

AGENDA ITEM
Old Business
Special City Council Meeting
July 13, 2021

TO: The Honorable Mayor and Members of the City Council

FROM: Bradley Eilts, City Manager

RE: EMS Transfer – Memorandum of Understanding

Background and Analysis: The City Council asked to hold a Special Meeting on the enclosed Memorandum of Understanding (MOU) drafted by Doug McNett, County Attorney. The MOU is regarding the transfer and merging of Emergency Medical Services from the Cities of Larned and Burdett to Pawnee County. The purpose of the MOU is to “confirm our mutual understanding and establish certain benchmarks for an agreement”. It lists in detail the:

- Terms and Issues
- Remaining Issues to Negotiate
- Certain Covenants and Restrictions

In an email from City Attorney, Ron Smith, he listed a couple issues for the Council to ponder...

Under Section II, (b), why is Larned going to deed over their entire EMS building on 123 W 9th but Burdett will likely lease their fire department facilities to PN EMS? I realize deeding over the bldg. can be a bonus to entice the county into the new EMS agreement, but if the county doesn't handle the transfer right, and the EMS effort folds up, will Larned have to buy the building back from the county? That the county EMS might have problems may be a very minor future possibility, but it would be an expensive one to fix at the Larned city level. You may want to consider leasing the building to the county for five years and THEN see about the transfer, after you see how well the new ERS organization is going.

Section II, (2), discusses accounts Receivable. I'm not sure of how big the numbers are for existing accounts receivable. If not a big number, then my concerns stop. However, if the accounts receivable are ours and we need to do a filing with the Division of Accounts and Reports to garnish a tax

return, like we do with overdue utility bills, if the AR is owned by the county we can't benefit. You might discuss the idea that AR's collected in first two years from older Larned accounts would be paid over by the county to the city.

After reviewing the building's deed from 1959, he said that there are three different chunks and suggested that we may want to get a surveyor to give us a better legal description.

Financial Considerations: None specifically for this action.

Action Required: Review and evaluate the MOU and consider approval and direct staff on the next steps.

**Memorandum of Understanding related to
the formation of the Pawnee County EMS**

WHEREAS, the City of Larned and the City of Burdett, in cooperation with the Board of Pawnee County Commissioners, have historically funded and maintained separate Emergency Management Services (EMS) Agencies in Pawnee County; and

WHEREAS, after considerable community discussions and research, it has been determined that a Countywide operated EMS and Ambulance Service would create a higher overall level of care and financial efficiency for the citizens of Pawnee County; and

WHEREAS, subsection (d) of K.S.A. 65-6113 prohibits a Board of County Commissioners from providing ambulance services to any part of the ~~County~~ ^{County} which already receives ambulance services; and

WHEREAS, on May 10, 2021, the Board of Pawnee County Commissioners voted to approve the formation of a countywide EMS by consolidating the Larned and Burdett EMS agencies into a County Agency.

THEREFORE, the below listed parties do hereby enter into this Memorandum of Understanding:

The purpose of this Memorandum of Understanding is to confirm our mutual understanding and establish certain benchmarks for an agreement between *the Board of Pawnee County Commissioners* (“Pawnee County”) and *City Councils of the City of Larned* (“Larned”) and *the City of Burdett* (“Burdett”) with respect to recent discussions regarding the formation and operation of a County operated Emergency Management Services (“Pawnee County EMS”) for the purposes further described below.

As the parties know, we have reached agreement on some, but not all, of the essential elements of the Agreement. This Memorandum of Understanding records our agreement on certain issues as a basis for the conduct of good-faith negotiations for the remaining issues.

Article I – Terms and Conditions

The following numbered paragraphs reflect our understanding of the matters described but are not legally binding and do not impose an enforceable obligation on any party hereto to negotiate or conclude an agreement regarding the Pawnee County EMS on such terms. This is not a complete statement of all terms and conditions of the proposed transaction but provides a basis for further negotiations.

1. Expectations of Pawnee County
 - a. Pursuant to K.S.A. 65-6113, the Board of Pawnee County Commissioners shall establish a countywide emergency medical service and ambulance service for the purpose of furnishing, operating, and maintaining emergency medical services and ambulance services within the boundaries of Pawnee County, Kansas, and medical

transport services to medical/nursing facilities outside of Pawnee County, as necessary. The name of the new public agency shall be the Pawnee County EMS and shall operate as a department under the supervision of Board of Pawnee County Commissioners. The anticipated start date of services by the Pawnee County EMS will be January 1, 2022.

- b. The newly formed Pawnee County EMS/Ambulance service shall maintain separate ambulance stations in both the City of Larned and the Western portion of Pawnee at or above the current level of care being provided the Larned EMS and Burdett EMS.
 - c. The any and all costs and liabilities associated with the operation of the Pawnee County EMS shall be the sole financial responsibility of the Board of Pawnee County Commissioners with the current anticipated funding source to be the County 1% Health Sale Tax Fund.
 - d. The Pawnee County Commissioners shall utilize County 1% Health Sale Tax Funds to purchase a new ambulance and necessary equipment to be stationed in the Western portion of Pawnee County.
 - e. The Pawnee County Attorney, in consultation with the respective city attorneys, shall draft all necessary legal documents, including but not limited to anticipated transfer agreements, to consummate the parties' purposes herein.
 - f. All employees of the Larned EMS and Burdett EMS still employed on December 31, 2021, shall be offered employment with the Pawnee County EMS subject a six (6) month probationary period and the Pawnee County Employment Policies.
2. Expectations of the City of Larned
 - a. The City of Larned shall maintain the services of the Larned EMS until January 1, 2022, at which time the ownership rights and legal title of all equipment and supplies of the Larned EMS, including vehicles, thereof shall be transferred to Pawnee County for purposes of operating the Pawnee County EMS.
 - b. The City of Larned shall maintain the building and real estate located at 123 W. 9th, Larned, Kansas, until January 1, 2022, at which time the ownership rights and legal title thereof shall be transferred to Pawnee County for purposes of operating the Pawnee County EMS.
 - c. The City of Larned shall begin assembling inventories of all Larned EMS equipment and supplies, including all necessary legal descriptions and VIN numbers, to be transferred pursuant to paragraph 2a and 2b. Said inventories shall be utilized later for anticipated transfer agreements between the parties.
 - d. The City of Larned will transfer all remaining funds in the Larned EMT Memorial Fund as of December 31, 2021, to Pawnee County to be deposited into a fund for future equipment purchases by the Pawnee County EMS.
 3. Expectations of the City of Burdett
 - a. The City of Burdett shall maintain the services of the Burdett EMS until January 1, 2022, at which time the ownership rights and legal title of all equipment and supplies of the Burdett EMS, including vehicles, thereof shall be transferred to Pawnee County for purposes of operating the Pawnee County EMS.
 - b. The City of Burdett shall begin assembling inventories of all Burdett EMS equipment and supplies, including all necessary legal descriptions and VIN

- numbers, to be transferred pursuant to paragraph 2a. Said inventories shall be utilized later for anticipated transfer agreements between the parties.
- c. The City of Burdett will transfer all remaining funds in the Burdett EMS Operations Fund and Burdett EMS Donation Fund as of December 31, 2021, less 2021 EMS related expenses, to Pawnee County to reimbursement the anticipated cost of the ambulance purchase set forth in paragraph 1d.
 - d. The City of Burdett shall allow the Pawnee County EMS ambulance to be housed in the Burdett fire station and shall allow the Pawnee County EMS use of the building currently used by the Burdett EMS for administrative purposes. The specific terms of said use subject to additional negotiations.
4. Mutual Expectations: All issues yet to be negotiated need to be resolved on or before October 1, 2021, unless and an extension is mutually agreed by the parties.

Article II – Remaining Issues to Negotiate

The following issues still have terms and conditions that need additional discussion:

1. Employee Earned Leave Benefits of the Larned EMS Employees: The Larned EMS Employees have expressed an interest in requesting their earned leave be transferred to the Pawnee County EMS. The City of Larned needs to determine if they wish to pay out all earned leave benefits in accordance with City Employee Policies as of December 31, 2021, or if a portion thereof will be paid to Pawnee County.
2. Accounts Receivables of the Larned EMS and Burdett EMS: the respective City Council's of Larned and Burdett need to determine if any or all accounts receivables due owing on December 31, 2021, will be retained by their respective Cities or if said accounts will be transferred to the Pawnee County EMS.
3. Facilities in Burdett: Pawnee County and the City of Burdett need to determine the lease terms for the City buildings currently being utilized by the Burdett EMS.

Article III - Certain Covenants and Restrictions

By signing this Memorandum of Understanding, the parties herein agree that the following lettered paragraphs will constitute a legally binding and enforceable agreement between us. In consideration of the significant expenses that we both will incur in pursuing an agreement with respect to the formation of the Pawnee County EMS and the mutual undertakings described, we agree as follows:

- A. Good Faith Negotiations: The parties shall negotiate in good faith and make their best efforts to arrive at an agreement with respect to the formation of the Pawnee County EMS at the earliest practicable time.
- B. Exclusive Dealing: While the parties are negotiating the agreements with respect to the formation of the Pawnee County EMS, no party herein shall, directly or indirectly, through an owner, employee, or agent, enter into discussions with (or consummate an agreement with) any other party with respect to any transaction relating to the proposed purpose of the Pawnee County EMS set forth above.

- C. Access to Information: Immediately after the execution of this Memorandum of Understanding, and for so long as this Memorandum of Understanding has not been terminated as set forth in Section F below, each party herein shall permit any other party herein and its accountants, counsel, and other representatives and agents to have reasonable access to our properties and the books, records, contracts, and other documents and information concerning their businesses, finances, and assets solely for the purpose of evaluating the County operated EMS and ambulance services. Each party herein shall also have reasonable access during normal business hours and upon reasonable notice to legal, financial, accounting, and other representatives of the other party with knowledge of the businesses, finances, and assets of the other party.
- D. Expenses: We each party herein shall be solely responsible for expenses that they incur in connection with the negotiations for the formation of the Company.
- E. Public Disclosures: All transactions and discussions between the parties shall be subject to the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Acts (KORA). Nothing herein prohibit the parties from making a public disclosure regarding this Memorandum of Understanding and the anticipated formation of the Pawnee County EMS if, in the opinion of its legal counsel, such disclosure is required by law.
- F. Termination: Each party shall have the right to terminate this Memorandum of Understanding if no mutual agreement to establish the Pawnee County EMS is reached by August 15, 2021.

Following termination, no party herein shall have any obligations under this Memorandum of Understanding.

- G. Binding Effect: This Memorandum of Understanding is intended to be a confirmation of interest between the parties in pursuing negotiations for a definitive agreement based on the terms hereof and, except for the lettered paragraphs hereof, shall not constitute a binding agreement between the parties hereto. Neither party intends, by setting forth in this Memorandum of Understanding the provisions of a possible transaction, to create for itself or any other person, any legally binding obligation of liability. No subsequent oral agreement or conduct of the parties, including partial performance, shall be deemed to impose such obligation or liability. No agreement shall be binding unless and until each party has reviewed and approved (in its sole discretion) a definitive written agreement incorporating all the terms, conditions, and obligations of the parties, has had such agreement reviewed by legal counsel, and has duly executed and delivered such agreement. The legal rights and obligations of each party shall be only those that are set forth in the definitive written agreement.

IN WITNESS WHEREOF, the parties hereby entered into this Memorandum of Understanding.

BOARD OF COUNTY COMMISSIONERS
OF PAWNEE COUNTY, KS

BY: _____
Philip Hammeke, Chair of the Board Date

CITY OF LARNED

BY: _____
William Nusser, Mayor Date

CITY OF Burdett

BY: _____
Linda Schadel, Mayor Date

DRAFT