



Agenda Statement

Date: April 4, 2011
To: Mayor & City Council
From: John D. Harrenstein, City Administrator
Re: Consider conditional approval of agreement with USD 491, Eudora Township Library, and City of Eudora for demolition of property at 10th and Main.

Background

Attached to this agenda statement is a consortium agreement for demolition of the old middle school. As outlined in the agreement, USD 491, the City of Eudora, and the Eudora Township would contribute to the demolition and grading of the site. Total project costs are estimated at \$220,000 and each body would contribute the following amount:

City of Eudora:	\$85,000
USD 491:	\$75,000
Township Library:	\$60,000
Total:	\$220,000

Reasons for moving forward with the project are many; however, two important reasons stand out from a city perspective. First, the land received from our contribution to the project will be the site of the future public safety building that will house our police and fire department. Second, the project will contribute immensely to redevelopment of the downtown area and cleaning up a site that has fallen into disrepair.

Two questions emerge from the project. First, where will the Eudora historical society be housed following demolition? Second, where will the CPA Carnival be located? The answer to the first question is undecided, but several possibilities exist. The Historical Society may receive funding from Douglas County this year to assist in renting a store front in downtown Eudora or they may be moved to another vacant building within the city. The answer to the second question is that for this year, the Carnival may be able to continue using the existing site if grass has seeded properly or the city will work with the CPA organization to configure the Carnival on existing city streets in the downtown area.

Funding for the project will come from unreserved fund balance in the Special Police & Fire Fund. Currently, the Special Police and Fire fund has a balance of \$130,000.

Staff recommends conditional approval of the project pending USD 491 approval and approval from the Eudora Township Library Board. RD Johnson submitted the lowest response to the request for proposal of demolition at approximately \$175,000. The remaining amounts will be used to grade and seed the site.

Budget Approval – 

City Administrator Approval – 

Recommended Council Action:

Motion: I move the City Council conditionally approve the Consortium Agreement between the City of Eudora, USD 491, and the Eudora Township Library Board for demolition of property at the corner of 10th and Main Street in Eudora at a cost not to exceed \$220,000 and authorize the City Administrator to sign the Consortium agreement after approval from the USD 491 school board and the Eudora Township Library Board.

CONSORTIUM AGREEMENT

This Consortium Agreement (the "Agreement") is entered into by the parties below effective the 27 day of April, 2011 (the "Effective Date"), between CITY OF EUDORA, KANSAS ("City"), UNIFIED SCHOOL DISTRICT NO. 491 DOUGLAS COUNTY, STATE OF KANSAS ("School"), and EUDORA PUBLIC LIBRARY ("Library") (the foregoing collectively, the "Consortium" and each individually a "Consortium Member").

RECITALS

A. The School owns property which formerly housed the School's middle school and is located at 10th and Main Streets in Eudora, Kansas as more particularly described on the attached Exhibit A (the "Property").

B. The Consortium Members will contribute to the redevelopment of the Property and then divide the Property into three parcels with one parcel for each Consortium Member in exchange for their financial support.

C. The City will enter into contractual arrangements on behalf of the Consortium to conduct demolition and excavation services on the Property to remove the existing building on the Property (such services the "Demolition Services").

D. The City will enter into contractual arrangements on behalf of the Consortium to have grading services ("Grading Services") to level and prepare the Property for use by the parties.

E. The Consortium Members will provide funding to the City for use by the City to pay for the Demolition Services and Grading Services and not for any other use.

F. The Consortium Members desire to establish their respective rights and obligations with regard to the Demolition Services, Grading Services, and to the Property.

G. The School will convey the Property to the City by General Warranty Deed before the Demolition Services may begin.

NOW, THEREFORE, in exchange for good and valuable consideration. The receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **Recitals.** The Recitals set forth above are a part of this Agreement.
2. **Consortium Representative.** The Consortium Members nominate and appoint the City, and the City agrees to serve, as representative of the Consortium for the purpose of paying for the Demolition Services and Grading Services and directing the completion of the Demolition Services and Grading Services.
3. **Payment and Conditions for Consortium Financial Commitments.** The Consortium Members shall remit their Consortium Financial Commitments (as

defined below) to the City within 30 days of written notice from the City. Prior to the City distributing any portion of the Consortium Financial Commitments for Demolition Services or Grading Services, applicable contractual progress requirements as contained in the contracts for the Demolition Services or Grading Services must be satisfied and the City must verify completion of such progress.

4. **Consortium Financial Commitments.** The Consortium Members financial contributions for the Demolition Services and Grading Services may be collectively referred to in this Agreement as the "**Consortium Financial Commitments.**" With regard to the Consortium Financial Commitments, the Consortium Members agree as follows:

A. The Consortium Member's contributions for the Demolition Services and Grading Services shall not exceed the total sum of \$220,000.00 and each Consortium Member shall be responsible for the following amounts:

City: \$85,000.00
School: \$75,000.00
Library: \$60,000.00

B. The City shall collect from the Consortium Members and thereafter hold and remit all Consortium Financial Commitments in accordance with this Agreement and the contracts for the Demolition Services and the Grading Services.

C. Each Consortium Member is entitled to request and receive documentation substantiating the City's expenditures and disbursements of Consortium Financial Commitments in connection with the Demolition Services and Grading Services.

D. If the total costs for Demolition Services and Grading Services is less than \$220,000.00 the remaining balance shall be returned by the City to the Consortium Members in proportion to the contributions of Consortium Financial Commitments made by the Consortium Members.

5. **Distribution of the Property After Demolition Services.** Upon completion of the Demolition Services and Grading Services, the City shall cause the Property to be divided in accordance with the diagram showing the division of the Property on Exhibit B to this Agreement, which is incorporated herein by reference (the "**Division Diagram**"). The City shall convey the Property in three parcels as shown on the Division Diagram with the City to receive Lot A, the School to receive Lot B, and the Library to receive Lot C. The City shall convey the Property by general warranty deeds substantially similar to those shown on Exhibits C, D, and E to this Agreement.

6. **No Joint and Several Obligations.** Each Consortium Member shall be responsible solely for that party's portion of the Consortium Financial Commitments. No Consortium Member shall be jointly or severally liable for another Consortium Member's portion of the Consortium Financial Commitments.

7. **Default.** If default shall be made by a Consortium Member in the payment of such party's Consortium Financial Commitments, or any part thereof, or in

the performance of any obligations pursuant to this Agreement and such default is not cured within 30 days after receipt of written notice of such default, any non defaulting Consortium Member shall have the option to do any one or more of the following, without any further notice or demand, in addition to and not in limitation of any other legal or equitable remedy permitted by law or by this Agreement: (i) terminate this Agreement; (ii) enforce specific performance of this Agreement and recover attorney fees together with any additional damages for the delay; or (iii) seek such damages or remedies as are available under Kansas law and, if successful, recover such party's attorney fees and expenses incurred in such proceeding.

8. **Miscellaneous.**

A. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their representative capacity as indicated.

B. Paragraph and section headings of this Agreement are for convenience only and are not to be construed as part of this Agreement and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

C. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

D. The terms and provisions of this Agreement shall be interpreted in accordance with and governed by the laws of the State of Kansas.

E. The terms of this Agreement shall extend to and be binding upon the permitted assigns and successors of the parties to this instrument.

F. All notices to or demands desired or required to be given under any of the provisions hereof shall be in writing. Except as expressly provided herein, any written notice, document or payment required or permitted to be delivered hereunder (a "Notice") shall be sent by United States Mail, registered or certified, return receipt requested, or by personal delivery with receipt acknowledged, or by Federal Express or other reputable overnight national courier service, addressed to the parties at such address as is regularly identified as the business office address of a party to this Agreement, or by electronic communication including electronic mail or telefacsimile transmission. Notice shall be effective when received (if personally delivered, transmitted by telefacsimile or electronic mail or delivered by overnight delivery service) or 3 days following the date such notice was deposited in the United States mail, registered or certified, return receipt requested.

G. The parties each represent and warrant that the expenditures contemplated by this Agreement to be made for the current budget year are actually on hand and will not violate the Kansas cash basis laws, K.S.A. 10-1101, et. seq. The obligations of each municipality for subsequent years are subject to appropriation in accordance with the Kansas cash basis laws.

H. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

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

CITY
City of Eudora, Kansas

SCHOOL
Unified School District No. 491,
Douglas County, State of Kansas

By: 
Printed Name: John Harrenstein
Title: City Administrator

By: 
Printed Name: Don Grosdibier
Title: Superintendent of Schools

LIBRARY
Eudora Public Library

By: 
Printed Name: Tom Jerome
Title: Treasurer

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

BLK 147 LTS 1 THRU 15 INCL; ALSO BLK 168 LTS 1 THRU 10 INCL; ALSO PORTION OF PARK AREA DESC AS: BEG AT NW COR LT 15 BLK 147 CITY OF EUDORA TH N 240.5 FT TO PT 30 FT S OF CL PRESENT PAVEMENT TH SELY PARA SD PAVEMENT TO W LINE "E" STREET, AKA ELM STREET; TH S 163.5 FT TO NE COR LT 11 BLK 147 TH W 215 FT TO PT BEG; ALSO VACATED "E" STREET, AKA ELM STREET; FROM 9TH STREET TO 10TH STREET (CORRECTED LEGAL DESC 2002).

In Douglas County, Kansas.



AREA CALCULATIONS

EXISTING LOT AREA:	±4.66 ac
LOT 'A':	1.47 ac
LOT 'B':	1.44 ac
LOT 'C':	1.75 ac
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*POLICE / FIRE:	14,000 SF
LIBRARY:	14,400 SF
USD 491:	12,000 SF
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PARKING STALLS:	163
ON-STREET PARKING STALLS:	15
TOTAL:	178