions. I would be more than happy to show you around the orchard, if that would be helpful to you.

Sincerely,

(William) Rory Murphy, MD  
913-484-4045 - cell phone



**FOR IMMEDIATE RELEASE**

## **Huber's Starlight Distillery Celebrates Grand Opening of New Stillhouse**

STARLIGHT, Indiana (December 5, 2014) Today, Huber's Starlight Distillery announced their official opening to a large crowd of supporters during a public open house. The grand opening & ribbon cutting ceremonies celebrated the expansion into a new 12,000 square foot "stillhouse" facility on the Huber's Orchard, Winery, and Vineyard property in Starlight, Indiana.

The development of a distillation process for spirits and opening of a stillhouse was a logical step for Huber's after Indiana Governor Mike Pence signed a new craft artisan permit into law in 2013. State Rep. Ed Clere, R-New Albany, authored the legislation and said, "Indiana wineries and breweries have done a lot for economic development and revitalization, tourism, and job creation in communities throughout the state. There are similar opportunities with distilling, and this expansion is a significant step for the Huber family."

The law grants permission to wineries who want to diversify their business model to include the production of the spirit, such as vodka, gin, whiskey, and bourbon. In response, Huber's released their Starlight Distillery Vodka this past June and in October, Starlight Distillery Gin.

Ted Huber, President, Co-Owner, and Master Distiller of Starlight Distillery noted that the agriculture and tourism aspects of their operation have always been a priority for the family and the tours demonstrating their production process are becoming more popular with visitors. "It's a priority for us to be grain to glass with our spirits like we are vineyard to bottle with the majority of our wines," said Huber. "Our tradition started in 1843 with a family farm and our agricultural heritage still remains a priority today."

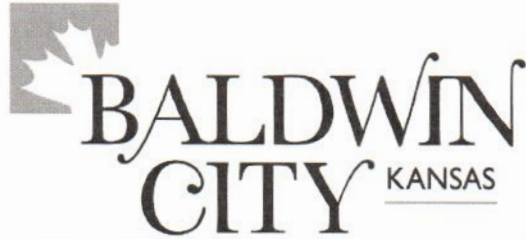
The Huber family hopes the expansion into spirit production will be an investment in the local community and partnerships with local companies such as Vendome from Louisville, KY, Libs Paving and Koetter Construction of Floyds Knobs, Indiana were a priority in the construction of the facility.

The event was planned as a celebration of National Repeal Day, an annual affair honoring the day when Prohibition was repealed in 1933. It included a blessing of the new facility, surprise fireworks, spirit tastings and hors d'oeuvres.

"The reaction from the public has been overwhelmingly positive, especially now that Huber's guests have a choice between enjoying the new Vodka and Gin craft artisan cocktails available on property along with Huber's award winning wines," said Samantha Huber, Retail Manager of Huber's Winery.

Huber's is an active member of the American Craft Spirits Association (ACSA) as well as the Distilled Spirits Council of the United States (DISCUS). The brand, Starlight Distillery, was founded in 2001 with the production of their brandy and is a division of Huber's Orchard, Winery, & Vineyards. Currently, all wines and spirits are available for purchase. Huber's Winery is open Monday through Saturday, 10 a.m. – 6 p.m. and Sundays, 12-6 p.m. For more information about the distillery and the products, visit [www.starlightdistillery.com](http://www.starlightdistillery.com).

**Media Contact:** Dana Huber, [dhuber@huberwinery.com](mailto:dhuber@huberwinery.com); (800) 345-9463 or (502) 817-0064 (cell).



P.O. Box 86, 803 Eighth St., Baldwin City, KS 66006 (785) 594-6427 FAX: 594-6586

May 14, 2015

Lawrence/Douglas County Planning Commission  
6 East 6<sup>th</sup> Street  
Lawrence, KS 66044

Dear Chairman Liese & Lawrence/Douglas County Planning Commission Members:

The Baldwin City Planning Commission has received and reviewed the Conditional Use application for Mr. and Mrs. Murphy to operate a micro-distillery at 1743 N. 200 Road, Baldwin City, Kansas. It is the opinion of the Baldwin City Planning Commission that the operation of a micro-distillery will have a positive impact on the County and its agri-tourism efforts and will offer a distinctive economic opportunity for the City of Baldwin City. We fully support the approval of the Murphy family's Conditional Use application and recommend that you do as well.

Respectfully,

Richard DeChant  
*Baldwin City Planning Commission Chair*

Matt Kirby  
*Planning Commission Member*

Ted Madl  
*Planning Commission Member*

Joe Salb  
*Planning Commission Member*

Casey Simoneau  
*Planning Commission Member*

**Conditional Use Permit  
Maple Leaf Orchards  
Micro-Distillery  
1743 N 200 Road**



**General Notes:**

1. Site: 1743 N 200 Road and adjacent parcel
2. Site Area: Approximately 20 acres
3. Existing Zoning: A (Agricultural) District
4. Current Use: Residential and Agricultural
5. Proposed Use: Residential, Agricultural and Value-added Agricultural Business (Micro-Distillery)
6. Legal Description: 18.327 ACRES; SECTION 10 TOWNSHIP 15S RANGE 20E; EAST 10 ACRES OF NORTHEAST 1/4 OF NORTHWEST 1/4, LESS 1.673 ACRE D 291/420; ALSO W 10 ACRES OF E 1/2 OF NORTHEAST 1/4 OF NORTHWEST 1/4 TCW82

**CUP CONDITIONS:**

1. A maximum of 4 full-time equivalent employees are permitted.
2. The total area of the structures used for operation, production, or storage may not exceed 10,000 sq ft.
3. Noise, light, vibration, or odor associated with the production may not be perceptible beyond the site boundary/ property lines.
4. The process must comply with EPA water and air quality standards.
5. All equipment used in production shall be located wholly within a building or structure or be screened from the public rights-of-way and adjacent residential buildings.
6. Product shall be enclosed within a building or structure so that it is not visible from the property lines.
7. Deliveries from vehicles with a GVW (Gross Vehicle Weight) that exceeds 5 tons in capacity are limited to no more than 2 trips (to and from the site) per day.
8. The CUP will be administratively reviewed every 5 years following approval.

**Parking Summary:**

Required parking: 1 space per 2 employees

1 employee: 1 parking space

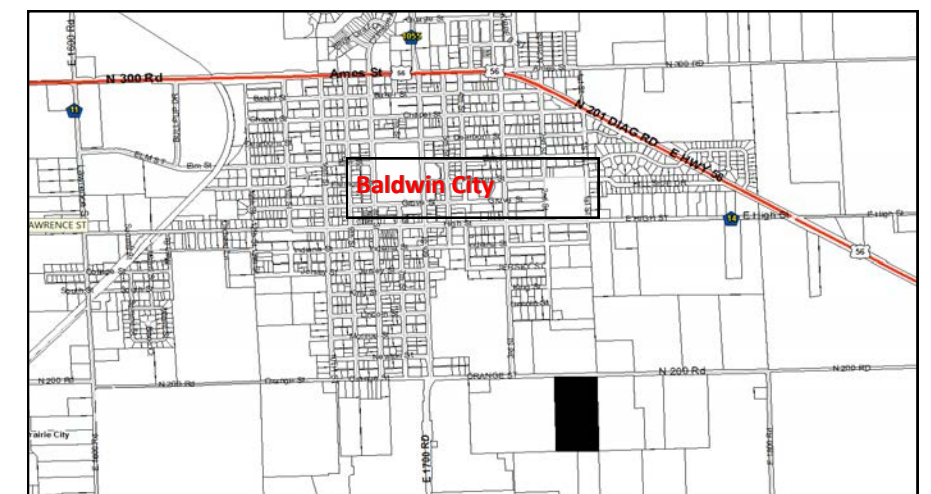
Parking provided: 1 parking space

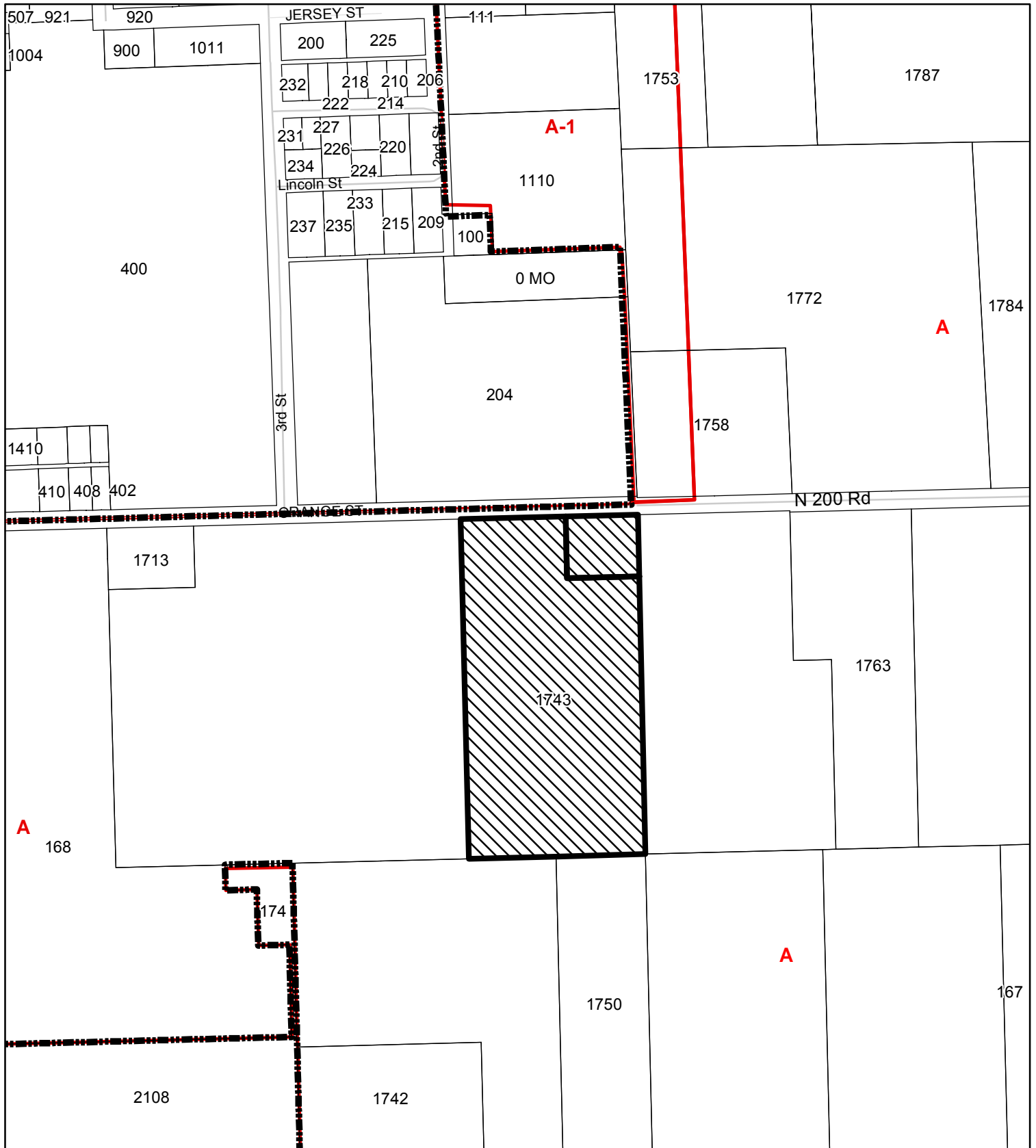
**Site Summary:**

Site area: ~ 20 acres

Micro-Distillery Structure: 2,520 sq ft

**GENERAL LOCATION**





CUP-15-00060: Conditional Use Permit for a Micro-Distillery  
 Located at 1743 N 200 Road



**ITEM NO. 1      CONDITIONAL USE PERMIT FOR A MICRO-DISTILLERY; 1743 N 200 RD (MKM)**

**CUP-15-00060:** Consider a Conditional Use Permit for a micro-distillery, a *Value-added Agricultural Business*, located on approximately 20 acres at 1743 N 200 Rd, Baldwin city. Submitted by William R. Murphy for Sunwise Turn Farms, LLC, a.k.a. Maple Leaf Orchards, LLC, property owner of record. *Joint meeting with Baldwin City Planning Commission.*

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**APPLICANT PRESENTATION**

Mr. William Rory Murphy said they were rehabilitating the trees that survived the years of neglect on the site. He said they also planted new apple trees. He said the new trees would take 3-5 years to mature. He said the Conditional Use Permit would allow them to bring in fruit if needed. He said he did not have time to talk to the Health Department regarding the septic system.

**PUBLIC HEARING**

Mr. Matt Kirby, Baldwin City Planning Commission, referenced the letter of unanimous support from the Baldwin City Planning Commission that was included in the packet. He said this type of business had culture, prestige, and a connection to artisanry. He said Baldwin Planning Commission felt it would likely be a business with a connection to interesting kinds of food related businesses. He said it was a beautiful property.

**COMMISSION DISCUSSION**

Commissioner Jossierand felt it was a great project and wished the applicant luck. He inquired about the typical life of an apple tree in this environment.

Mr. Murphy said the trees would be grown organically so that would create a disadvantage. He said the life span of an apple tree was anywhere from 20 to several hundred years.

Commissioner von Achen asked staff to explain how the process would differ if they obtained all the apples they needed from their property.

Ms. Miller said if the applicant raised all the apples it would probably be considered an agricultural use and would not come before Planning Commission. She said that would be something that the County Zoning & Codes would look at. She said if they did not raise all the apples a Conditional Use Permit would be required.

Commissioner Liese inquired about the Starlight Distillery press release and if it was related.

Mr. Murphy said he shared that with staff because he thought it might be of interest to see how other communities had received distilleries. He said it was a much larger scale operation than what he would be running. He said some states were passing laws to encourage distilleries and that it was a growing and popular endeavor.

**ACTION TAKEN**

Motioned by Commissioner von Achen, seconded by Commissioner Denney, to approve the Conditional Use Permit, CUP-15-00060, for a micro-distillery, a *Value-added Agricultural Business* use, subject to the following conditions:

1. The following standards apply to the use:
  - a. A maximum of 4 full-time equivalent employees are permitted.
  - b. The total area of the structures used for operation, production, or storage may not exceed 10,000 sq ft.



- c. Noise, light, vibration, or odor associated with the production may not be perceptible beyond the site boundary/property lines.
  - d. The process must comply with EPA water and air quality standards.
  - e. All equipment used in production shall be located wholly within a building or structure or be screened from the public rights-of-way and adjacent residential buildings.
  - f. Product shall be enclosed within a building or structure so that it is not visible from the property lines.
  - g. Deliveries from vehicles with a GVW (Gross Vehicle Weight) that exceeds 5 tons in capacity are limited to no more than 2 trips (to and from the site) per day.
2. Provision of a revised CUP plan with the following changes:
- a. Identify the areas where storage for the aging process may occur and add the following note *"If storage is to occur in any structure other than the Morton building, the Zoning and Codes Office shall be notified, all necessary building permits obtained, and the structure shall be brought into compliance with current building codes before use."*
  - b. Add the following notes:
    - i. *"The Conditional Use Permit will be administratively reviewed by the Zoning and Codes Office every 5 years following approval."*
    - ii. *"Prior to the commencement of the use, an additional septic system shall be installed for the Morton building or the Morton building will be connected to the existing septic system."*

Unanimously approved 9-0.

## HOME RULE RESOLUTION NO. HR-15-\_\_\_

A HOME RULE RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS AMENDING THE CONSTRUCTION CODES OF DOUGLAS COUNTY, KANSAS, SEPTEMBER 19, 2012 EDITION, AS CODIFIED AT CHAPTER 13 OF THE DOUGLAS COUNTY CODE.

**WHEREAS**, K.S.A. 19-101a, and amendments thereto, authorizes the Board of County Commissioners (hereinafter the "Board") to transact all County business and perform all powers of local legislation and administration it deems appropriate, including the enactment of legislation designed to protect the health, safety, welfare, and quality of life of the citizens of Douglas County; and

**WHEREAS**, by Resolution No. HR-12-9-3, the Board of County Commissioners adopted Construction Codes of Douglas County, Kansas, September 19, 2012 Edition, codified at Chapter 13 (the "Construction Codes"), generally adopting new construction and building codes for the unincorporated areas of Douglas County, Kansas, replacing construction codes that were previously in place, with the new codes becoming effective January 1, 2013; and

**WHEREAS**, the Board previously amended the Construction Codes and desires to make further amendments to the Construction Codes as set forth in this Resolution.

**NOW, THEREFORE**, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION AND INTENDING TO EXERCISE THE POWERS OF HOME RULE LEGISLATION PURSUANT TO K.S.A. 19-101a, DOES HEREBY RESOLVE AS FOLLOWS:

**Section 1. AMENDMENTS TO CONSTRUCTION CODES.** The Construction Codes of Douglas County, Kansas, September 19, 2012 Edition, as codified at Chapter 13 of the Douglas County Code and previously amended, are hereby amended as follows:

- 1.1 In Section 13-111.2, Note No. 5 under the provision titled "Inspection and Other Fees" is deleted and Nos. 6 and 7 are renumbered 5 and 6, respectively. From and after the effective date of this Resolution, the provision titled "Inspection and Other Fees" shall read as follows:

"Inspection and Other Fees:

1. Inspections outside of normal business hours (minimum charges - two hours) - \$47.00 per hour.\*
2. Re-inspection fees assessed under provisions of Section 108.8 - \$47.00 per hour.\*

3. Inspections for which no fee is specifically indicated (minimum charge - one-half hour) - \$47.00 per hour.\*

4. Additional plan review required by changes, additions or revisions to approved plans (minimum charge - one-half hour) - \$47.00 per hour or the total hourly cost to Douglas County, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

5. The permit applicant shall pay costs of any third party plan review required by the size or complexity of the building project, as determined by the building official.

6. Solar photovoltaic (PV) systems (up to 13.44 kW) and solar thermal systems requiring no structural changes to the building - \$115.00. For every kW, measured in whole increments of 1 kW, over 13.44 kW the flat rate shall increase by \$10 per kW. [HR- 14-1-1]"

All of the remaining provisions of Section 13-111.2 remain unaltered.

1.2 Section 13-111.5 is amended to read as follows:

13-111.5 **Work Commencing Before Permit Issuance.** Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to an additional fee established by the permit fee schedule, which shall be in addition to all other required permit fees; provided, however, that the building official shall have the authority to waive some or all of this additional fee if (I) the building official determines that failure to obtain the permit was not an intentional act to avoid the fees, inspections, or other provisions of the Construction Codes and (II) the person requiring the permit cooperates in applying for the permit, paying permit fees, and complying with the other provisions of the Construction Codes.

**Section 2. COPIES.** Not less than one copy of the Construction Codes, as amended, together with the International Building Code, 2012 Edition; the International Residential Code, 2012 Edition; the International Plumbing Code, 2012 Edition; the International Mechanical Code, 2012 Edition; the International Fuel Gas Code, 2012 Edition; and the National Electric Code (NFPA 70), 2011 Edition; all adopted therein, marked and stamped in the manner provided by K.S.A. 12-3304, shall be filed with the County Clerk and shall be open to inspection and available to the public at reasonable business hours. Subsequent references to the "Construction Codes" shall mean the Construction Codes as adopted and amended herein.

**Section 3. SEVERABILITY.** If any section, subsection, sentence, clause or phrase herein or in the Construction Codes is, for any reason, held to be

unconstitutional or invalid, such decision shall not affect the validity of the remaining portions hereof. The Board declares that it would have adopted the Construction codes, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

**Section 4. EXISTING RIGHTS OR VIOLATIONS.** Nothing herein or in the Construction Codes hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or resolution repealed in connection with the adoption of the Construction Codes, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Resolution.

**Section 5. REPEAL.** Provisions in the Construction Codes inconsistent with this Resolution are repealed.

**Section 6. EFFECTIVE DATE.** This is a home rule resolution and shall take effect and be in force and effect from and after its adoption and its publication once in the official County newspaper.

**ADOPTED:** \_\_\_\_. 2015.

BOARD OF COUNTY COMMISSIONERS OF  
DOUGLAS COUNTY, KANSAS

\_\_\_\_\_  
Jim Flory, Chair

\_\_\_\_\_  
Nancy Thellman, Member

\_\_\_\_\_  
Mike Gaughan, Member

ATTEST:

\_\_\_\_\_  
Jameson D. Shew, County Clerk