

MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding (this "MOU") is entered into this ____ day of _____, 2012, by and between the CITY OF LAWRENCE, KANSAS (the "City"); DOUGLAS COUNTY, KANSAS, by and through the BOARD OF DOUGLAS COUNTY COMMISSIONERS (the "County"); and THE FRATERNAL ORDER OF POLICE LAWRENCE LODGE NO. 2, INC. (the "FOP").

WHEREAS, FOP owns real estate in Douglas County, Kansas, generally located at 768 E 661 Diagonal Road, on which land FOP owns and operates an 8-position pistol/rifle range (the "Range").

WHEREAS, FOP has received a proposal (the "Proposal") dated August 17, 2012 from MT2, LLC (the "Contractor"), by which the Contractor has proposed to the FOP a plan of lead reclamation and environmental stewardship of the Range (the "Project").

WHEREAS, City and County have generally reviewed the Proposal, agree that the Project provides a public benefit, and are willing to assist the FOP in funding the Contractor's costs and charges for the Project.

WHEREAS, the Proposal and Project shall remain under the exclusive control of the FOP.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth below, the parties agree as follows:

1. *Purpose.* The purpose of this MOU is to outline the understanding of the parties as to the extent of the City and County assistance in financing some of the costs of the Project and ongoing environmental maintenance of the Range, and the obligations of the FOP in exchange for such assistance.

2. *Understanding and Obligations of FOP.* FOP understands and agrees to do the following in exchange for the assistance under Paragraphs 3 and 4:

a. Enter into a contract with Contractor to perform the Project in accordance with the Proposal, including all options shown on page 6 of the Proposal.

b. Provide supervision and oversight of the Project to ensure Contractor performs in accordance with the Proposal, including but not limited to responding to and handling requests for change orders, contract disputes, and any other issues that arise in connection with the Project; provided, however, that FOP will not agree to a change order that reduces the scope or quality of the Project without the consent of the City and County.

c. Issue periodic payments to the Contractor at such times and in

such amounts as required by the contract between FOP and Contractor.

d. Pay a minimum of \$4,000 of the costs of the Project from its own funds and, if the costs of the Project exceeds \$40,000 (\$4,000 from FOP's own funds, plus \$12,825 from County, plus \$23,175 from City), pay any excess costs from its own funds.

e. Going forward, annually budget for ongoing environmental maintenance and hold such budgeted funds in a separate account specifically earmarked for environmental maintenance.

f. Deposit the Project cost set-off that FOP receives from recycled lead in the separate account referenced above in Paragraph 2.e; provided, however that FOP can use such set-off to pay for Project costs to the extent that they exceed \$40,000.

g. If the Contractor's billed cost of the Project is less than \$40,000, retain the excess funds received from the City and County (the excess funds being determined after FOP has made its minimum \$4,000 payment from its own funds), and hold the excess funds plus the Project cost set-off that FOP receives from recycled lead in the separate account referenced above in Paragraph 2.e, to be used for ongoing environmental maintenance.

3. *Understanding and Obligations of County.* County understands and agrees to do the following:

a. Pay FOP the lump sum of \$12,825 within 30 days of the date FOP provides County with a copy of a fully executed contract in accordance with Section 2.

b. The County has no obligation or responsibility to determine the scope or sufficiency of the Proposal or the Project, and shall have no responsibility for the Project or liability for claims resulting from the operations, management, control or conduct of the Range or elsewhere on FOP's property.

4. *Understanding and Obligations of City.* City understands and agrees to do the following:

a. Pay FOP the lump sum of \$23,175 within 30 days of the date FOP provides County with a copy of a fully executed contract in accordance with Section 2.

b. The City has no obligation to determine the scope or sufficiency of the Proposal or the Project, and shall have no responsibility for the Project or liability for claims resulting from the operations, management, control or conduct of the Range or elsewhere on FOP's property.

5. *Understanding and Obligations of all Parties.* All parties understand and agree to the following:

a. The parties anticipate that the FOP will continue to grant the City

and County access to the Range in exchange for reasonable user fees. The City and County understand that the FOP may include projected future environmental maintenance costs referenced above in Paragraph 2.e into the user fee.

- b. Every provision of this MOU is subject to the laws of the State of Kansas.
- c. This MOU may be amended only by written mutual agreement of all parties.
- d. The City and County retain all rights and protections under the Kansas Tort Claims Act, (K.S.A. 75-6101, *et seq.*), and nothing in this MOU shall diminish them. The City and County shall not hold harmless or indemnify any party.
- e. Each party shall act in their individual capacity and not as agents, employees, partners, in joint venture, or as associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- f. The parties may not assign this MOU to any other entity, nor the respective rights or duties thereof.
- g. In the event any of the provisions of this MOU are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of the MOU and replaced by a provision as similar in terms to that provision as is possible and be enforceable. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.
- h. All parties signing this MOU hereby attest to authorization as a signatory for the respective entities involved.

[remainder of page intentionally blank, signature page to follow]

IN WITNESS WHEREOF, this MOU is effective upon the last signing by a duly authorized representative of the parties.

CITY OF LAWRENCE, KANSAS

DOUGLAS COUNTY, KANSAS

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

THE FRATERNAL ORDER OF POLICE
LAWRENCE LODGE NO. 2, INC.

By: David E. Beavin

Title: PRESIDENT

Date: 12-10-12