

# CITY OF CHERRYVALE

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**MEETING OF THE CITY COUNCIL  
REGULAR MEETING  
APRIL 6, 2015  
7:00 PM**

*Working for a better tomorrow... today.*

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## **ORDER OF BUSINESS**

### **CALL MEETING TO ORDER**

### **INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **ROLL CALL**

### **NEW BUSINESS**

#### **A. PROPOSED ORDINANCE 15-4661: JAIL COSTS**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Adopt Ordinance 15-4661

#### **B. MOWING BID AWARD**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Award mowing bid to Ed Keleman, conditional on insurance requirements, for the cemetery mowing for \$4,000/month; and the remaining options to TLC Nursery as presented..

#### **C. CONSENT AGENDA**

Presented by John Wright, Mayor

**RECOMMENDED ACTION:** Approve the consent agenda as presented.

1. Appropriations Ord. No. 15-0327 \$72,522.76
  - a. Approval of Purchases over \$5,000
    - i. Blue Cross-Blue Shield \$9,351.53
    - ii. Republic Services \$9,787.93
2. Consideration of the minutes for March 16, 2015 Regular Meeting

**OLD BUSINESS**

**A. INTERIM SMELTER WASTE AGREEMENT**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Take appropriate action.

**WORKSHOP**

1. Montgomery County Action Council Work Plan

**INFORMATIONAL ITEMS**

1. Department Monthly Reports
  - a. Police
  - b. Fire
  - c. Public Works
  - d. City Clerk
  - e. City Administration
2. Annual Report
3. Job Fair

**ADJOURNMENT**

**ORDINANCE 15-4661**  
**JAIL COSTS**

AN ORDINANCE ALLOWING FOR COSTS INCURRED BY THE CITY IN THE IMPRISONMENT OF PERSONS FOUND GUILTY, PLEAD GUILTY, OR PLEAD NO CONTEST, TO BE ASSESSED TO THE DEFENDANT FOR THE CITY OF CHERRYVALE, KANSAS.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHERRYVALE, KANSAS, THAT:**

The Code of the City of Cherryvale is hereby amended by adding a section which reads as follows:

**9-115. Jail Costs.**

In addition to the costs assessed against the defendant as otherwise provided by ordinance of the City, the judge of the municipal court is hereby authorized to assess against a criminal defendant who has been found “guilty,” entered a plea of “guilty,” or a plea of “nolo contendere,” the costs of incarceration of such defendant in the amount of per diem costs to the City of such incarceration.

**PASSED AND APPROVED THIS 6<sup>th</sup> DAY OF APRIL, 2015.**

\_\_\_\_\_  
John Wright, Mayor

ATTEST:

\_\_\_\_\_  
Christopher Weiner, City Clerk

# CITY COUNCIL ACTION REPORT

**Proposed Agenda Date:** April 6, 2015

**Subject:** Proposed Ordinance 15-4661: Jail Costs

**Guest:** None

**Background:** Montgomery County Sheriff's Office used to allow 7 days of incarceration of Cherryvale defendants for free, after that; we would be charged \$30/day for the inmate. That policy has since changed to 2 days for free, with \$30/day after that.

There are a few cities (3 that we know for certain) in Kansas that do assess these costs to the inmate. The drafted ordinance is essentially the same as one of these cities.

**Financial Consideration:** For 2014, \$810 (27 days) was paid for prisoner expenses; this was during the 7 days of free incarceration. YTD, we have paid \$150 (5 days) with a few additional encumbered.

**Legal Consideration:** This concept was sent to the City Attorney for research and opinion several weeks ago. At the time of the packet being assembled, no opinion has been given.

**Policy Consideration:** N/A

**Recommendation:** Adopt Proposed Ordinance 15-4661 as presented.

# CITY COUNCIL ACTION REPORT

**Proposed Agenda Date:** April 6, 2015

**Subject:** Mowing Bids

**Guest:** N/A

**Background:** The Governing Body issued an RFP for mowing city owned property and nuisance abatement mowing, there were 3 replies to the RFP out of the 7 that were solicited.

The bid board opened the packets and made the recommendation to award the cemetery mowing to Edward Keleman for \$4,000/month (not mowing), contingent on him obtaining the required insurance. The bid board also recommends awarding the remainder of the RFP to TLC Groundskeeping.

**Financial Consideration:** We estimate the savings on the cemetery by awarding this bid, to be approximately \$1,400/month. This also will allow the City to not need near the part-time seasonal help, if at all. This will also free up full-time employees to perform other projects, especially during the school year when we often lose our part-time help.

By awarding the rest of the RFP to TLC Groundskeeping, the savings to the City is relatively unknown, however, will allow the City to not need near the part-time seasonal help, if at all. This will also free up full-time employees to perform other projects.

Edward Keleman was the lowest bid for the cemetery mowing; TLC Groundskeeping was the lowest bid on Logan Park, Cherryvale Community Center, and Liberty Street Overpass; Barry Beurskens was the lowest bid on Lake Tanko Shoreline and Nuisance Abatement. \*Nuisances will most likely still be done by City staff, the award would be used for backup.

**Legal Consideration:** N/A

**Policy Consideration:** The award of the bid aligns with the RFP.

**Recommendation:** Award the cemetery mowing to Edward Keleman for \$4,000/month, contingent on obtaining the required insurance; and the rest of the RFP to TLC Groundskeeping for Logan Park - \$292.50/mowing, Cherryvale Community Center - \$47.50/mowing, Liberty Street Overpass - \$175/mowing, Lake Tanko Shoreline - \$135/mowing, and Nuisance Abatement at \$65/man hour.

CITY OF CHERRYVALE

Warrant Ordinance Number: 15-0327 Date: Friday, March 27, 2015

Detail of Checks Processed On Friday, March 27, 2015

Bk	Chk Num	Date	Vendor Number & Name	Voucher Num	Date	Voucher Amt	Memo
0	20561	03/27/15	00600 BLUE CROSS-BLUE SHIELD	20150205	03/27/15	8,979.72	Health Insurance Premiums for April 2015
				20150206	03/27/15	371.81	Dental Insurance Premiums for April 2015
				Check Total		9,351.53	
0	20562	03/27/15	00790 BUMPER TO BUMPER AUTO PARTS	20150186	03/25/15	28.86	ACCOUNT 20200
				20150208	03/27/15	174.30	CUSTOMER #20225
				Check Total		203.16	
0	20563	03/27/15	01090 CHERRYVALE CARE CENTER	20150212	03/27/15	250.00	DONATION FOR EASTER EGG HUNT
	20564		01095 CHERRYVALE CHAMBER OF COMMER	20150213	03/27/15	100.00	DONATION FOR CHERRY BLOSSOM ENTERTAINMENT
	20565		01370 CHIEF SUPPLY	20150181	03/24/15	129.46	INVOICE #242244
	20566		02087 DIGITAL CONNECTIONS	20150190	03/25/15	58.52	INVOICE #35013
	20567		6632 FERGUSON ENTERPRISES, INC	20150177	03/24/15	351.70	INVOICE #0456732
	20568		02535 FORT SCOTT COMMUNITY COLLEGE	20150207	03/27/15	140.00	INVOICE #142s-0324
	20569		02605 GALLAGHER BENEFIT SERVICES, IN	20150172	03/18/15	416.50	March 2015 Employee Benefits Consulting
	20570		05880 KANSAS ONE-CALL SYSTEM, INC.	20150188	03/25/15	18.00	INVOICE #4120194-IN
	20571		03760 KANSAS STATE FIREFIGHTERS'ASC.	20150184	03/25/15	50.00	2015 DEPARTMENT DUES FOR CHERRYVALE FIRE DEPARTMENT
	20572		03970 KANSAS STATE TREASURER	20150176	03/24/15	225.50	STATE ASSESSMENTS
	20573		04260 LATTIN LAW OFFICES, CHARTERED	20150202	03/26/15	200.00	INVOICE #9561
	20574		04500 LINN'S AIR COOLED ENGINES	20150179	03/24/15	189.76	INVOICE #602147
	20575		0510 LYON COUNTY SHERIFF'S OFFICE	20150193	03/25/15	60.00	INVOICE #15-072
	20576		05235 MONTGOMERY COUNTY ACTION	20150191	03/25/15	2,500.00	MONTGOMERY COUNTY ACTION COUNCIL MEMBERSHIP
	20577		05695 NATIONAL SIGN COMPANY	20150180	03/24/15	25.00	INVOICE #IN-174604
	20578		05750 NEWTON'S	20150210	03/27/15	289.58	ACCT #63007
	20579		06176 PITNEY BOWES, INC.	20150203	03/26/15	112.64	INVOICE #304387
	20580		6768 PLUMLEY, SHANNON	20150189	03/25/15	19.00	MEAL REIMBURSEMENT
	20581		06210 POSTMASTER	20150175	03/24/15	330.00	WATER BILL POSTAGE
	20582		06580 REPUBLIC SERVICES	20150195	03/26/15	9,787.93	INVOICE #0376-000364664
	20583		06588 RICHARD L. HINES, P.A.	20150174	03/24/15	450.00	MUNICIPAL COURT JUDGE SETH JONES
	20584		06674 ROBERTS, BILLY D.	20150183	03/25/15	277.86	INVOICE #150283
	20585		06761 SANDBAGGER GOLF & TURF	20150178	03/24/15	243.51	INVOICE #11048
	20586		07379 SURENCY LIFE AND HEALTH	20150209	03/27/15	186.66	Vision Insurance Premiums for April 2015
	20587		6767 TACTICAL OFFICER SURVIVAL SCHL	20150192	03/25/15	300.00	TACTICAL OFFICER SURVIVAL SCHOOL REGISTRATION FOR SHANNON PLUMLEY
	20588		07382 TLC VETERINARY HOSPITAL, PA	20150185	03/25/15	13.25	INVOICE #32582

CITY OF CHERRYVALE

Warrant Ordinance Number: 15-0327 Date: Friday, March 27, 2015  
 Detail of Checks Processed On Friday, March 27, 2015

Bk	Chk Numb and Date	Vendor Number & Name	Voucher Num and Date	Voucher Amt	Memo
0	20589 03/27/15	07800 UNIVERSITY OF KANSAS	20150182 03/25/15	235.00	INVOICE #LE150318-36904-I
			20150187 03/25/15	120.00	INVOICE #FC150113-2155-B
			Check Total	355.00	
0	20590 03/27/15	07807 WAGeworks	20150171 03/18/15	56.00	FSA Service Fees for February 2015
	20591	02590 WEX BANK	20150194 03/26/15	2,439.39	INVOICE #4172428
	20150327	00914 CARD SERVICES	20150196 03/26/15	95.34	CHRIS WEINER P-CARD
			20150197 03/26/15	26.00	TRAVIS GOEDKEN P-CARD
			20150198 03/26/15	746.24	PERRY LAMBERT P-CARD
			20150199 03/26/15	512.32	WADE WEBBER P-CARD
			20150200 03/26/15	12.00	POLICE DEPT P-CARD
			20150201 03/26/15	24.50	CITY CLERK P-CARD
			20150204 03/26/15	634.34	JESSE REED P-CARD
			Check Total	2,050.74	
			Grand Total	31,180.69	

Passed this \_\_\_\_\_ day of \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_ Mayor

Attest:  
 \_\_\_\_\_ City Clerk

\$41,522.76 Payroll  
Total \$72,703.45

**CITY OF CHERRYVALE  
MEETING OF THE CITY COUNCIL  
REGULAR MEETING  
MARCH 16<sup>TH</sup>, 2015  
7:00 PM**

*Working for a better tomorrow... today.*

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**ORDER OF BUSINESS**

**CALL MEETING TO ORDER**

Mayor Wright called the meeting to order at 7:00 P.M.

Present: Mayor Wright, Council President Wickham, Council Member Forman, Council Member Wagoner, Council Member Crain, City Administrator Travis Goedken, City Clerk/Assistant City Administrator Chris Weiner, Donna Celaya (Montgomery County Chronicle), Greg Lower (Independence Reporter), Kathy Shepard (RSVP 4-County), Ruby Mansfield, and Don King.

**INVOCATION**

Council Member Wagoner led the invocation.

**PLEDGE OF ALLEGIANCE**

All present participated.

**ROLL CALL**

*City Clerk Chris Weiner took roll:*

**Mayor Wright – present; Council President Wickham – present; Council Member Forman – present; Council Member Wagoner – present; Council Member Crain – present.**

**A quorum was present.**

**PUBLIC FORUM**

Ruby Mansfield – 712 E. 4<sup>th</sup> St.: Complained about the trash on her neighbor's property. Council discussed that having a community award for "Yard of the Month" is a good idea.

Jim Nixon – Diebolt LLC (2661 Nebraska Rd. LaHarpe, KS): Would like to be notified of opportunities to bid on building construction.

**GOVERNING BODY COMMENTS**

Mayor John Wright - None  
Council Member Chad Wickham - None  
Council Member Kevin Crain - None  
Council Member Randy Wagoner - None  
Council Member Lew Forman, Jr. – None

## **NEW BUSINESS**

### **A. PROPOSED RESOLUTION 15-4: NATIONAL SERVICE RECOGNITION**

Presented by Travis Goedken, City Administrator

Guest: Kathy Shepard, RSVP Four County

**RECOMMENDED ACTION:** Adopt the proposed resolution as presented.

**Council Member Wagoner motioned to adopt Resolution 15-4 as presented, Council Member Forman seconded.**

**All votes aye.**

**RESOLUTION 15-4  
NATIONAL SERVICE RECOGNITION**

WHEREAS, THE CITY OF CHERRYVILLE, KANSAS PROCLAIMING APRIL 7, 2015, AN ANNUAL SERVICE RECOGNITION DAY

WHEREAS, service to others is a hallmark of the American character, and central to how we meet our challenges; and

WHEREAS, the nation's major are increasingly turning to national service and volunteerism as a cost-effective strategy to meet city needs; and

WHEREAS, AmeriCorps and Senior Corps participants address the most pressing challenges facing our cities and counties, from educating students for the jobs of the 21<sup>st</sup> century and supporting veteran and military families to providing health services and helping communities recover from natural disasters; and

WHEREAS, national service expands economic opportunity by creating more sustainable, resilient communities and providing education, career skills, and leadership abilities for those who serve; and

WHEREAS, AmeriCorps and Senior Corps participants serve in more than 60,000 locations across the country, bolstering the civic, neighborhood, and faith-based organizations that are vital to our economic and social well-being; and

WHEREAS, national service participants measure the impact of the organizations they serve, both through their direct service and by recruiting and managing millions of additional volunteers; and

WHEREAS, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and measure the return on taxpayer dollars; and

WHEREAS, national service participants demonstrate commitment, dedication, and patriotism by making an intensive commitment to service, a commitment that remains with them in their future endeavors; and

WHEREAS, the Corporation for National and Community Service shares a priority with citizens nationwide to engage citizens, improve lives, and strengthen communities; and in joining with the National League of Cities, City of Service, and mayors across the country to recognize the impact of service on the Mayor Day of Recognition for National Service on April 7, 2015; and

WHEREAS, residents of Cherryville are involved with other organizations that increase the quality of life, those that serve on our various boards and committees including the chamber of commerce, recreation, library museum, community center, historical alliance, housing authority, food bank, and planning and zoning, those that are involved in coaching our youth, and those that volunteer their time to help better the community that we live in

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body of the City of Cherryville, Kansas:

to hereby proclaim April 7, 2015 as National Service Recognition Day, and encourage residents to recognize the positive impact of national service on our city, to thank those who serve, and to find ways to give back to their communities.

**PASSED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF CHERRYVILLE, KANSAS ON THE 16<sup>TH</sup> DAY OF MARCH 2015.**

John Wagoner, Mayor

ATTEST:

Christopher Wenzel, City Clerk

### **B. PROPOSED RESOLUTION 15-5: FAIR HOUSING MONTH**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Adopt the proposed resolution as presented.

**Council Member Crain motioned to adopt Resolution 15-5 as presented, Council Member Forman seconded.**

**All votes aye.**

**RESOLUTION 15-3  
FAIR HOUSING PROCLAMATION**

A RESOLUTION OF THE CITY OF CHERRYVALE, KANSAS PROCLAIMING THE MONTH OF APRIL AS FAIR HOUSING MONTH.

WHEREAS, the Congress of the United States passed the Civil Rights Act of 1968, of which Title VIII declared that the law of the land would now guarantee the rights of equal housing opportunity; and

WHEREAS, the City is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all, and today, many realty companies and associations support fair housing laws; and

WHEREAS, the Fair Housing groups and the U.S. Department of Housing and Urban Development have, over the years, received thousands of complaints of alleged illegal housing discrimination and found too many that have proved upon investigation to be violations of the fair housing laws; and

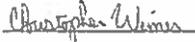
WHEREAS, equal housing opportunity is a condition of life in our city that can and should be achieved.

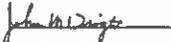
NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Cherryvale, Kansas:

We, the Governing Body of the City of Cherryvale, on behalf of its citizens, do hereby proclaim the month of April as FAIR HOUSING MONTH and express the hope that this year's observance will promote fair housing practices throughout the City.

PASSED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF CHERRYVALE, KANSAS ON THE 16<sup>TH</sup> DAY OF MARCH, 2013.

ATTEST:

  
Christopher Weiner, City Clerk

  
John Wright, Mayor



**C. EMPLOYEE HEALTH INSURANCE PLANS RENEWAL**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Approve the plans as presented and select the appropriate contribution levels.

**Council Member Wagoner motioned to adopt option three of the health insurance proposals presented and to switch life and long-term disability insurance from *Mutual of Omaha* to *Unum*, Council President Wickham seconded.**

**All votes aye.**

Option 03							
	Monthly Cost	Employees	Avg Per Employee	Employee Portion	City Portion	Total City Cost	Total Employee Cost
Single	\$2,079.12	9	\$230.97	\$19.13	\$267.24	\$2,305.11	\$173.96
Family	\$1,678.25	2	\$839.12	\$132.47	\$706.65	\$1,411.80	\$266.45
Old	\$1,140.62	2	\$570.31	\$65.27	\$505.05	\$1,070.09	\$130.53
Family	\$4,534.52	5	\$907.70	\$149.91	\$758.09	\$3,790.45	\$748.07
<b>Total</b>	<b>\$10,836.50</b>	<b>18</b>				<b>\$9,588.45</b>	<b>\$1,317.49</b>

Rates of 5% for Single, 75% for others

**D. CITY PROPERTY AND CASUALTY INSURANCE PLAN RENEWAL**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Renew the plan with EMC through the Jim Gill Agency, without the optional terrorism coverage.

**Council Member Wagoner motioned to renew the plan with EMC without the optional terrorism coverage, Council Member Forman seconded.**

**All votes aye.**

**E. CONTRACTUAL MOWING REQUEST FOR PROPOSALS**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Issue the RFP as presented.

**Council Member Wagoner motioned to issue the RFP with discussed amendments, Council President Wickham seconded.**

**All votes aye.**

**F. MONTGOMERY COUNTY ACTION COUNCIL MEMBERSHIP**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Continue membership with MCAC at or above past of \$2,500.

**Council Member Wagoner motioned to continue the City's membership with MCAC with a contribution to MCAC of \$2,500, Council Member Forman seconded.**

**All votes aye.**

**G. RECREATION COMMISSION APPOINTMENT**

Presented by Travis Goedken, City Administrator

**RECOMMENDED ACTION:** Take appropriate action.

**Council Member Wagoner motioned to appoint Travis Wheatley to the Cherryvale Recreation Commission, Council President Wickham seconded.**

*City Clerk Chris Weiner took the roll call vote:*

**Council Member Forman – aye; Council Member Wagoner – aye; Council President Wickham – aye; Council Member Crain – aye.**

**Motion passes 4-0.**

## H. CONSENT AGENDA

Presented by John Wright, Mayor

**RECOMMENDED ACTION:** Approve the consent agenda as presented.

1. Appropriations Ord. No. 15-0313: \$88,211.35
  - a. Approval of Purchases over \$5,000
    - i. Public Wholesale Water \$24,333.33
    - ii. Westar Energy \$5,937.39
2. Consideration of the minutes for March 2<sup>nd</sup>, 2015 Regular Meeting
3. Reappointment of Joyce Thomas to Cherryvale Housing Authority
4. Reappointment of Ruth Goins to Cherryvale Housing Authority

**Council President Wickham motioned to approve the consent agenda as presented, Council Member Forman seconded.**

**All votes aye.**

## **INFORMATIONAL ITEMS**

1. Tabletop Emergency Preparedness Drill
2. City Wide Clean Up
3. City Wide Garage Sales
4. Cherry Blossom Update
5. Election and Special Questions

**Council Member Wagoner motioned to enter into executive session to discuss matters of non-elected personnel with Council, Mayor Wright, and City Administrator Goedken at 7:54 P.M. to return at 7:59 P.M., Council President Wickham seconded.**

**All votes aye.**

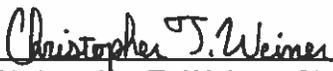
Mayor Wright declared the meeting back in regular session at 7:59 P.M.

## **ADJOURNMENT**

**Council President Wickham motioned to adjourn the meeting at 7:59 P.M., Council Member Crain seconded.**

**All votes aye.**

Respectfully submitted,

  
\_\_\_\_\_  
Christopher T. Weiner, City Clerk





## **AGREEMENT TO PERFORM INTERIM WASTE MANAGEMENT ACTIVITIES**

**Between**

**Kansas Department of Health and Environment,**

**The City of Cherryvale**

**And**

**United States Steel Corporation and Citigroup Global Market Holdings, Inc.**

**SUBJECT: Interim Smelter Waste Management in Cherryvale, Kansas**

**TERM: \_\_\_\_\_, 2014 through completion of the project as described herein.**

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Now on this \_\_\_ day of ~~March~~~~January~~, 2015, (“Date of this Agreement”) the Kansas Department of Health and Environment (“KDHE”), the City of Cherryvale (“City”), and United States Steel Corporation and Citigroup Global Market Holdings, Inc. (“Respondents”) (collectively the “Parties”) enter into this Agreement to Perform Interim Waste Management Activities (“Agreement”) in Cherryvale, Kansas.

The Parties stipulate that this Agreement was negotiated in good faith and is in the best interests of the Parties in protecting public health and the environment. The City and Respondents deny any responsibility and do not admit liability for the contamination or waste at the Site, as defined herein, and the surrounding environment. With regard to the denial of responsibility and non-admission of any liabilities by the City and the Respondents, there is hereby incorporated by reference the provisions of the Consent Order dated April 7, 2003 in Case No. 03-E-0022BER, the Amendment to Consent Order dated June 4, 2007, and the Second Amendment to Consent Order dated May 3, 2013, including particularly but without limitation, Sections 6, 7, 8, 61 and 77 of the Consent Order and Sections 4, 5, 6 and 7 of the Second Amendment to Consent Order. For purposes of the aforesaid denials of responsibility and non-admission of any liabilities, the term "Site" as used in the Consent Order shall be deemed to also include the area and property described in Section 1 of the Second Amendment to Consent Order and in Section 1.B hereof. Without prejudice to or in any way limiting such denials of responsibility and non-admissions of any liabilities, the City and the Respondents agree to enter into this Agreement and perform the activities described herein. KDHE enters into this agreement under the authority provided in K.S.A. 65-3453(a)(6).

### **THE PARTIES MUTUALLY AGREE TO THE FOLLOWING:**

1. Definitions - Terms used in this Agreement, if defined in state statutes or the associated regulations, shall have the meanings assigned to them in the statute or the regulations. To the extent not inconsistent with the meanings assigned to them in statute or regulation, the terms listed below, if used in this Agreement or in attached or incorporated documents, shall have the following meanings:
  - A. “Former National Zinc Facility” shall mean the facility and real property operated as a zinc smelter by National Zinc Company, as shown in Exhibit 1.
  - B. “Site” shall mean all property owned by the City and all rights-of-way and easements held by the City within the City limits, as shown in Exhibit 2, where smelter waste and contaminated soil contacting smelter waste from the Former National Zinc Facility has been transported or otherwise disposed.
  - C. “City of Cherryvale Interim Smelter Waste” shall mean all smelter waste and contaminated soil containing smelter waste uncovered and removed by the City in the course of construction and maintenance activities at the Site conducted at any time prior to the termination of this Agreement. City of Cherryvale Interim Smelter Waste includes approximately 3,000 cubic yards of material currently temporarily stored by the City at the Cherryvale dog kennel/former wastewater treatment plant property located at 1276 W. Main Street in Cherryvale, Kansas (“City Interim Waste Storage Facility”).
  - D. “Respondents’ Interim Smelter Waste” shall mean all smelter waste and contaminated soil uncovered and removed by Respondents in the course of smelter waste and soil removal activities within the City of Cherryvale, Kansas and temporarily stored by Respondents on the EPA Repository at the Former National Zinc Facility as shown on Exhibit 3 hereto (the "Respondents' Interim Smelter Waste Facility"), prior to the termination of this Agreement. Respondents’ Interim Smelter Waste includes the existing waste pile temporarily stored by Respondents at the Respondents' Interim Smelter Waste Facility. The City has granted Respondents an easement covering the Respondents' use of the Interim Smelter Waste Facility, together with needed access and work areas related thereto.
2. Within ninety (90) days after the Date of this Agreement, the City shall submit to KDHE for approval a Stockpile Management Plan which describes and provides for best practices for management of the present and future City of Cherryvale Interim Smelter Waste at the City Interim Waste Storage Facility. The Respondents shall at their cost work with and assist the City in preparation of the Stockpile Management Plan, and shall at their cost make their independent environmental consultants available to assist in preparation of the Stockpile Management Plan, and to make recommendations to the City in the development and implementation of said Stockpile Management Plan, and to provide estimated costs for the development, implementation, ~~and~~ and performance of the Stockpile Management Plan. All decisions as to the final content of the Stockpile Management Plan shall be reserved to and approved by the City, subject to approval by the KDHE. Best practices in the Stockpile Management Plan shall ensure protection of human health and the environment by preventing direct contact to and migration of the City of Cherryvale Interim Smelter Waste.
3. Neither the Respondents nor their consultants shall have any liability to the City or any

other party for or arising out of the assistance provided by them to the City hereunder, which assistance is voluntary and furnished by the Respondents at the City's request on a non-compensated basis. Nothing in this Agreement, however, changes or affects the liability or responsibility each party may have to the other, ~~or to third parties outside of~~ except as provided for by the provisions of this Agreement, ~~to Perform Interim Waste Management Activities.~~ It is understood and agreed that as between the City and the Respondents, ~~t~~The City shall be solely responsible for conducting all operations required at, and paying for costs associated with, operation of the City Interim Waste Storage Facility, and for implementing, conducting and paying for all of the activities required by the Stockpile Management Plan; provided, that the foregoing allocation of cost liability to the City is final and binding as between the City and Respondents only, and is without prejudice to, and the City reserves all of its rights, to assert and prosecute claims for defective performance against third party vendors of goods or services utilized by the City in developing, implementing, conducting, maintaining and/or performing the activities required of it under the Stockpile Management Plan. The City shall also continue to have responsibility for the City of Cherryvale Interim Smelter Waste until it is finally disposed of at the location specified in paragraph 5 below.

4. Pursuant to the aforementioned Second Amendment to Consent Order, Respondents are required to complete a Removal Site Evaluation and develop a Removal Action Design ("RAD") for smelter-related materials in the City of Cherryvale. Following KDHE's approval of the RAD, Section 13.h of the Second Amendment to Consent Order requires KDHE and Respondents to negotiate in good faith as to whether Respondents will implement the RAD. Nothing contained in this Agreement shall in any way obligate the Respondents to implement the RAD, or in any way abridge, limit, alter or adversely affect the Respondents' rights under Section 13.h of the Second Amendment to Consent Order.
5. All City of Cherryvale Interim Smelter Waste and Respondents' Interim Smelter Waste (not to exceed a volume of 15,000 cubic yards without the consent of Respondents), shall be finally disposed of by Respondents, at Respondents' cost, on the Former National Zinc Facility at a location to be selected by Respondents, with KDHE approval, at or near the Respondents' Interim Waste Facility (the "Final Disposal Site"). Such final disposal shall occur either (1) in accordance with the aforesaid RAD, if the RAD is implemented by Respondents, or (2) pursuant to the Consent Order as amended by the First Amendment to Consent Order, if Respondents do not implement the RAD. It is understood and agreed that as between the City and the Respondents, ~~t~~The City shall agree at its sole cost, ~~to~~ excavate, transport and deliver all City of Cherryvale Interim Smelter Waste to the Final Disposal Site, and at its sole cost, close the City Interim Waste Storage Facility as approved and directed by KDHE; provided, that the foregoing allocation of cost liability to the City is final and binding as between the City and Respondents only, and is without prejudice to, and the City reserves all of its rights, to assert and prosecute claims for defective performance against third party vendors of goods or services utilized by the City in developing, implementing, conducting, maintaining and/or performing the activities required of it under the Stockpile Management Plan. Delivery of City of Cherryvale Interim Smelter Waste by the City shall commence on thirty (30) days' written request from Respondents and shall continue on a schedule mutually agreeable to City and the Respondents until completed.
6. The City and KDHE further agree that pursuant to existing easement from the City, the

Respondents may permanently use such portion of the Former National Zinc Facility as is needed for the Final Disposal Site, and for access and work areas in and around the Final Disposal Site, both to finally dispose of the City of Cherryvale Interim Smelter Waste and Respondents' Interim Smelter Waste, and if Respondents implement the RAD, to finally dispose of any and all other smelter-related materials that may be excavated and/or accumulated from within the City of Cherryvale pursuant to the RAD, with all such uses to be without charge by the City.

7. KDHE agrees to provide technical oversight and regulatory management throughout the term of this Agreement. KDHE's activities shall include, but are not limited to: a) assuring that the work set out in this Agreement complies with applicable state and federal statutes and regulations; b) providing oversight during field activities, c) establishing and maintaining the administrative record file; and d) conducting any necessary community involvement activities.
8. Respondents agree to reimburse KDHE for all direct and administrative costs incurred in relation to the activities described herein pursuant to the terms of the Second Amendment to Consent Order for the National Zinc Site, dated May 3, 2013. The City of Cherryvale agrees to allow access to, or arrange access for, KDHE and Respondents and their agents or contractors for the purpose of carrying out their respective obligations under this Agreement, including Respondents' assistance to the City in preparing and implementing best management practices pursuant to the Stockpile Management Plan at the City Interim Waste Storage Facility.
9. The City of Cherryvale agrees to ensure that all work products on behalf of the City that constitute the practice of geology, engineering, architecture, or surveying will be sealed, signed, and dated by a professional licensed by the Kansas State Board of Technical Professions to practice in the State of Kansas.
10. The City of Cherryvale agrees to provide at least seven (7) days advance notice of all field activities conducted pursuant to this agreement by completing KDHE's Field Activities Notification Form, available online at:

[http://www.kdheks.gov/remedial/fieldactivities\\_notification.html](http://www.kdheks.gov/remedial/fieldactivities_notification.html).

11. Nothing herein shall preclude KDHE from undertaking or causing to be undertaken any response actions that may be necessary to study or mitigate conditions at the Site which present actual or potential threats to public health or welfare or the environment.
12. This Agreement shall terminate upon the City's and Respondents' receipt of written notice from KDHE that the terms of this Agreement have been satisfactorily completed.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement through their duly authorized representatives.

FOR KANSAS DEPARTMENT OF  
HEALTH AND ENVIRONMENT

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Robert Moser, MD, Secretary,  
Kansas Department of Health  
and Environment

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Date

FOR THE CITY OF CHERRYVALE

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Signature

---

Printed Name

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Title

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Date

FOR UNITED STATES STEEL CORPORATION

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Signature

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Printed Name

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Title

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Date

FOR CITIGROUP GLOBAL MARKET HOLDINGS, INC.

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Signature

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Printed Name

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Title

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Date

CERTIFICATE OF MAILING  
(To be finalized after Agreement is fully executed)

3334904v1

# CITY COUNCIL ACTION REPORT

**Proposed Agenda Date:** April 6, 2015

**Subject:** Interim Smelter Waste Agreement

**Guest:** N/A

**Background:** Upon the last approval of this agreement by the Governing Body, it was my understanding that the agreement had been negotiated with all parties. Apparently this was not the case. Also, Nancy Ulrich who was the attorney working on this for KDHE is no longer with the organization and a new attorney has been assigned. If the agreement is approved as presented **THIS WILL BE THE FINAL APPROVAL** as this agreement has been approved by both KDHE and the responsible parties – per Teresa Woody.

**Financial Consideration:** There are no changes in future costs between this agreement and the previous.

**Legal Consideration:** Teresa Woody has been the legal consultant for this project and does not have any large concerns with the current agreement.

**Policy Consideration:** N/A

**Recommendation:** Take appropriate action.

**MINUTES  
CITY OF CHERRYVALE  
COMMUNITY CENTER ADVISORY BOARD  
MARCH 23, 2015  
1:30 P.M.**

**CALL TO ORDER**

Vice Chairwoman Plumley called the meeting to order at 1:43 P.M on March 19<sup>th</sup>; in absence of a quorum, Vice Chairwoman Plumley motioned to adjourn the meeting until Monday, March 23<sup>rd</sup> at the Cherryvale Community Center at 1:30 P.M., Board Member Shaffer seconded. – All votes aye.

Chairwoman Staton called the meeting to order at 1:35 P.M.

**ROLL CALL**

Chairwoman Staton – present; Vice Chairwoman Plumley – present; Board Member Hogben – absent; Board Member Hugo – present; Board Member Shaffer – present.

*A quorum was present.*

**CONSIDERATION OF MINUTES – February 19th, 2015 Regular Meeting**

Board Member Shaffer motioned to approve the minutes, Vice Chairwoman Plumley seconded.

*All votes aye.*

**PUBLIC FORUM**

None.

**BOARD COMMENTS**

**Chairwoman Carol Staton** – Enquired as to the status of the basketball goals and flooring.

**Vice-Chairwoman Janet Plumley** – Mentioned that Miranda Reed might be interested in serving on the Advisory Board.

**Board Member James Hogben** – Absent.

**Board Member Brad Hugo** – Enquired as to the status of the Community Center employees.

**Board Member Sylvia Shaffer** – None.

## **AGENDA ITEMS**

### **1. STATUS OF THE CENTER IN THE MORNINGS**

Presented by Chris Weiner, Secretary

**Board Member Shaffer motioned to suspend the Center being open during the early morning hours until there is more interest in utilizing the morning hours, Vice Chairwoman Plumley seconded.**

**All votes aye.**

### **2. FEE STRUCTURE FOR MEMBERS (ANNUAL RATE)**

Presented by Chris Weiner, Secretary

**Board Member Shaffer motioned to approve a new fee structure for members and daily use of \$1 per day for non-members, \$10 a month for an individual membership, \$15 a month for a family membership (immediate family/household), \$100 a year for an individual membership, and \$150 a year for a family membership (immediate family/household), Vice Chairwoman Plumley seconded.**

**All votes aye.**

### **3. STATUS UPDATE OF COX PROJECT**

Presented by Chris Weiner, Secretary

### **4. RESIGNATION OF JAMES HOGBEN**

Presented by Chris Weiner, Secretary

**Board Member Shaffer motioned to accept the resignation of James Hogben from the Community Center Advisory Board, Board Member Hugo seconded.**

**All votes aye.**

### **5. MONTHLY CALENDAR**

Presented by Sylvia Shaffer, Board Member

**Board Member Shaffer motioned to add discussion of a monthly calendar to the agenda, Vice Chairwoman Plumley seconded.**

**All votes aye.**

### **6. RENTAL CLEANUP DEPOSIT**

Presented by Janet Plumley, Vice Chairwoman

**Vice Chairwoman Plumley motioned to add discussion of the cleanup deposit for rental use of the facility to the agenda, Board Member Shaffer seconded.**

**All votes aye.**

**Vice Chairwoman Plumley motioned to recommend to the City Council that if they waive or lower rental fees for the Community Center, that the cleanup deposit never be waived or lowered, Board Member Shaffer seconded., Board Member Shaffer seconded.**

**All votes aye.**

### **ADJOURNMENT**

**Board Member Shaffer motioned to adjourn the meeting at 2:30 P.M., Vice Chairwoman Plumley seconded.**

**All votes aye.**

Respectfully submitted,

Christopher S. Winters