

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
300 S.W. TENTH AVENUE
TOPEKA, KS 66612
(785) 296-7673
mark.hutton@house.ks.gov



DISTRICT OFFICE
7118 CLEAR MEADOW CT.
WICHITA, KS 67205
(316) 268-9888

MARK HUTTON
105TH DISTRICT

April 29, 2013

Honorable Marc Rhoades
Chairman, Committee on Appropriations
Room: 111-N, Kansas State Capitol

Honorable Jerry Henry
Ranking Minority Member, Committee on Appropriations
Room: 47-S, Kansas State Capitol

Re: Washburn University/Kansas Bureau of Investigation Forensic Laboratory Project

Dear Chairman Rhoades and Ranking Member Henry:

Perhaps because of my background in the construction industry, various members of the Legislature have sought my views on this project. It has been my privilege to provide advice and information related to this project to several members of your Committee.

During the April recess, I have made further inquiry about details of this project and, based on that, have formed additional thoughts and recommendations. I have met with representatives of Washburn University and the KBI and discussed various details. My purpose in writing this letter is to report the following information and my recommendations:

1. This project is important for public safety and for higher education in the State of Kansas. I believe the urgent need for this project is abundantly clear.
2. The Memorandum of Understanding between Washburn University and the KBI, dated April 1, 2013, adequately clarifies the parameters of this project and how the relationship between Washburn and the KBI would be structured. That MOU, which has been reviewed by the Joint Committee on State Building Construction, is attached to this letter. I support the project as outlined in the MOU.
3. The cost projections for this project, including a total project cost of \$55 million, are reasonable and will result in reasonable annual lease payment obligations for the State.

4. The Legislature should give its approval to this project this session by authorizing a loan of \$3.5 million from The Kansas Department of Transportation to Washburn University to be repaid as per the terms of a promissory note to be executed between the Department of Transportation and Washburn University. That authorization, along with the proviso, should also allow a lease agreement to be signed between the KBI and Washburn University. No further approval would be needed or should be required in order to allow this project to proceed.

5. Time is of the essence in this project. It should proceed as quickly as possible after the Legislature approves funding this year in order to avoid unnecessary costs that could accompany delay. For that reason, the lease contemplated by the MOU should be executed during 2013 with the first lease payment due in fiscal year 2015. Thank you for the opportunity to provide this updated information to the Committee. I request this letter (and the attached MOU) be made part of the Committee minutes so that it is publicly available for reference by any Legislator or other person interested in this project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Hutton".

Representative Mark Hutton

Attachment (MOU)

MEMORANDUM OF UNDERSTANDING
Between
THE KANSAS BUREAU OF INVESTIGATION
And
WASHBURN UNIVERSITY

This Memorandum of Understanding (hereinafter "MOU") dated this 1st day of April, 2013, by and between Washburn University, at 1700 SW College, Topeka, Kansas 66604 (hereinafter referred to as "Washburn") and the Kansas Bureau of Investigation, an agency of the State of Kansas headquartered at 1620 SW Tyler, Topeka, Kansas 66612 (hereinafter referred to as "KBI"), expresses a desire to enter formal agreements pertaining to the planning, design, financing, development, and management of certain real property, owned by Washburn, located in the area of Washburn Street and Durow Drive (the "Project"), to house a new KBI Forensic Science Laboratory, and related issues.

WHEREAS, the KBI has represented to Washburn the desire to enter a mutually beneficial building project on which the KBI will provide expertise, capital and vision and Washburn will provide expertise, arrange financing of the building to be leased to the KBI, and supply construction and project management; and

WHEREAS, in fulfilling the educational mission of Washburn University, the KBI and Washburn intend to offer students opportunities at the KBI Forensic Science Laboratory and to develop excellence in the essential areas of forensic science, including Biology and Chemistry, Computer Science/Digital Forensics, and Criminal Justice; such collaboration to possibly include other departments such as Anthropology, Art, Psychology, the School of Business, and the School of Nursing. It is the hope of the parties that this collaboration will enable the KBI and other forensic science laboratories in the state of Kansas to more efficiently analyze evidence and solve crimes; and

WHEREAS, the collaboration will be beneficial to the KBI and the citizens of the state of Kansas and will generate:

- A cadre of highly trained professional graduates from Washburn prepared in forensic technologies to serve as much needed technicians and scientists at the KBI and other forensic science laboratories in Kansas, including but not limited to scientists with expertise in areas such as DNA analysis and digital retrieval;
- An identified and accessible group of Washburn University faculty to serve as consultants and advisors as needed by the KBI and other law enforcement officials in Kansas;
- An ideal location on the Washburn University campus to facilitate analysis and interaction;
- An expanded state-of-the-art Forensic Science Laboratory to decrease the time needed to process evidence and interact with other local, state and federal agencies constituting the overall criminal justice system in Kansas;
- A facility to be used by the KBI and Washburn to provide training through seminars to law enforcement in Kansas on topics ranging from securing crime scenes to handling evidence; and
- Adjunct faculty employment opportunities at Washburn for the KBI forensic scientists, which in turn, hopefully will increase the employment longevity and retention of KBI scientists.

While this MOU provides a mutual understanding of the framework for the Project, it is preliminary in nature and is intended to set parameters for the Project with more details to be addressed in a future land lease and operating agreement, in addition to an affiliation agreement with regard to academic opportunities for Washburn students, such as internships, and adjunct faculty opportunities for KBI scientists.

1. **Premises Description:** Washburn and the KBI shall execute a lease agreement (the "Lease") pursuant to which the KBI shall lease from Washburn certain land located at Washburn Avenue and Durow Drive on the Washburn University campus, for the construction of a building known as the KBI Forensic Science Laboratory (the "Premises"), Topeka, Kansas.

2. **Project:** Subject to Legislative appropriations, the KBI shall commit \$3.5 million for engineering/architectural design or other related services for the Project, subject to Washburn's request for proposal process and approval as referenced herein. If such initial state funding is approved for these services, in collaboration with the KBI, Washburn will solicit proposals from qualified firms and select the most qualified firms and negotiate fees based upon the guidance of the State of Kansas, Department of Administration, for facilities of this complexity. The KBI and Washburn will jointly approve timely periodic invoices during the engineering/architectural phase. During this phase of the Project, plans will be prepared/completed to formulate detailed construction cost estimates and will be near or at completion for construction bid documents. Engineers/architects will not be permitted by the parties to proceed beyond the available funding but must include cost estimation. The scope of work for the Project shall include construction of a building for a KBI Forensic Science Laboratory which is to be three stories plus a basement, and shall be externally consistent with the design of other buildings on campus and those anticipated in Washburn's Master Plan. The Project shall incorporate amenities and a general level of quality comparable to other Washburn buildings, including landscaping, as outlined in design guidelines to be specified in the Lease agreement(s) between the parties.

3. **Project Budget:** The total cost of the Project is currently estimated to be \$55 million. This includes:
 - \$40 million (\$400/ sq. ft.) to construct the facility based upon consultant estimates and the cost of comparable recently constructed facilities;
 - Approximately \$11.5 million for construction related costs, building fees, and equipment;
 - and

- \$3.5 million the KBI will pay to Washburn, subject to Legislative appropriations, for engineering/architectural design or other related fees Washburn will incur in furtherance of the Project. The \$3.5 million the KBI contributes may either:
 - a. Be added to the overall amount of the debt service, such that the funds can be returned to the State of Kansas upon commencement of construction; or
 - b. Be used toward the overall cost of the Project by lowering the amount of the debt service by \$3.5 million.

The engineering/architectural design services, and construction, will follow Washburn's request for proposal process and be jointly reviewed by Washburn and the KBI and the contracts awarded to the lowest and best bid.

4. **Debt Service:** Washburn will arrange for or secure funding for the Project through debt service anticipated to be approximately twenty (20) years in length. The Lease agreement will provide a commitment by the KBI to lease the property for the entire length of the debt service issued or arranged by Washburn. The security for the debt will be the annual lease payment and the Lease agreement will be matched to the amortization schedule including estimated interest rate to be 3%-4%. The Lease will provide for lease payments to include the debt service including but not limited to cost of construction, insurance and interest during construction as required, and bond fund reserve; however, in no event shall the lease payments exceed Washburn's actual costs.
5. **Triple Net Lease:** The Lease shall be structured as a "triple net" lease which by definition designates the lessee as being solely responsible for all costs relating to the asset being leased in addition to the rent fee applied under the lease. The parties understand this type of lease requires the lessee to pay for any applicable net real estate taxes, net building insurance, and net common area maintenance costs. The Lease agreement will provide details in which the KBI shall bear the entire cost of the property including debt service costs, utility and security costs, and maintenance and landscaping costs. There will be a Bond Fund Reserve funded from bond proceeds equal to the average one-year debt service (estimated to be \$3.9 million); interest during construction must be funded from bond proceeds (estimated to be \$2.5 million assuming 4% interest); and renewal and replacement fund costs plus and issue cost of 1% of

bond issue (estimated to be \$600,000.) When debt service is retired, the Lease will provide that portion of the lease payment to cease; however all other costs including all utility costs will continue to be provided in the Lease agreement as the KBI's responsibility.

6. **Lease Commencement**: The parties shall endeavor to execute the Lease not later than July 1, 2014. The Lease term shall commence on the earliest to occur of the following: (i) the Closing of Washburn's debt; or (ii) the start of construction of the Project ("Lease Commencement Date").
7. **Land Lease Consideration**: Washburn shall provide in the Lease agreement a provision for the KBI to lease the land at no cost so long as the KBI provides and continues to provide Washburn use of designated joint use/shared Forensic Science Laboratory space for instruction and other "public space" which shall be further defined in the Lease agreement. Such Lease agreement will detail the amount of shared space allocated, any shared use of equipment and/or storage space for the purposes set forth in this MOU, along with provision of parking spaces for Washburn.
8. **Lease Extension Option**: The term of the Lease agreement shall be for the length of the debt service (expected to be approximately 20 years) with three optional renewal periods of 10 years each. The Lease agreement will provide that after the debt for the Project is retired, the portion of the annual lease payment used to amortize the debt will fall to zero.
9. **Initial Capital Structure**: Prior to the execution of the lease, the capital structure for the project will require Washburn, itself or through a public building commission, to procure a fully amortizing bond issue for the Project with an approximate term of 20 years which must be approved by the KBI.
10. **Ownership**: Upon the end of the lease term the KBI shall have the option to purchase the building from Washburn for \$1 dollar plus costs of ownership transfer. The building shall be delivered to the KBI free of all mortgages or any other debt contingent on the Project continuing to operate as a Forensic Science Laboratory. Should the KBI move its operations

or cease using the facility for its initial purpose as a Forensic Science Laboratory, the building ownership will revert to Washburn. The land will always remain under the ownership of Washburn.

11. **Sale/Assignment**: The KBI shall not assign, pledge, encumber or sell its leasehold interest in the Project.

12. **Subtenants**: The KBI shall not sublease the Project.

13. **Open Book CM**: Washburn shall make available to the KBI all construction estimates, bids, proposals and any proposed contracts with respect to the Project and shall obtain the KBI's prior written authorization to engage any Construction Manager or construction company in relation to improvements to the Premises, such approval not to be unreasonably withheld or delayed. The parties may engage the services of a construction management representative to represent the interests of both parties. However, Washburn reserves the right to retain the services of a construction management representative, at Washburn's cost, to independently represent and assist Washburn in this project if needed. Specifically, the construction management representative may assist in the evaluation of plans and specifications, the verification of project costs, the determination of project budgets and, in general, assist in making various decisions relating to the construction and development of the Project. Should the parties require individual construction representatives, the KBI shall agree to cooperate fully with Washburn's construction management representative throughout the pre-development, development and construction phases of the Project. Similarly, Washburn and Washburn's construction manager shall agree to cooperate fully with the KBI throughout the pre-development, development and construction phases of the Project. Washburn shall cooperate with the KBI to enable the construction management representative to perform the services as outlined herein in a manner that shall not unreasonably affect the KBI or the Project. Such services, if procured by Washburn, shall be at Washburn's sole cost.

14. **Property Management**: The Lease agreement will provide that the KBI shall maintain and operate the Project in a manner equivalent to the highest commercial standards applicable to similar projects of comparable quality in the market. The KBI shall be responsible for all utility costs in the building including shared/joint use space, as defined in the Lease agreement. To the extent that the KBI expects to provide its own Property Management Services, the Lease and the agreement(s) by and between the KBI and Washburn shall specify that the KBI's failure to maintain and operate the Project consistent with these standards, such as custodial, maintenance and security, shall serve (after notice and opportunity to cure to be more particularly described in the Lease) as cause for Washburn to remove the KBI as the manager of the property. By separate agreement, the KBI may contract with Washburn for the provision of certain property management services for the Project if they so choose; however maintaining landscaping and related upkeep shall be the sole responsibility of Washburn.

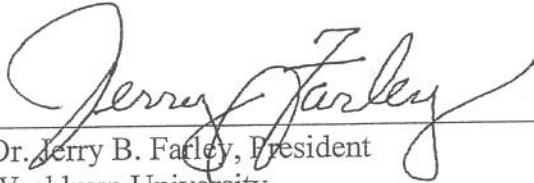
15. **Other Agreements**: Washburn and the KBI agree that the parties shall negotiate in good faith the terms of the Lease, Property Management Agreement and any ancillary documents required to carry out the Project.

16. **Project Schedule**: The parties will agree to a tentative project schedule reflecting all predevelopment, development and construction activities.

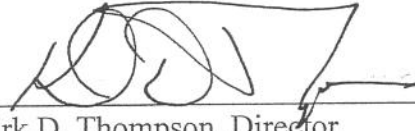
This memorandum of understanding shall not constitute an offer to lease the Premises or a lease of the Premises, but is rather intended to reflect ongoing discussions regarding certain terms and conditions, as negotiated by Washburn and the KBI, which are intended to be incorporated into a formal Lease agreement, including provisions to lease the land, building and operating terms. Except as modified by the definitive agreements executed by the parties, the Project shall be developed in accordance with this MOU.

Washburn and the KBI agree to negotiate in good faith with each other toward the completion of mutually acceptable agreements documenting the proposed transaction as outlined herein.

Executed by:

A handwritten signature in cursive script, reading "Jerry B. Farley". The signature is written in black ink and is positioned above a horizontal line.

Dr. Jerry B. Farley, President
Washburn University

A handwritten signature in cursive script, reading "Kirk D. Thompson". The signature is written in black ink and is positioned above a horizontal line.

Kirk D. Thompson, Director
Kansas Bureau of Investigation