

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Tuesday, September 8, 2015

7:00 p.m.

MEETING #5014

CALL TO ORDER

ROLL CALL

INVOCATION BY Pastor Kirk Larson, of Grace Community Church

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

PETITIONS & PROCLAMATIONS

Welcoming City Proclamation

Suicide Prevention Week Proclamation

Walk to End Alzheimer's

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

Corey Keller, Public Works Director - Fly Kansas Air Tour

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, August 17, 2015;
2. Appropriation Ordinance No. 17, September 8, 2015;
3. Cereal Malt Beverage License:
 - a. Taylor's Roadhouse #2, 302 S. 2nd Avenue;
 - b. Dillon's Store #1, 1700 N. 14th Avenue;
 - c. Circle K Stores, 609 S. 2nd Avenue;
 - d. Circle K Stores, 2615 E. Trial Street;
4. Approval of Change Order No. 2 for 14th Avenue Reconstruction;

5. Professional Service Agreement for Airport Consultant.

ORDINANCES & RESOLUTIONS

Ordinance No. 3612: An Ordinance Regulating Traffic Within the Corporate Limits of the City of Dodge City, Kansas; Incorporating by Reference the “Standard Traffic Ordinance for Kansas Cities, Edition 2015” and Repealing Ordinance No. 3587. Report by City Clerk/Director of Finance, Nannette Pogue.

Ordinance No. 3613: An Ordinance Regulating Public Offenses within the Corporate Limits of the City of Dodge City, Kansas; Incorporating by Reference the “Uniform Public Offense Code for Kansas Cities, Edition 2015” and Repealing Ordinance No. 3588. Report by City Clerk/Director of Finance, Nannette Pogue.

Ordinance No. 3614: An Ordinance Rezoning of 97 ½ N. 14th Avenue from R-2 Medium Residential to C-2 Highway Commercial. Report by Planning, Zoning, Storm Water Coordinator, Nathan Littrell.

Resolution No. 2015-22: A Resolution approving the Kansas Department of Transportation (KDOT) Enhancement TEA-21 Program to Design and Construct an Extension of the Gunsmoke Trail. Report by Director of Engineering Services, Ray Slattery.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval to accept the 2014 Audited Financial Statement. Report by Director of Finance/City Clerk, Nannette Pogue.
2. Approval of League of Kansas Municipalities Delegates. Report by Director of Finance /City Clerk, Nannette Pogue.
3. Approval of the Amendment to the Leisure Development Agreement. Report by City Manager, Cherise Tieben.
4. Authorization to give notice of closing to Pos-T-Vac and to Boot Hill Museum. Report by City Manager, Cherise Tieben.
5. Approval of Building Relocation Plans, Report by Parks & Recreation Director, Paul Lewis.

OTHER BUSINESS

EXECUTIVE SESSION

ADJOURNMENT

PROCLAMATION

WHEREAS, the City of Dodge City recognizes that cities that proactively welcome immigrants and take steps to ensure their successful integration will be strategically positioned as globally competitive, 21st century leaders; and

WHEREAS, the City of Dodge City is committed to building a welcoming and neighborly atmosphere in our community where all people, including recent immigrants, are welcome, accepted, and integrated; and

WHEREAS, City efforts and policies that promote full access for all, including recent immigrants, are crucial to individual and community success; and

WHEREAS, the City of Dodge City recognizes that we must capitalize on diverse perspectives, cultures and talents as the most valuable assets in an economy where knowledge, creativity and innovation reap the greatest benefits, and becoming a more welcoming community means more customers for our local businesses, more jobs created by immigrant entrepreneurs, and we recognize that a thriving economy benefits us all; and

WHEREAS, fostering a welcoming environment for all individuals, regardless of race, ethnicity or place of origin, enhances Dodge City's cultural fabric, economic growth, global competitiveness and overall prosperity for current and future generations.

NOW, THEREFORE, BE IT RESOLVED, the City of Dodge City, Kansas, does hereby proclaim that the City of Dodge City, Kansas is a

“WELCOMING CITY”

Joyce Warshaw, Mayor

ATTEST:

Nannette Pogue, City Clerk

PROCLAMATION

WHEREAS, September 10th is World Suicide Prevention Day and September 7-13 is National Suicide Prevention Week; and

WHEREAS, suicide is the 2nd leading cause of death for 15-44 year olds among Kansans and is the 10th leading cause of death for people of all ages in the United States; and

WHEREAS, each person's death by suicide intimately affects at least six other people, with over 200,000 newly bereaved each year; and

WHEREAS, in 2013, 426 Kansans died by suicide, and several thousand friends and family members were changed forever by losing those people; and

WHEREAS, many of those people who died never received effective behavioral health services, for many reasons including the difficulty of accessing services by healthcare providers trained in best practices to reduce suicide risk, the stigma of using behavioral health treatment, and the stigma associated with losing a loved one to suicide; and

WHEREAS, far too many Kansans die by suicide each year, and most of these deaths are preventable.

NOW, THEREFORE, I, Joyce Warshaw, Mayor of the City of Dodge City, Kansas, do hereby proclaim September 7-12, 2015 as

SUICIDE PREVENTION WEEK

in the City of Dodge City, Kansas, and encourage all citizens and organizations to learn how they can help because Suicide Prevention is Everyone's Business.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Dodge City to be affixed this 8th day of September, 2015.

Mayor

ATTEST:

City Clerk

SUICIDE PREVENTION WEEK

SEPTEMBER 7-12, 2015

MONDAY—Labor Day—Take your day off from work to discuss suicide awareness topics with someone in your family or in your community. **ASK THE QUESTION—**Have you ever thought of suicide?

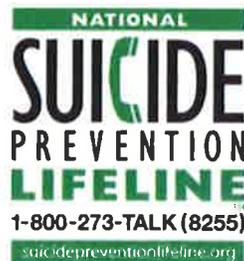
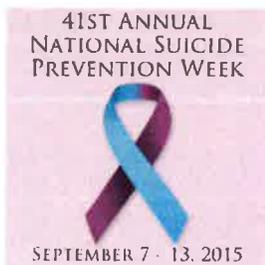
TUESDAY—Expand your **KNOWLEDGE**. Check out www.kansassuicideprevention.org, www.suicidepreventionlifeline.org, or www.sprc.org. Read or print off resources or take advantage of a free online training of **CALM** at www.sprc.org. Use **#yellowribbonwks** on your media information. Follow Yellow Ribbon Western Kansas on Facebook.

WEDNESDAY—Tie a **YELLOW** ribbon on your car, display **YELLOW** ribbons at your office. Share the Yellow Ribbon experience. Check out www.yellowribbon.org for additional information.

THURSDAY—BALLOON RELEASE to expand awareness and honor those who have lost their lives by suicide. Meet at the front entrance of Dodge City High School at 9am. Join in a global **CANDLELIGHT VIGIL** by lighting a candle near a window at home to show support for suicide prevention, a lost loved one, or for the survivors of suicide.

FRIDAY—CHALK DAY —Spread a positive message using chalk on your sidewalks at your home or business. Don't forget to register for the **2nd Annual Alive & Kicking 5K WALK/RUN** on September 19. Call Compass Behavioral Health for more information.

Purple & turquoise ribbons are a suggestion to show support & awareness of suicide prevention. Yellow ribbons support the Yellow Ribbon Project.



Walk to End Alzheimer's
Annual Event

Dodge City
September 19, 2015

Whereas, the Walk to End Alzheimer's Disease is the world's largest event to raise awareness, and funds for Alzheimer's care, support and research; and

Whereas, Alzheimer's Disease is the 6th leading cause of death in the United States, and

Whereas, it is the ONLY cause of death in the top ten in America that currently cannot be prevented or cured, and

Whereas, it is estimated that over 250,000 families provide assistance and care to a loved one with Alzheimer's Disease; and

Whereas, the impact on families on families and friends is that they provide 17.9 billion hours of unpaid care, creating substantial financial, emotional, and physical toll; and

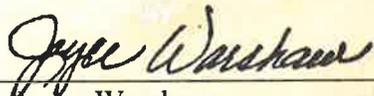
Whereas, raising funds for research and assistance for families and caregivers, annual "walks" take place Nationwide; and

Whereas, Dodge City will hold their annual Walk to End Alzheimer's Disease on Saturday, September 19, 2015 with registration at 9:00 a.m. with the walk beginning at 9:30 a.m. at the Sheridan Center,

I, Joyce Warshaw, Mayor of the City of Dodge City, now proclaim the Week of September 14 - 18, as Alzheimer's Awareness week and encourage everyone to join others in the Walk to End Alzheimer's.



Nannette Pogue, City Clerk



Mayor, Joyce Warshaw

FLY KANSAS

Air Tour

September 29 - October 3, 2015



Mid-America Air Museum visit



RANS Designs Tour



1st Infantry Aviation Brigade



Aviator Golf

September 29: Wellington, Pratt, Dodge City, Liberal

We'll have celebratory start-up of the tour, making a few stops as we head west to the Mid-America Air Museum. We'll connect with students of all ages along the way as we share our aviation passions.

September 30: Garden City, Colby, Hays

Joining LifeTeam, we'll help kids discover the many career possibilities in aviation as we continue to Hays where tour pilots will enjoy a tour of RANS Designs and dinner at the award winning Lb. Brewing Co.

October 1: Concordia, Junction City, Emporia

We'll inspire students in Concordia, join the Fort Riley 1st Infantry Division Brigade in Junction City and enjoy a round of aviator golf in Emporia. It's definitely not your typical golf game!

October 2: Beaumont

After a busy few days, we'll be ready to relax and unwind. Enjoy a casual pilots brunch at the historic Beaumont Hotel.

October 3: Newton

Looking for a weekend event? We'll be joining EAA Chapter 88 for their annual fly-in at the Newton airport, featuring Young Eagle flights, Commemorative Air Force aircraft, fun Activities and a banquet dinner featuring Congressman and fellow aviator Sam Graves.



Join the Tour!

Registration for the 2015 Fly Kansas Air Tour can be found at www.FlyKansas15.eventbrite.com

For questions or to become a sponsor, email the Fly Kansas Foundation at register@flykansas.org or call 316-285-7820

The Fly Kansas Air Tour is brought to you by:

Fly Kansas Air Tour presenting sponsors:



CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, August 17, 2015

7:00 p.m.

MEETING #5013

CALL TO ORDER

ROLL CALL: Mayor Joyce Warshaw, Commissioners Brian Delzeit, Rick Sowers, Jan Scoggins and Kent Smoll.

INVOCATION by Lt. Enrique Coreano of Salvation Army

PLEDGE OF ALLEGIANCE

Commissioner Kent Smoll moved to add two items to the agenda: New Business items – appointment of Gary Johnson to City appointed committees; and Executive Session – Discussion of non-elected personnel. The motion was seconded by Commissioner Brian Delzeit. The motion carried unanimously.

PETITIONS & PROCLAMATIONS

Mayor Joyce Warshaw read the Loren Doll Day Proclamation and proclaimed August 18 as Loren Doll Day.

PUBLIC HEARING

2016 Budget

Mayor Joyce Warshaw opened the Public Hearing on the 2016 Budget. The 2016 Budget was presented by City Finance Director/City Clerk, Nannette Pogue. The Mayor closed the Public Hearing.

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

Kevin Israel updated the City Commission about smoke detectors in residences and residential rentals. The department is seeking additional funding to continue a program in which they were able to provide smoke detectors at no charge to residences.

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes, August 3, 2015;
2. Approval of City Commission Meeting Minutes, August 3, 2015;
3. Approval of Joint City/County Meeting Minutes, August 10, 2015;
4. Appropriation Ordinance No. 16, August 17, 2015.

Commissioner Jan Scoggins moved to approve the Consent Calendar as presented; Commissioner Ken Smoll seconded the motion. The motion carried unanimously.

ORDINANCES & RESOLUTIONS

Resolution No. 2015-20: A Resolution Designating an Additional Bank Account at Fidelity State Bank and Trust Company, Dodge City, Kansas and Authorizing Signers was approved on a motion by Commissioner Kent Smoll. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

Resolution No. 2015-21: A Resolution that provides that a levy of property taxes to finance the 2016 budget for the City of Dodge City exceeding the amount levied to finance the 2015 budget was approved on a motion by Commissioner Jan Scoggins. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

UNFINISHED BUSINESS**NEW BUSINESS**

1. Commissioner Brian Delzeit moved to approve the 2016 Budget. Commissioner Rick Sowers seconded the motion. The motion carried unanimously.
2. Commissioner Rick Sowers made the motion that Gary Johnson, Landmark National Bank, be appointed to: 1) serve as the City of Dodge City's appointee for Great Plains Development, Inc.'s general membership; and 2) serve as the City of Dodge City's appointee for the CDBG Revolving Loan Fund and the Dodge City/Ford County Development Corp's E-Community Combined Loan Review Committee. The motion was seconded by Commissioner Jan Scoggins. The motion carried unanimously.

OTHER BUSINESS

City Manager, Cherise Tieben

- Asked if any of the Commissioners would be available for a ribbon cutting on August 26. Several Commissioners stated that would be available.
- On September 3 the Commissioners will be meeting individually with Brian Reilly with Dial Development; at 1:30 Jan Scoggins; 3:00 Brian Delzeit and Joyce Warshaw and at 5:00 Kent Smoll and Rick Sowers.

- After David Amaro approached the City Commission about having a City flag available for citizens to purchase, it was decided to order some of the city flags that are already designed and made and sell those to citizens who might want them.

Commissioner, Brian Delzeit

- Reported on activities going on at the United Wireless Arena; August 22, Professional Boxing; August 29, Boston; September 9, Don Williams; October 3, Kansas; December 11, Manheim Steamroller.

Commissioner, Rick Sowers

Commissioner, Kent Smoll

- Thanked City staff for their efforts on the 2016 budget.
- Had the opportunity to ride the Public Transportation Bus. What a great thing to have this in the community. Would encourage people to ride.

Commissioner, Jan Scoggins

- Thanked all the citizens who attended the meeting either in person or by watching on television.
- She had the opportunity to ride along with Meals on Wheels and commented what a great program that is. She thanked Sheila Grayson for directing that program

Mayor, Joyce Warshaw

- We would like to hear from our citizens. Talked about the City's request tracker program that is available on the City's website, dodgecity.org.
- She is concerned about all the at-large dogs and all of the dogs that are picked up in the City and taken to shelters in other areas. Please take care of your pets and realize that they are a commitment and responsibility.
- School starts Wednesday, watch the school zones.

EXECUTIVE SESSION

Commissioner Kent Smoll moved to Adjourn to Executive Session at 7:40 not to exceed 30 minutes to discuss non-elected personnel. To be included in the session is the City Manager and City Attorney. Commissioner Rick Sowers seconded the motion. The motion carried unanimously.

At 8:10 the Regular Session was reconvened.

ADJOURNMENT

Commissioner Brian Delzeit moved to adjourn the meeting; Commissioner Rick Sowers seconded the motion. The motion carried unanimously.

**INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City, KS

SECTION 1 - LICENSE TYPE	
Check One: <input checked="" type="checkbox"/> New License <input type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licenses premises.	

SECTION 2 - APPLICANT INFORMATION		
Kansas Sales Tax Registration Number (required):		
Name <u>Charles R Taylor Jr.</u>	Phone No. <u>620-338-3881</u>	Date of Birth <u>8/1/64</u>
Residence Street Address <u>111 McCaustland Rd #2</u>	City <u>Dodge City, KS</u>	Zip Code <u>67801</u>
Applicant Spousal Information		
Spouse Name <u>Martisha A Taylor</u>	Phone No. <u>620-682-3449</u>	Date of Birth <u>3/5/66</u>
Residence Street Address <u>111 McCaustland Rd #2</u>	City <u>Dodge City, KS</u>	Zip Code <u>67801</u>

SECTION 3 - LICENSED PREMISE	
Licensed Premise (Business Location or Location of Special Event)	Mailing Address (If different from business address)
DBA Name <u>Taylor's Roadhouse #2</u>	Name <u>Charles R Taylor Jr.</u>
Business Location Address <u>302 S. Second</u>	Address <u>Box 1623</u>
City <u>Dodge City, KS</u> State <u>KS</u> Zip <u>67801</u>	City <u>Dodge City, KS</u> State <u>KS</u> Zip <u>67801</u>
Business Phone No. <u>620-338-3881</u>	<input checked="" type="checkbox"/> I own the proposed business or special event location. <input type="checkbox"/> I do not own the proposed business or event location.
Business Location Owner Name(s) <u>Charles R Taylor Jr.</u>	

SECTION 4 - APPLICANT QUALIFICATION	
I am a U.S. Citizen	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of Kansas for at least one year prior to application.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have resided within the state of Kansas for <u>42</u> years.	
I am at least 21 years old.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of this county for at least 6 months.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Within 2 years immediately preceding the date of this application, neither I nor my spouse ¹ has been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Have Have Not
My spouse has previously held a CMB license.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
My spouse has never been convicted of one of the crimes mentioned above while licensed.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 – LICENSE TYPE	
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): <u>004-270497081F-01</u>			
Name of Corporation Dillon Stores, Div of Dillon Companies, Inc		Principal Place of Business 2700 E. 4th., P.O. Box 1608	
Corporation Street Address 2700 E. 4th., P.O. Box 1608		Corporation City Hutchinson	State KS
			Zip Code 67501
Date of Incorporation 05/13/1921		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name		Phone No.	
Residence Street Address		City	State
			Zip Code

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Dillon's #1		Name Kroger Business License Dept	
Business Location Address 1700 N 14th St		Address P.O. Box 305103	
City Dodge City, KS 67801	State	City Nashville, TN 37230-5103	State
	Zip		Zip
Business Phone No. 620-225-6130		<input type="checkbox"/> Applicant owns the proposed business or special event location. <input type="checkbox"/> Applicant does not own the proposed business or event location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name		Position	
Residence Street Address		City	State
			Zip Code
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code
Name		Position	
Residence Street Address		City	State
			Zip Code
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code
Name		Position	
Residence Street Address		City	State
			Zip Code
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 – LICENSE TYPE	
Check One: <input checked="" type="checkbox"/> New License <input type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): 004-465579045F-01			
Name of Corporation Circle K Stores Inc		Principal Place of Business P.O. Box 522085	
Corporation Street Address P.O. Box 522085		Corporation City Phoenix	State Arizona
Date of Incorporation 7-2-1984		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name Corporation Service Company		Phone No.	
Residence Street Address 2900 SW Wanamaker Drive, Suite 204		City Topeka	State Kansas
			Zip Code 66614

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Circle K Store		Name Circle K Stores Inc.	
Business Location Address 609 South 2nd Street		Address P.O. Box 522085	
City Dodge City	State Kansas	City Phoenix	State Arizona
Zip 67801		Zip 85072	
Business Phone No. 620-340-8038		<input checked="" type="checkbox"/> Applicant owns the proposed business or special event location. <input type="checkbox"/> Applicant does not own the proposed business or event location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name Geoffrey C. Haxel		Position President & Secretary	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
Spouse Name Lori Glyn Haxel		Position spouse	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Name Kathy Cunnington		Position Treasure and Vice President	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
Spouse Name Jeffrey David Cunnington		Position spouse	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Name Kelly McGuire		Position Vice President	
Residence Street Address 7312 Vangaurd Court		City Colleyville	State TX
Spouse Name Donna McGuire		Position spouse	
Residence Street Address 7312 Vangaurd Court		City Colleyville	State TX
			Zip Code 76034

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 – LICENSE TYPE	
Check One: <input checked="" type="checkbox"/> New License <input type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): 004-465579045F-01			
Name of Corporation Circle K Stores Inc		Principal Place of Business P.O. Box 522085	
Corporation Street Address P.O. Box 522085		Corporation City Phoenix	State Arizona
Date of Incorporation 7-2-1984		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name Corporation Service Company		Phone No.	
Residence Street Address 2900 SW Wanamaker Drive, Suite 204		City Topeka	State Kansas
			Zip Code 66614

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Circle K Store		Name Circle K Stores Inc.	
Business Location Address 2615 East Trail Street		Address P.O. Box 522085	
City Dodge City	State Kansas	City Phoenix	State Arizona
	Zip 67801		Zip 85072
Business Phone No. 620-227-2625		<input checked="" type="checkbox"/> Applicant owns the proposed business or special event location. <input type="checkbox"/> Applicant does not own the proposed business or event location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name Geoffrey C. Haxel		Position President & Secretary	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Spouse Name Lori Glyn Haxel		Position spouse	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Name Kathy Cunnington		Position Treasure and Vice President	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Spouse Name Jeffrey David Cunnington		Position spouse	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Name Kelly McGuire		Position Vice President	
Residence Street Address 7312 Vangaurd Court		City Colleyville	State TX
			Zip Code 76034
Spouse Name Donna McGuire		Position spouse	
Residence Street Address 7312 Vangaurd Court		City Colleyville	State TX
			Zip Code 76034

Memorandum

*To: City Manager
City Commissioners*

From: Ray Slattery, Director of Engineering Services

Date: August 20, 2015

*Subject: 14th Ave. Reconstruction
(ST 1502)*

Agenda Item: Consent Calendar

Recommendation: Approve Change Order No. 2 for 14th Ave. Reconstruction.

Background: 14th Ave. Reconstruction was approved on March 16, 2015.

Justification: Pavement Excavation, Fly-Ash Sub-Grade Preparation, & 9" NRDJ PCC Pavement – The additional 5 S.Y. for all these bid items represent actual field measurements. The reconstruction was actually 1' longer than plan.

Sub-Grade Repair – This bid item was deleted from the project since it was not used.

Financial Considerations: Change Order No. 2 is for a decrease of \$14,727.50.

Purpose/Mission: One of the City's core values in Ongoing Improvements. With the construction of these improvements the City is preparing for the community's future and providing new possibilities for current and future citizens of our community.

Legal Considerations: N/A

Attachments: Change Order No. 2

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Corey Keller/ Airport Manager

Date: September 1, 2015

*Subject: Approval of Airport Engineering
Consultant Professional Service
Agreement*

Agenda Item: Consent Calendar

Recommendation: Staff recommends authorizing City Staff to execute the agreement with Burns & McDonnell to serve as the City's professional engineering consultant for future FAA and non-FAA sponsored airport improvement projects.

Background: At a previous meeting the Commission approved City staff to enter into negotiations with Burns & McDonnell pending legal review of the agreement. This work has since been completed by legal staff and is now ready for commission approval.

Justification: By FAA regulations, every 5 years the Airport is required to solicit other interested engineering firms in order to be approved for Federal Airport Improvement Projects (AIP) funding for future projects. Previously the Airport Staff and the Airport Advisory Board solicited RFP's for engineering consultants. In that process the Airport Advisory Board approved Burns & McDonnell to return as the Airports engineering consult.

Financial Considerations: The Contract is for terms and conditions only there is no monetary value to the agreement.

Attachments: Burns & McDonnell Professional Service Agreement



PROFESSIONAL SERVICES AGREEMENT – TASK ORDER
Between
CITY OF DODGE CITY, KANSAS
And
BURNS & McDONNELL ENGINEERING COMPANY, INC.
Kansas City, Missouri

This AGREEMENT is made as of _____, 2015, by and between the City of Dodge City, Kansas (hereinafter called OWNER) and Burns & McDonnell Engineering Company, Inc. (hereinafter called CONSULTANT).

OWNER from time to time requires professional services in connection with the planning, design and construction for FAA and non-FAA sponsored Airport Improvement Projects, (AIP) located at Dodge City Regional Airport. Therefore, OWNER and CONSULTANT, in consideration of their mutual covenants, agree as follows:

CONSULTANT shall serve as OWNER'S professional engineering consultant in those assignments to which this AGREEMENT applies, and shall give consultation and advice to OWNER during the performance of CONSULTANT'S services.

SECTION 1 - AUTHORIZATION OF SERVICES

1.1 Services on any assignment shall be undertaken only upon written authorization of OWNER and agreement of CONSULTANT. The parties shall use the form of Task Order attached hereto as **Exhibit A**.

1.2 Assignments may include those projects as stated in the OWNER's Notice to Airport Consultants dated August 11, 2013 and as referenced in Section 1.3 and services described hereafter as Basic Services or as Additional Services of CONSULTANT.

- 1.3 Task Order projects are listed herein:
- a. Assist with documentation required to secure federal and state aviation funds
 - b. 12-unit T-Hangars
 - c. Public Hangars
 - d. Reconstruct Runway 14-32
 - e. Acquire Snow Removal Equipment Broom
 - f. Perimeter Fencing
 - g. Rehabilitate Runway 2-20
 - h. Rehabilitate Taxiway A and Connector Taxiways
 - i. Rehabilitate Taxilanes
 - j. Slurry Seal Taxiway B
 - k. Install a new Fueling System
 - l. Terminal Building
 - m. Supplemental Airport Access Road
 - n. Updating Airport Signage and Markings
 - o. Apron Rehabilitation
 - p. Airport Maintenance and Improvements that may be required to maintain the airport within FAA criteria and standards
 - q. Security Fencing

SECTION 2 - BASIC SERVICES OF CONSULTANT

2.1 General. The Basic Services to be provided may include any of those tasks listed in this Section 2, as identified in the Task Order for a specific project.

2.1.1 Civil, structural, mechanical, electrical consulting services, architectural services, or other consulting services identified in the Task Order(s).

2.1.2 Advise OWNER as to the necessity of OWNER providing or obtaining services or data from others described in Paragraph 4.3, make recommendations as to the possible sources of such services, and act as OWNER'S representative in connection with any such services.

2.2 Preliminary Planning and Preliminary Design

2.2.1 Consult with OWNER to determine OWNER'S requirements for the Project and available data.

2.2.2 Provide special analyses of OWNER'S needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.

2.2.3 Provide general economic analyses of OWNER'S requirements applicable to various alternatives.

2.2.4 Prepare a preliminary cost opinion for the Project.

2.2.5 Prepare preliminary design documents consisting of final design criteria, preliminary drawings, and outline specifications.

2.2.6 Prepare a Preliminary Design Report summarizing studies performed in accomplishing Paragraphs 2.2.2 and 2.2.3, including findings and recommendations for the Project, and furnish three review copies of the Report to OWNER.

2.3 Not Applicable

2.4 Not Applicable

2.5 Final Design Services

2.5.1 On the basis of the approved preliminary design documents, prepare for incorporation in the Contract Documents detailed drawings to show the character and scope of the Work to be performed by contractors on the Project (hereinafter called the "Contract Drawings"), and Invitation to Bid, Instructions to Bidders, Bid Form, Agreement and Bond forms, General Conditions, and Specifications (all of which, together with the Contract Drawings, are hereinafter called the "Bid Documents") for review and approval by OWNER, its legal counsel, and other advisors as appropriate, and assist OWNER in the preparation of other related documents.

2.5.2 Provide technical criteria, written descriptions, and design data for OWNER'S use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.

2.5.3 Advise OWNER of adjustments in the cost opinion for the Project caused by changes in scope, design requirements, or construction costs and furnish a revised cost opinion for the Project based on the final Bid Documents.

2.5.4 Furnish three approval copies of the final Bid Documents.

2.6 Bidding or Negotiating Services

2.6.1 Assist OWNER in obtaining and evaluating bids or negotiating proposals and preparing construction contracts.

2.6.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime construction contractor(s), for those portions of the work as to which such acceptability is required by the Bid Documents.

2.6.3 Make recommendations regarding award of construction contracts.

2.7 Construction Phase Services

2.7.1 Consult with and advise OWNER and act as OWNER'S CONSULTANT as provided in CONSULTANT'S standard General Conditions for the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of CONSULTANT as assigned in said General Conditions shall not be modified without CONSULTANT'S written consent.

2.7.2 Consult with and advise OWNER and act as OWNER'S CONSULTANT as may be provided in OWNER'S construction contract conditions furnished pursuant to Paragraph 4.11 herein. The extent and limitations of the duties, responsibilities, and authority of CONSULTANT as may be assigned in said construction contract conditions or in supplements prepared thereto shall not be modified without CONSULTANT'S written consent.

2.7.3 As OWNER'S CONSULTANT, CONSULTANT shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs, or for Contractor's failure to perform construction work in accordance with the Contract Documents, all of which shall remain the sole responsibility of the OWNER'S Contractor.

2.7.4 Review Contractor(s) schedules for Work progress, equipment and materials procurement, submittals, and values for partial pay purposes, and project cash flow requirements.

2.7.5 Review and accept Submittals of Contractor(s) for conformance with the design concept and intent of the Contract Documents.

2.7.6 Make visits to the Site at intervals appropriate to the stages of construction to (consult with and advise CONSULTANT'S Resident Project Representative, if any, and) observe the progress and quality of the executed Work, and to determine, in general, if the Project is proceeding in accordance with the Contract Documents. CONSULTANT shall not be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.

2.7.7 Issue all instructions of OWNER to Contractor(s); prepare routine Supplemental Instructions, Change Orders and Construction Change Directives, as required; act as interpreter of the terms and conditions of the Contract Documents and judge of the performance thereunder by the parties thereto, and make decisions on claims of OWNER and Contractor(s) relating to the execution and progress of the Work and other matters and questions related thereto; but CONSULTANT shall not be liable for the results of any such interpretations or decisions rendered by CONSULTANT in good faith.

2.7.8 Review Contractor(s) applications for payment and supporting data, determine the amounts owing to Contractor(s), and approve in writing all payments to Contractor(s) in accordance with the Contract Documents.

2.7.9 Render periodic Work progress reports to OWNER.

2.7.10 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in general in accordance with the Contract Documents, so that CONSULTANT may approve, in writing, final payment to each Contractor.

2.8 Post-Construction Services

2.8.1 Provide qualified CONSULTANTs during equipment start-up and instruct OWNER'S personnel in equipment function and intended use.

2.8.2 Prepare a reproducible Record Set of drawings revised to show significant changes made during construction of the Project in accordance with records provided by Contractor and CONSULTANT'S Resident Project Representative, if any.

SECTION 3 - ADDITIONAL SERVICES OF CONSULTANT

3.1 General

If authorized in writing by OWNER and agreed to in writing by CONSULTANT, CONSULTANT shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Grant and Loan Assistance

Prepare applications and supporting documents for governmental grants, loans, or advances.

3.1.2 Financial Consultation

Consult with OWNER'S fiscal agents and bond attorneys and provide such Consulting data as required for any bond prospectus or other financing requirements.

3.1.3 Property Procurement Assistance

Determine land and easement requirements and provide consultation and assistance on property procurement as related to professional services being performed.

3.1.4 Administrative Assistance

Provide Contract and Project administration to the degree authorized by OWNER.

3.1.5 Obtaining Services of Others

Provide through subcontract the services or data set forth in Paragraph 4.3.

3.1.6 Furnishing renderings or models of the Project for OWNER'S use.

3.1.7 Miscellaneous Studies

Investigations involving detailed consideration of operations, maintenance, and overhead expenses, and the preparation of rate schedules, earnings, and expense statements; feasibility studies; appraisals and valuations; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

3.1.8 Extraordinary Construction-Related Services

3.1.8.1 Additional or extended services during construction made necessary by a force majeure, act of God, governmental action, severe weather, vandalism, terrorism, or other extraordinary event.

3.1.8.2 Consultation or other services after completion of the Construction Phase, such as frequent inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any construction contract.

3.1.8.3 Preparing to serve or serving as a witness for OWNER in any litigation or other legal or administrative proceeding involving the Project.

3.1.9 Preparation of an operating manual for use by OWNER.

3.1.10 Extra Services not specifically defined above that may be authorized by OWNER.

3.2 Resident Services during Construction

3.2.1 If requested by OWNER or recommended by CONSULTANT and agreed to in writing by the other party, a Resident Project Representative and assistants shall be furnished and shall act as directed by CONSULTANT in order to provide more extensive representation at the Project site during the Construction Phase.

3.2.2 The Resident Project Representative, through more extensive on-site observations of the work in progress, field checks of materials and equipment, and maintenance of jobsite records on conditions and activities, shall assist CONSULTANT in determining that the Project is proceeding in accordance with the Contract Documents. However, the furnishing of such resident project representation shall not make CONSULTANT responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs, or for Contractor(s)' failure to perform the construction work in accordance with the Contract Documents.

3.3 Contingent Additional Services

3.3.1 If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the CONSULTANT'S control, the CONSULTANT shall notify the OWNER prior to commencing such services. If the OWNER deems that such services described in Section 3.3 are not required, the OWNER shall give prompt written notice to the CONSULTANT. If the OWNER indicates in writing that all or part of such Contingent Additional Services are not required, the CONSULTANT shall have no obligation to provide those services.

3.3.2 Making revisions in Drawings, Specifications, or other documents when such revisions are:

3.3.2.1 inconsistent with approvals or instructions previously given by the OWNER, including revisions made necessary by adjustments in the OWNER'S program or Project Budget.

3.3.2.2 required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents.

3.3.2.3 due to changes required as a result of the OWNER'S failure to render a decision in a timely manner.

3.3.3 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the OWNER'S schedule, or the method of bidding or negotiating and contracting for construction.

3.3.4 Preparing Drawings, Specifications, and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Work Change Directives.

3.3.5 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revision to Drawings, Specifications, and other documentation resulting therefrom.

3.3.6 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.7 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the OWNER or Contractor under the Contract for Construction.

3.3.8 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.9 Prolonged construction administration more than sixty (60) days after substantial completion, or acceleration of the work schedule involving services beyond normal working hours.

3.3.10 Preparing documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Final Design Phase.

SECTION 4 - RESPONSIBILITIES OF OWNER

OWNER shall, within a reasonable time, so as not to delay the services of CONSULTANT:

4.1 Provide full information as to OWNER'S requirements for the Project.

4.2 Assist CONSULTANT by placing at CONSULTANT'S disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

4.3 Furnish consulting services or data, such as core borings, probings and subsurface explorations; hydrographic surveys; laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic, and utility surveys; zoning and deed restrictions; and other special data or consultations, all of which CONSULTANT may rely upon in performing its services under this AGREEMENT.

4.4 Guarantee access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services under this AGREEMENT.

4.5 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by CONSULTANT and render in writing decisions pertaining thereto.

4.6 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.

4.7 Designate in writing a person to act as OWNER'S representative with respect to the services to be performed under this AGREEMENT. Such person shall have complete authority to transmit instructions; receive information; interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements, and systems to be used in the Project; and other matters pertinent to the services covered by this AGREEMENT.

4.8 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any defect in the Project.

4.9 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

4.10 Furnish, or direct CONSULTANT to provide necessary Additional Services as stipulated in Section 3 of this AGREEMENT or other services as required.

4.11 If CONSULTANT'S standard bidding requirements, agreement forms, and General Conditions are not to be used, but OWNER'S documents are to be used instead, OWNER shall provide copies of such documents for CONSULTANT'S use in coordinating the Contract Drawings and Specifications.

SECTION 5 - PERIOD OF SERVICE

5.1 This AGREEMENT will become effective upon the first written notice by OWNER authorizing services hereunder.

5.2 This AGREEMENT shall be applicable to all assignments authorized by OWNER and accepted by CONSULTANT subsequent to the date of its execution. All assignments authorized prior to the execution of this document, even if performed in whole or in part before the execution date, shall be governed by the terms and conditions of this AGREEMENT.

5.3 The provisions of this AGREEMENT have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the services stated in the AGREEMENT. CONSULTANT'S obligation to render services hereunder will extend for an initial period of twelve months (hereinafter the "primary term") and subject to renewal for four (4) additional and separate twelve (12) month terms (hereinafter the "renewal term"). It is understood and agreed by the parties hereto that renewal of this Agreement at the conclusion of the primary term shall be automatic unless this AGREEMENT is otherwise terminated as herein provided.

SECTION 6 - COMPENSATION

6.1 Compensation. OWNER shall pay CONSULTANT for services rendered and reimbursable expenses as follows, or as stated in the Task Order(s):

6.1.1 Amount of Payment: Method A – Fixed Lump Sum Payment.

For the Scope of Services described, the OWNER shall pay the CONSULTANT the lump sum amount as stated in the written Task Order for the specific project. For additional, reduced, or changed scope of services, the amount of payment shall be adjusted on a mutually agreeable lump-sum basis. Or,

6.1.2 Amount of Payment: Method B – Cost Plus a Fixed Payment.

For the Scope of Services described, the OWNER shall pay the CONSULTANT the sum of the following:

- a. Individual's Hourly Rate, plus
- b. CONSULTANT's current Audited Overhead rate to cover general and administrative expenses, and payroll burden (as applicable to the specific Task Order) for office personnel, resident field personnel and contract labor.
- c. A ten percent fixed payment of the sum of a. and b.
- d. Direct hourly rate is determined by dividing each individual's current annual base salary by 2,088 hours per year. Overtime rate for nonexempt personnel shall be 1.5 times the hourly rate. Exempt and nonexempt are as defined by the United States Fair Labor Standards Act.

6.1.3 For outside expenses incurred by CONSULTANT, such as authorized travel and subsistence, commercial services, courier deliveries, and incidental expenses, the cost to CONSULTANT.

6.1.4 For reproduction, printing, long distance telephone calls, fax services, vehicles, and testing apparatus, amounts as determined from CONSULTANT's schedule of rates in effect at the time the service is provided.

6.1.5 For services rendered by others as subcontractor(s) to CONSULTANT, such as surveying, real property descriptions, soil borings, subsurface investigations, laboratory testing, field quality control tests, progress photographs, or other activities required or requested by OWNER, the cost to CONSULTANT.

6.1.6 For time expended by outside individual professional service subcontractor(s) employed by the CONSULTANT in providing services to the OWNER, the cost to the CONSULTANT. Expenses incurred by such outside subcontractors in service to the OWNER shall be reimbursable in accordance with Subparagraph 6.1.3 above.

6.1.7 For expenses incurred by CONSULTANT in providing resident field services such as vehicle lease or rental, telephone services, miscellaneous resident office expenses, commercial services, field personnel moving expenses to the field site location, per diem or mileage allowances for personnel assigned in the field, authorized travel and subsistence expenses of personnel temporarily assigned from CONSULTANT's offices to the field, and other such items incidental to operating a field office, the cost to CONSULTANT.

6.1.8 The total payment for the Scope of Services described in each Task Order shall not exceed as stated in the written Task Order for the specific project without written approval of the OWNER.

6.2 Statements

Monthly statements, in CONSULTANT'S standard format, will be submitted by the CONSULTANT to the OWNER.

6.2.1 Method A – Fixed Lump Sum Payment. Statements will be based on the CONSULTANT'S estimated percent of services completed at the end of the preceding month.

6.2.2 Method B – Cost Plus a Fixed Payment. Statements will be submitted for payment covering services performed, costs and expenses incurred, and appropriate fee or markup (if applicable) during the preceding month.

6.3 Payments

Statements are payable upon receipt. A late payment charge of 1.5 percent per month or any partial month will be added to amounts not received within 30 days of the statement date. Time is of the essence in payments of statements, and timely payment is a material part of the consideration of this AGREEMENT. Costs, including reasonable attorney's fees, incurred by the CONSULTANT in collecting any delinquent amount shall be reimbursed by the OWNER. If a portion of CONSULTANT'S statement is disputed by OWNER, the undisputed portion shall be paid by OWNER by the due date. The OWNER shall advise the CONSULTANT in writing of the basis for any disputed portion of any statement.

6.4 Taxes

Taxes, other than United States federal and state income taxes, and Kansas City, Missouri earnings tax, as may be imposed by the United States, state, and local authorities, shall be in addition to the payment stated under "Amount of Payment".

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

7.1.1 During the course of performance of these services, CONSULTANT will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$1,000,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability:	\$1,000,000 Per Claim and Annual Aggregate

If requested, CONSULTANT will provide to OWNER certificates as evidence of the specified insurance.

7.1.2. Construction Contractors shall be required to provide (or OWNER may provide) Owners' Protective Liability Insurance naming the OWNER as a Named Insured and the CONSULTANT as an additional insured, or, to endorse OWNER and CONSULTANT using ISO Form GC 20101185 endorsement or its equivalent as Additional Insureds on all construction Contractors' liability insurance policies covering claims for personal injuries and property damage in at least the amount required of CONSULTANT in Section 7.1.1, above. Construction Contractors shall be required to provide certificates evidencing such insurance to the OWNER and CONSULTANT.

7.1.3. OWNER and CONSULTANT waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance (including deductibles) during and after the completion of CONSULTANT'S services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered into by OWNER, and all construction Contractors shall be required to provide waivers of subrogation in favor of OWNER and CONSULTANT for damage or liability covered by any construction Contractor's policy of insurance.

7.2 Professional Responsibility

7.2.1. CONSULTANT will exercise reasonable skill, care, and diligence in the performance of CONSULTANT'S services and will carry out its responsibilities in accordance with customarily accepted professional consulting practices. If the CONSULTANT fails to meet the foregoing standard, CONSULTANT will perform at its own cost, and without reimbursement from OWNER, the professional services necessary to correct errors and omissions which are caused by CONSULTANT'S failure to comply with above standard, and which are reported to CONSULTANT within one year from the completion of CONSULTANT'S services for the Project.

7.2.2. The obligations and representations contained in Paragraph 7.2.1 are CONSULTANT'S sole obligation and OWNER'S exclusive remedy with respect to defects in the quality of services detected prior to project completion under a Task Order. OWNER'S failure to properly operate and maintain the project shall relieve CONSULTANT of its liability for any damage caused in whole or in part by improper operation or maintenance.

7.2.3 No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service or oral or written representation by CONSULTANT or its employees or consultants.

7.2.4 Subject to Paragraph 7.14.1 and Section 8, the obligations and remedies stated in this Section 7.2, Professional Responsibility, are the sole and exclusive obligations of CONSULTANT and remedies of OWNER, regardless of the cause of action pled including, without limitation, all types of negligence.

7.3 Cost Opinions and Projections

Cost opinions and projections prepared by CONSULTANT relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on CONSULTANT'S experience, qualifications, and judgment as a design professional. Since CONSULTANT has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, CONSULTANT does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by CONSULTANT.

7.4 Changes

OWNER shall have the right to make changes within the general scope of CONSULTANT'S services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by an authorized representative of the OWNER and the President or any Vice President of the CONSULTANT.

7.5 Suspension of Services

Should OWNER fail to fulfill its responsibilities as provided under Section 4 to the extent that CONSULTANT is unduly hindered in CONSULTANT'S services or if OWNER fails to make any payment to CONSULTANT on account of CONSULTANT'S services and expenses within 90 days after receipt of CONSULTANT'S bill therefor, CONSULTANT may, after giving seven days' written notice to OWNER, suspend services under this AGREEMENT until OWNER has satisfied OWNER'S obligations under this AGREEMENT.

7.6 Termination

7.6.1. Reference Section 7.21 Federal Contract Provision per the FAA Airport Improvement Program.

7.7 Delays

In the event the services of the CONSULTANT are suspended or delayed by the OWNER, the CONSULTANT shall be entitled to additional compensation for reasonable costs incurred by the CONSULTANT in temporarily closing down or delaying the Project and reassigning Project staff (including, but not limited to, unavoidable down time and any termination expenses incurred where reassignment is not reasonably possible) and in organizing Project files, records, and work in progress for suspension and later resumption of the CONSULTANT'S services.

7.8 Deleted

7.9 Rights and Benefits

CONSULTANT'S services will be performed solely for the benefit of the OWNER and not for the benefit of any other persons or entities.

7.10 Dispute Resolution

7.10.1 Scope of Section: The procedures of this Section 7.10 and its subparts shall apply to any and all disputes between OWNER and CONSULTANT (including disputes involving an officer, director or employee of either party) which arise from, or in any way are related to, this AGREEMENT, including, but not limited to the interpretation of this AGREEMENT, the enforcement of its terms, any acts, errors, or omissions of OWNER or CONSULTANT in the performance of this AGREEMENT, whether in contract or in tort, and disputes concerning payment.

7.10.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate and, if necessary, mediate their disputes as set forth in this Paragraph. If timely Notice is given under

Paragraph 7.10.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 7.10.3, 7.10.4, and 7.10.5 have been complied with.

7.10.3 Notice of Dispute

7.10.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

7.10.3.2 For disputes arising after the making of final payment, OWNER shall give CONSULTANT written Notice at the address listed in Paragraph 7.18 within ninety (90) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this AGREEMENT that authorize the relief requested.

7.10.4 Negotiation: Within seven (7) days of receipt of the Notice, the Project Managers for the OWNER and CONSULTANT shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level within twenty-one (21) days after Notice then, upon written request of either side, the matter shall be referred to the Division President of the CONSULTANT and the following executive officer of OWNER, City Manager. These officers shall meet at the Project Site or such other location as is agreed upon within thirty (30) days of the written request to resolve the dispute.

7.10.5 Mediation: If the OWNER'S and CONSULTANT'S said officers are unable to resolve the dispute, then either side may request that the matter be submitted to mediation before a mediator mutually agreed upon. If the parties cannot agree on a mediator, then the American Arbitration Association shall appoint one upon request. Any administrative or mediator's fees shall be split equally between the parties. The mediation shall take place in Ford County, Kansas unless the parties mutually agree on another location.

7.10.6 Arbitration:

7.10.6.1 If the parties are unable to resolve their dispute after at least one session of mediation, then any claim, dispute or other matter in question arising out of or related to this AGREEMENT (including disputes involving an officer, director or employee of either party), whether in contract or in tort, shall be subject to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party to this AGREEMENT and with the American Arbitration Association.

7.10.6.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.10.6.3 No arbitration arising out of or relating to this AGREEMENT shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this AGREEMENT (other than disputes involving an officer, director or employee of either party, or subcontractor to CONSULTANT), except by written consent containing a specific reference to this AGREEMENT and signed by the OWNER, CONSULTANT, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein.

7.10.6.4 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this AGREEMENT shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. The award rendered by the

arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.10.6.5 Any legal action necessary to compel, confirm, vacate, enforce, modify or otherwise affect the mediation or arbitration shall be filed in state or federal courts in the State of Kansas and each party expressly consents to jurisdiction therein.

7.10.7 Deleted.

7.10.8 Deleted.

7.11 The OWNER represents that it has sufficient funds or the means of obtaining funds to remit payment to the CONSULTANT for services rendered by the CONSULTANT.

7.12 Publications

Recognizing the importance of professional development on the part of CONSULTANT'S employees and the importance of CONSULTANT'S public relations, CONSULTANT may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to CONSULTANT'S services for the Project. Such publications will be provided to OWNER in draft form for OWNER'S advance review. OWNER shall review such drafts promptly and provide OWNER'S comments to CONSULTANT. OWNER may require deletion of proprietary data or confidential information from such publications, but otherwise OWNER will not unreasonably withhold approval. The cost of CONSULTANT'S activities pertaining to any such publication shall be for CONSULTANT'S account.

7.13 Deleted.

7.14 Indemnification

7.14.1 Except for those projects identified in Section 7.13, and subject to the provisions of Sections 4 and 8 of this Agreement, CONSULTANT agrees to indemnify OWNER for damages, costs and expenses (including reasonable attorney's fees) but only to the extent caused by the negligent acts, errors or omissions of CONSULTANT, its officers, directors, shareholders, employees, agents, and consultants, and any of them. Nothing in this Agreement shall require CONSULTANT to provide a defense of the OWNER against any claim, suit or complaint.

7.14.2 OWNER agrees to indemnify CONSULTANT for damages, costs and expenses (including reasonable attorney's fees) but only to the extent caused by the negligent acts, errors or omissions of OWNER, its officers, directors, shareholders, employees and agents and any of them.

7.14.3 OWNER agrees that it will require all construction Contractors to indemnify, defend, and hold harmless OWNER and CONSULTANT from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, subcontractors, and suppliers.

7.14.4 If the services under a Task Order involve construction, and CONSULTANT does not provide services during construction including, but not limited to, on-site observation, site visits, submittals review, and design clarifications, OWNER agrees to indemnify and hold harmless CONSULTANT from or against any liability arising from the Project or this AGREEMENT.

7.15 Computer Models

CONSULTANT may use or modify CONSULTANT'S proprietary computer models in service of OWNER under this AGREEMENT, or CONSULTANT may develop computer models during CONSULTANT'S service to OWNER under this AGREEMENT. Such use, modification, or development by CONSULTANT does not constitute a license to OWNER to use or modify CONSULTANT'S computer models. Said proprietary computer models shall remain the sole property of the CONSULTANT. OWNER and

CONSULTANT will enter into a separate license agreement if OWNER wishes to use CONSULTANT'S computer models.

7.16 Reuse of Documents

All documents including Contract Drawings and Specifications prepared or furnished by CONSULTANT (and CONSULTANT'S independent professional associates and subcontractors) pursuant to this AGREEMENT are instruments of service in respect of the Project, and CONSULTANT shall have the ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT, or to CONSULTANT'S independent professional associates or subcontractors, and OWNER shall indemnify and hold harmless CONSULTANT and CONSULTANT'S independent professional associates and subcontractors from and against all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by OWNER and CONSULTANT.

7.17 Electronic Media

Any electronic media (computer disks, tapes, and similar items) furnished with respect to CONSULTANT'S services are for OWNER'S information and convenience only. Such media are not to be considered part of CONSULTANT'S instruments of service. (Due to the potential that information contained in electronic media can be modified by OWNER or others, CONSULTANT, at its option, may remove all indicia of CONSULTANT'S ownership and involvement from each electronic display.)

CONSULTANT shall not be liable for loss or damage directly or indirectly, arising out of use of electronic media including, but not limited to, any loss of business or incidental or consequential damage. OWNER shall assume all risk and release, indemnify, and hold harmless CONSULTANT, its officers, directors, employees, servants, agents, successors, and assigns, from and against each and every claim or cause of action that OWNER may have or which may arise in the future respecting use of the electronic media.

If there is a discrepancy between the electronic media files and the signed and sealed hard copies, the hard copies shall govern.

7.18 Notices

Any Notice required under this AGREEMENT will be in writing, addressed to the appropriate party at the following addresses:

OWNER'S address:

The City of Dodge City, Kansas
c/o Mr. Corey Keller, Superintendent of Public Works & Airport Manager
806 2nd Avenue
P.O. Box 880
Dodge City, Kansas 67801

CONSULTANT'S address:

Burns & McDonnell Engineering Company, Inc.
c/o David G. Hadel, P.E.
9400 Ward Parkway
Kansas City, Missouri 64114

7.19 Successor and Assigns

OWNER and CONSULTANT each binds itself and its successors, executors, administrators, and assigns to the other party of this AGREEMENT and to the successors, executors, administrators, and assigns of

such other party, in respect to all covenants of this AGREEMENT; except as above, neither OWNER nor CONSULTANT shall assign, sublet, or transfer its interest in the AGREEMENT without the written consent of the other.

7.20 Controlling Law

This AGREEMENT shall be subject to, interpreted, and enforced according to the laws of the State of Kansas without regard to any conflicts of law provisions.

7.21 Federal Contract Provisions per the Federal Aviation Administration (FAA) Airport Improvement Program. Reference Exhibit B as attached herein. The term "SPONSOR" shall apply to OWNER.

7.22 Entire Agreement

This AGREEMENT represents the entire AGREEMENT between the CONSULTANT and OWNER relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to CONSULTANT'S services described herein are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event OWNER issues to CONSULTANT a purchase order, no preprinted terms thereon shall become a part of this AGREEMENT. Said purchase order document, whether or not signed by CONSULTANT, shall be considered as a document for the OWNER'S internal management of its operations.

SECTION 8 – LIMITATION OF LIABILITY

8.1 To the fullest extent permissible by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of CONSULTANT, its officers, directors, shareholders, employees, agents, and subcontractors, and any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any form of negligence, professional errors or omissions (including breach of contract or warranty) of CONSULTANT, its officers, directors, employees, agents or subcontractors, or any of them, SHALL NOT EXCEED the total compensation actually received by CONSULTANT under this Agreement (including all Task Orders), or the sum of Five Hundred Thousand Dollars (\$500,000), whichever is greater. The parties agree that specific consideration has been given by the CONSULTANT for this limitation and that it is deemed adequate.

8.2 In no event will CONSULTANT be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of OWNER, or governmental fines or penalties.

IN WITNESS WHEREOF, the parties have made and executed this AGREEMENT as of the day and year first above written.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION
PROVISION WHICH MAY BE ENFORCED BY THE PARTIES**

OWNER: City of Dodge City, Kansas

**CONSULTANT: Burns & McDonnell
Engineering Company, Inc.**

By: _____

By: _____

Name: Joyce Warshaw

Name: David G. Yeamans

Title: Mayor

Title: President – A&F

By: _____

By: _____

Name: Corey Keller
Superintendent of Public Works &
Title: Airport Manager

Name: David G. Hadel, P.E.
Title: Manager, Aviation Services

ATTEST:

By: _____

Name: Nannette Pogue

Title: City Clerk

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**EXHIBIT A
EXAMPLE
AUTHORIZATION NO. ____**

PROFESSIONAL ENGINEERING SERVICES
FOR
"INSERT PROJECT NAME"
AT DODGE CITY REGIONAL AIRPORT

Project No. _____

In accordance with SECTION 1 – AUTHORIZATION OF SERVICES of the Agreement for Professional Engineering Services (the "AGREEMENT"), dated _____, by and between THE CITY OF DODGE CITY (OWNER) and BURNS & McDONNELL ENGINEERING COMPANY, INC. (CONSULTANT), the following Airport Improvement Project ("AIP") authorization is hereby given and mutually agreed upon:

- A. PROJECT NAME AND DESCRIPTION OF IMPROVEMENTS:**
- B. DESCRIPTION OF SERVICES TO BE PERFORMED:**
- C. METHOD OF COMPENSATION:**
- D. AMOUNT OF COMPENSATION:**
- E. ESTIMATED TIME OF COMPLETION:**
- F. ENGINEERS' NOTICE TO PROCEED DATE:**

IN WITNESS WHEREOF, the parties hereto have caused this Authorization to be executed in four (4) counterparts by their duly authorized representatives and made effective the day and year first written above.

-----oooOooo-----

OWNER: City of Dodge City, Kansas

**CONSULTANT: Burns & McDonnell
Engineering Company, Inc.**

By: _____
Name: Joyce Warshaw
Title: Mayor

By: _____
Name: David G. Hadel, P.E.
Title: Manager, Aviation Services

By: _____
Name: Corey Keller
Superintendent of Public Works &
Airport Manager
Title: Airport Manager

ATTEST:

By: _____
Name: Nannette Pogue
Title: City Clerk

END OF AUTHORIZATION

EXHIBIT “B”

Federal Provisions

Federal Aviation Administration, (FAA) Airport Improvement Program

1. ACCESS TO RECORDS AND REPORTS.

(Reference: 2 CFR § 200.326, 2 CFR § 200.333)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

2. BREACH OF CONTRACT TERMS.

(Reference 2 CFR § 200 Appendix II(A))

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. CIVIL RIGHTS - GENERAL.

(Reference: 49 USC § 47123)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

(a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

4. CIVIL RIGHTS – TITLE VI ASSURANCES.

Appropriate clauses from the Standard DOT Title VI Assurances must be included in all contracts and solicitations. The clauses are as follows:

- 1) Title VI Solicitation Notice
- 2) Title VI Clauses for Compliance with Nondiscrimination Requirements.
- 3) Title VI Required Clause for Land Interests Transferred from the United States
- 4) Title VI Required Clause for Real Property Acquired Or Improved by the sponsor subject to the nondiscrimination Acts and Regulations.
- 5) Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program
- 6) Title VI List Of Pertinent Nondiscrimination Statutes And Authorities

4.1. MANDATORY CONTRACT LANGUAGE.

4.1.1. Title VI Solicitation Notice

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

4.1.2. Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

4.1.3. Title VI Clauses for Deeds Transferring United States Property

(Source: Appendix B of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (Title of Sponsor) will accept title to the lands and maintain the project constructed thereon in accordance with (Name of Appropriate Legislative Authority), for the (Airport Improvement Program or other program for which land is transferred), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (Title of Sponsor) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (Exhibit A attached hereto or other exhibit describing the transferred property) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (Title of Sponsor) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (Title of Sponsor), its successors and assigns.

The (Title of Sponsor), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (Title of Sponsor) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in

and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

4.1.4. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

(Source: Appendix C of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (**Title of Sponsor**) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (**Title of Sponsor**) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (**Title of Sponsor**) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (**Title of Sponsor**) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

4.1.5. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

(Source: Appendix D of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (Title of Sponsor) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (Title of Sponsor) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (Title of Sponsor) will there upon revert to and vest in and become the absolute property of (Title of Sponsor) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

4.1.6. Title VI List of Pertinent Nondiscrimination Authorities

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination

because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

5. CLEAN AIR AND WATER POLLUTION CONTROL.

(Reference: 49 CFR § 18.36(i)(12)) Note, when the DOT adopts 2 CFR 200, this reference will change to 2 CFR § 200 Appendix II(G))

5.1. Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

6. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS.

(Reference: 2 CFR § 200 Appendix II (E))

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

7. **DEBARMENT AND SUSPENSION (NON-PROCUREMENT).**

(Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

8. DISADVANTAGED BUSINESS ENTERPRISE.

(Reference: 49 CFR part 26)

Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29)- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

9. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

(Reference: 29 USC § 201, et seq.)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

10. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.

(Reference: 49 CFR part 20, Appendix A)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

11. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

(Reference 20 CFR part 1910)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

12. RIGHT TO INVENTIONS.

(Reference 2 CFR § 200 Appendix II(F))

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

13. TERMINATION OF CONTRACT.

(Reference 2 CFR § 200 Appendix II(B))

13.1. TERMINATION OF CONTRACT

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

14. TRADE RESTRICTION

(Reference: 49 CFR part 30)

14.1. The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

15. TEXTING WHEN DRIVING

(References: Executive Order 13513, and DOT Order 3902.10)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: August 25, 2015
Subject: Ordinance No. 3612 and Ordinance No. 3613
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the approval of Ordinance No. 3612 and 3613

Background: **Ordinance No. 3612** adopts the “2015 Edition of the Standard Traffic Ordinance” by reference. The changes made to this code during the 2015 legislature include the following:

- Section 1. Definitions.
- Section 23 Accident involving death or personal injuries; duties of drivers, reports; penalties (Amended)
- Section 25 Duty of driver to give certain information after accident; failure to provide proof of liability insurance or financial security; duty to render aid after accident; proof of liability insurance or financial security by electronic means, restrictions (amended)
- Section 30 Driving under the Influence of intoxicating liquor or drugs; penalties (amended)
- Section 30.1 Driving commercial motor vehicle under the influence of intoxicating liquor or drugs; penalties (amended by HB 2043)
- Section 30.2.1 Refusal to submit to alcohol or drug test (amended by HB 2043)
- Section 138 Riding on motorcycles (amended by HB 2044)
- Section 142 Equipment for motorcycle operator or rider (amended by HB 2044)
- Section 171 Lighting equipment and warning devices on church buses and day care program buses (amended)
- Section 182. Child passenger safety restraining system (amended by HB 2044)
- Section 182.1 Seat belts (amended by HB 2044)
- Section 193 Driver’s License in possession (amended)

- Section 198 Vehicle license; illegal tag (amended by HB 2013)
- Section 200 Motor vehicle liability insurance (amended)

Ordinance No. 3613 adopts the “2015 Edition of the Uniform Public Offense Code” by reference. The changes made to the Uniform Public Offense Code during the 2014 legislative session include the following:

- Section 1.1 Definitions
- Section 3.2 Battery against a law enforcement officer (amended by HB 2055)
- Section 3.2.2 Battery against a school employee (new section)
- Section 3.12 Breach of privacy (amended)
- Section 5.1 Contributing to a child’s misconduct or deprivation (amended)
- Section 5.2 Furnishing alcoholic liquor or cereal malt beverage to a minor (amended)
- Section 5.5 Watercraft; lifesaving devices required (amended)
- Section 5.7 Selling, giving or furnishing cigarettes or tobacco products to a minor (amended)
- Section 6.2 Intent; permanently deprive (amended by HB 2048)
- Section 6.7 Criminal trespass (amended)
- Section 6.7.1 Trespassing on railroad property (amended)
- Section 6.17 Criminal use of a financial card (amended)
- Section 6.18 Motor vehicle dealers; selling motor vehicles without a license (amended)
- Section 6.24 Unlawfully selling scrap metal. (reserved for future use, HB 2048)
- Section 6.25 Unlawfully buying scrap metal (reserved for future use, HB 2048)
- Section 7.14 Electioneering (amended)
- Section 9.1 Disorderly conduct (amended)
- Section 9.8 Criminal desecration (amended)
- Section 9.10 Harassment by telecommunications device (amended)
- Section 9.11 Unlawful public demonstration at a funeral (amended)
- Section 10.1 Criminal use of weapons (amended by SB 45)
- Section 10.1.1 Criminal carrying of a weapon (amended by SB 45)
- Section 10.4 Confiscation, disposition of weapons (reserved for future use)
- Section 10.14 Operation of a motorboat or sailboat (amended)
- Section 10.15 Operating a vessel under the influence of alcohol or drugs; penalties (amended)
- Section 10.16 Throwing objects (amended)
- Section 10.20 Unlawfully obtaining a prescription-only drug (amended)
- Section 10.24 Smoking prohibited (amended by HB 2124)

- Section 11.1 Promoting obscenity (amended)
- Section 11.8 Gambling (amended by HB 2155)
- Section 11.11 Cruelty to animals (amended)

Justification: Each year the State Legislature passes numerous laws that affect the laws of the State as well as those of the individual cities. The League of Kansas Municipalities compiles a small booklet which incorporates all of the laws in Kansas that deal with public offenses and traffic offenses. These are the “Uniform Public Offense Code” and the “Standard Traffic Ordinance”. Cities are allowed to adopt these codes by reference, so the entire code is not included in the adopting ordinance and is not published in the local paper. Each employee that deals with any of these codes or ordinances is furnished a book to reference when necessary, to cite persons with violations of the ordinances. I have three of each of these books in my office for your review.

Financial Considerations: The cost of the booklets for the pertinent employees’ use is approximately \$1,000.

Purpose/Mission: Ensure the City is up to date on all of the laws passed in the State of Kansas as well as make sure all employees have easy access to these laws.

Legal Considerations: None

Attachments: Ordinance Nos. 3612 and 3613. The Standard Traffic Ordinance and Uniform Public Offense Code booklets are available in my office if any one would like to review them.

ORDINANCE NO. 3612

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; INCORPORATING BY REFERENCE THE "STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, EDITION 2015" AND REPEALING ORDINANCE NO. 3587

Be it Ordained by the Governing Body of the City of Dodge City:

Section 1: INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by Reference for the purpose of regulating traffic within the corporate limits of the City of Dodge City, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 2015, prepared and published in book form by the League of Kansas Municipalities, Topeka Kansas. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 3612" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

Section 2: TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.

- (a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.
- (b) All traffic violations which are included within this ordinance, and which are not ordinance traffic infractions, as defined in subsection (a) of this section shall be considered traffic offenses.

Section 3: REPEAL. Ordinance No. 3587 is hereby repealed.

Section 4: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the governing body of the City of Dodge City, Kansas, and approved by the Mayor this 8th day of September, 2015.

Joyce Warshaw, MAYOR

ATTEST:

Nannette Pogue, CITY CLERK

ORDINANCE NO. 3613

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, EDITION 2015 AND REPEALING ORDINANCE NO. 3588

Be it Ordained by the Governing Body of the City of Dodge City:

Section 1: INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by Reference for the purpose of regulating public offenses within the corporate limits of the City of Dodge City, Kansas, that certain code known as the "Uniform Public Offense Code, "Edition of 2015, prepared and published in book form by the League of Kansas Municipalities, Topeka Kansas. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 3613" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

Section 2: REPEAL. Ordinance No. 3588 is hereby repealed.

Section 3: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the governing body of the City of Dodge City, Kansas, and approved by the Mayor this 8th day of September, 2015.

Joyce Warshaw, MAYOR

ATTEST

Nannette Pogue, CITY CLERK

Memorandum

*To: City Manager
City Commissioners*
From: Nathan Littrell
Date: September 8, 2015
Subject: Rezoning for 97 ½ N. 14th Ave.
Agenda Item: Ordinance #3614

Recommendation: The Dodge City Planning Commission held a public hearing on August 11, 2015 and recommends approval of this zoning amendment.

Background: The applicant, Economic Pro Building, LLC, wishes to have this lot rezoned from R-2 Medium Residential to C-2 Highway Commercial to allow for construction of a shop with an office for their business on this property.

Justification: The proposed use and rezoning meets all of the requirements of the Dodge City Zoning Regulations and conforms to the Dodge City Comprehensive Plan.

Financial Considerations: None

Purpose/Mission: To promote development and provide overall growth to the community.

Legal Considerations: None

Attachments: Ordinance #3614 and map showing proposed area to be rezoned.

ORDINANCE NO. 3614

AN ORDINANCE OF THE CITY OF DODGE CITY, KANSAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY, CHANGING THE LOT LOCATED AT 97 ½ N. 14TH AVE FROM R-2, MEDIUM RESIDENTIAL, TO C-2, COMMERCIAL HIGHWAY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CIY, KANSAS:

SECTION 1: The following described real property located in Dodge City, Ford County, Kansas is hereby rezoned:

Lot 12, Westview Place No. 1 Addition
Dodge City, Ford County, Kansas

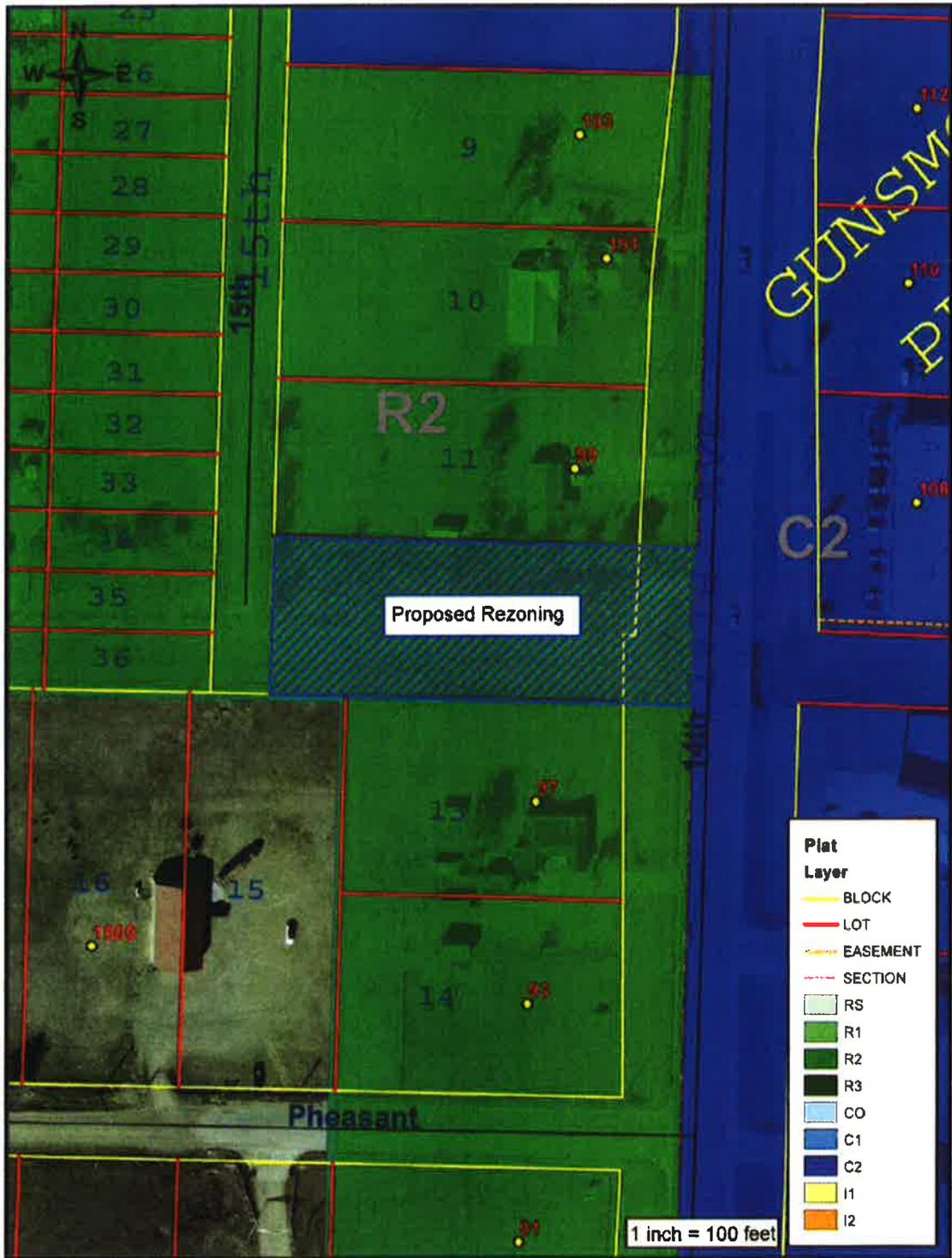
SECTION 2: This ordinance shall take effect, from and following its publication in the official paper, as required by law.

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR SESSION AND APPROVED BY THE MAYOR, THIS EIGHTH DAY OF SEPTEMBER, 2015.

JOYCE WARSHAW, MAYOR

ATTEST:

NANNETTE POGUE, CITY CLERK



Memorandum

To: City Manager
City Commissioners
From: Ray Slattery, 
Director of Engineering
Services
Date: August 25, 2015
Subject: Resolution 2015-22
Agenda Item: Ordinances and Resolutions

Recommendation: Approve Resolution 2015-22

Background: In 2013 the City applied for and was awarded a project through the TEA-21 reimbursement program administered by KDOT to design and construct an extension of the Gunsmoke Bike/Pedestrian Trail through Chilton Park. Design started in early 2014. The trail extension will start where the trail ends at Soule St. and extend through Chilton Park. There will be a connection of the trail extension to the path on the south side of Comanche St in the southeast corner of Chilton Park. The trail extension will also turn west at the south end of Chilton Park and extend to the intersection of Burr Parkway and Comanche St. The plan review, bidding was managed by KDOT's Bureau of Local Projects. On August 19, 2015, KDOT opened bids for this project. Bryant & Bryant Construction Inc. of Halstead, Ks. submitted the low bid of \$458,077. The city is responsible for 20% of the cost of construction and construction engineering. Construction Inspection will be completed by SMH and KDOT Staff.

Justification: This Resolution will commit the City to fund 20% of the cost of construction and construction engineering of the trail extension. Funds were budgeted in 2013 for this and some additional funds will come from the 2015 Special Street Fund.

Financial Considerations: The Resolution will authorize KDOT to proceed with the project and commit city funds to pay for 20% of the construction and construction engineering cost, which is \$106,000.

Purpose/Mission: Provide for the Ongoing Improvements of the City's Trail Program. It also adds to a quality of life project.

Legal Considerations: N/A

Attachments: Resolution 2015-22 and the bid tab for the project.

RESOLUTION NO. 2015-22

**AUTHORITY TO AWARD CONTRACT
COMMITMENT OF CITY FUNDS**

August 21, 2015

2 Copies to City

Project Number: TE-0384-01

TEA-T038(401)

City of Dodge City

WHEREAS bids were received at Topeka, Kansas on 08/19/2015 for the performance of work covered by plans on the above numbered project, and

WHEREAS the bidder and the low bid or bids on work covered by this project were:

CONTRACTOR	TYPE OF WORK	AMOUNT
<p>BRYANT & BRYANT CONSTRUCTION INC 703 MCNAIR ST HALSTEAD, KS 67056-2420</p>	<p>Ped/Bike Path in the City of Dodge City</p>	<p>\$ 458,077.00</p>

WHEREAS bids are considered satisfactory and have been recommended by the Secretary of Transportation of the State of Kansas, hereinafter referred to as the SECRETARY, for consideration and acceptance of the work on this project as covered by such bid or bids.

A combination of the bid plus an estimated \$70,451.31 for construction engineering less \$423,368.64 of Federal Funds = \$105,842.16 matching City Funds.

BE IT FURTHER RESOLVED that City funds in the amount of \$105,842.16 which are required for the matching of Federal Funds are hereby pledged by the City to be remitted to the Chief of Fiscal Services of the Department of Transportation of the State of Kansas on or before 10/08/2015 for use by the SECRETARY in making payments for construction work and engineering on the above designated project with final cost being determined upon completion and audit of the project.

The City/County certifies that no known or foreseeable legal impediments exist that would prohibit completion of the project and that the project complies with all applicable codes, standards and or/regulations required for completion.

Adopted this 8th day of September, 2015, at Dodge City, Kansas.

Recommended for Approval:

City of Dodge City

Ray Slattery

City Engineer

Joyce Warshaw, Mayor

Attest:

(Seal)

Nannette, Pogue,

City Clerk

BID OPENING
GUNSMOKE TRAIL - BIKE PATH
KDOT TE-0384

Contractor	Start Date	Bid Price
JAG		\$657,925.00
SMOKEY HILL		\$507,205.01
BRYANT & BRYANT		\$458,076.75
APAC KANSAS		\$618,787.75

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: August 26, 2015
Subject: Accept 2014 Audited Financial Statements
Agenda Item: New Business

Recommendation: I recommend the City Commission formally accept the 2014 Audited Financial Statements

Background: The 2014 audited financial statements will be presented by John Hendrickson of Kennedy and McKee at the work session prior to the regular meeting. They will go through the highlights and give the City Commission a chance to ask any questions.

Justification: Annually the City is required to have their financial statements audited.

Financial Considerations: none

Purpose/Mission: We strive for high service standards

Legal Considerations: None

Attachments: A hard copy of the audit will be available to each of the City Commissioners. The scanned version is on the website.

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue, Finance Director/City Clerk
Date: August 28, 2015
Subject: Appointment of League Voting Delegates
Agenda Item: New Business

Recommendation: I would recommend that City Commissioners and City Manager that plan to attend the annual League of Kansas Municipalities Annual Conference be appointed as voting delegates and staff members be appointed as alternates.

Background: Annually, the League of Kansas Municipalities holds their meeting during the annual conference. Dodge City is allowed 4 voting and 4 alternate delegates to that meeting. The annual conference is being held in Topeka, October 10-12, 2015.

Justification: At the League of Kansas Municipalities annual conference each City can have 4 voting delegates and 4 alternates.

Financial Considerations: None

Purpose/Mission: Together we value progress, growth and new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: None

Purpose/Mission: Together, we value progress, growth & new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: See attached amendment.

Memorandum

To: City Commissioners
From: Cherise Tieben
Date: September 3, 2015
Subject: Leisure Agreement Amendment
Agenda Item: New Business

Recommendation: Staff recommends approval of the amendment to the Leisure Development Agreement which was passed on April 6, 2015

Background: As you are all aware, the Leisure Development Agreement contained an obligation by Leisure to develop a hotel, RV park and restaurant on specific properties now commonly referred to as the Guymon Petro building (restaurant), Postvac/Chaffin property (hotel) and the SW corner of Wright Park (RV park). In return they would receive \$1.5 million in star bond proceeds which are directly attributable to their project. The City was obligated to provide access to the RV park, complete the water park, provide parking, provide area signage, landscape enhancements and a variety of other less noticeable improvements throughout the area encompassed by the development agreement. Leisure requested: use of an additional \$270,000 in Star Bonds and a reduction in the sale price of the land to \$100,000. In return, we relieved ourselves of the following: a previous obligation to construct a portion of their parking lot which connects to the water park, having the hotel site pad ready and a substantial reduction in the scope of way finding signage. The amendment also clarifies a variety of less impactful items that have come to light as a result of the substantial negotiations involved in this concluding this Development.

Justification: The negotiations are a result of items which arose during the due diligence period that were necessary to resolve in order to move forward with the development and in order to move forward with the issuance of the Star Bonds.

Financial Considerations: The items which are proposed are financially neutral to the City.

Purpose/Mission: Together, we value progress, growth & new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: See attached amendment.

**FIRST AMENDMENT TO LEISURE DEVELOPMENT, LLC
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO LEISURE DEVELOPMENT, LLC DEVELOPMENT AGREEMENT (the “Amendment”) is made as of _____, 2015, by and between the **CITY OF DODGE CITY, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “City”) and **LEISURE DEVELOPMENT, L.L.C.**, a Kansas limited liability company (“Developer”).

RECITALS:

A. The City owns certain real property and holds option(s) to acquire certain other real property, all situated in Ford County, Kansas (the “Site”), which consists of the “Hotel Parcel,” the “Restaurant Parcel,” and the “Campground Parcel” (collectively the “Site Parcels” or the “Site”).

B. On March 19, 2012, pursuant to the STAR Bonds Financing Act, K.S.A. 12 17,160 et seq., as amended (the “STAR Bond Act”), the City approved a STAR Bond Project District (the “STAR Bond District”) by passage of Ordinance No. 3527, which STAR Bond District encompasses an area which is larger than the Site, but includes the Site. More specifically, the STAR Bond District contains two (2) separate non-contiguous areas totaling approximately 500 acres located within the City – (i) one area is approximately 166 acres located in the historic downtown area of Dodge City, Kansas (the “Heritage Area”), and (ii) the other area is generally located between U.S. Highway 50 and 108th Road, south of Frontview Road (the “Entertainment Area”). The STAR Bond Project Area, including that portion thereof which constitutes the Site, shall have the same boundaries as the Heritage Area of the District.

C. On March 16, 2015, pursuant to the STAR Bond Act, the City set and provided public notice for a public hearing on April 20, 2015 in order to consider the Heritage Area Project Plan for the Heritage Area (the “Project Plan”). Developer shall have development rights on the Site – which represents a portion of the Heritage Area (“Development Plan”).

D. On April 20, 2015 the Dodge City Commission approved the Project Plan and the Development Plan, and authorized the execution and delivery of a development agreement with Developer, and on April 24, 2015, the parties fully executed and delivered that certain Leisure Development, LLC Development Agreement (the “Original Agreement”) pursuant to which Developer agreed, subject to the terms and conditions set forth in the Original Agreement, to design, construct, develop, complete and operate the Hotel Improvements, Restaurant Improvements, and Campground Improvements as described in Section 2.3 thereof (collectively, the “Project”) in and on the Hotel Parcel, Restaurant Parcel and Campground Parcel, respectively.

E. In order to pay for certain costs associated with the design, development and construction of the Project, Developer has requested additional public incentive financing from the City. Specifically, Developer has requested that the City create a community improvement district (“CID”) to be imposed on the Site Parcels in order to pay for certain costs incurred in connection with the Project.

F. The City has the authority to create a CID pursuant to K.S.A. 12-6a26 *et seq.*, as amended from time to time (the “CID Act”) for the purpose of financing certain economic development-related projects. Under the CID Act, the owners of the land within the boundaries of a proposed CID may petition the City to request the creation of a CID and to impose special assessments and/or CID sales taxes (“CID Sales Tax”) to pay for or reimburse the costs of a portion of a CID project.

G. The City, as the current owner of the Campground Parcel and a portion of the Hotel Parcel, and Boot Hill Museum, Inc., as the current owner of the Restaurant Parcel, intend to submit a proper petition (the “CID Petition”) to the City requesting the formation of a CID with geographic boundaries including all of the Site Parcels (the “CID District”). A copy of the CID Petition is attached hereto as **Exhibit 1**. A legal description of the boundaries of the CID District is hereby set forth on **Exhibit 2** attached hereto and a map generally showing the boundaries of the CID District is attached hereto as **Exhibit 3**.

H. The City intends to submit an ordinance for the creation of the CID District (the “CID Ordinance”) pursuant to the CID Act. As contemplated in the CID Petition, the CID Ordinance shall call for the imposition of a CID Sales Tax of 1%, within the CID District, to be used to pay for and/or reimburse certain CID Costs (as defined in Section 11.1 of the new Article XI set forth in Section 4 below). The CID Ordinance shall specify that the CID Sales Tax is to commence on [April 1, 2017], or any other effective date that the City may approve by ordinance if a change in the effective date is requested in writing by the owners of no less than 55% of the land and 55% of the assessed value of the land within the CID District. The proposed CID Ordinance is attached hereto as **Exhibit 4**.

I. The parties agree that the development of the Project would not be feasible without the public-private partnership as set forth in this Amendment, and therefore the parties wish to amend the Original Agreement in order to provide the necessary financing for the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Aspen Square Agreement as follows:

1. **Nature of the First Amendment**. In connection with this First Amendment to Assignment, Assumption and Amended and Restated Development Agreement, the parties hereby agree as follows:

(a) **References**. The Original Agreement as modified by this Amendment shall be referred to as the “Agreement.”

(b) **Other Terms**. All other terms and provisions of the Original Agreement not amended hereby, shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the Original Agreement, the terms of this Amendment shall govern and control.

(c) Agreement to Remain in Effect. Subject to Section 1(b) above, the Agreement as herein amended shall be and remain in full force and effect in accordance with the terms thereof. References in the Original Agreement to “the Agreement” or “this Agreement” shall be deemed to mean the Original Agreement as amended by this Amendment.

(d) Severability. It is the intent of the parties that the provisions of this Amendment shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Amendment or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Amendment as modified, enforceable and the balance of this Amendment shall not be affected thereby, the balance being construed as severable and independent.

(e) Capitalized Terms. Capitalized terms used but not defined in this Amendment shall have the respective meanings set forth in the Original Agreement.

(f) Incorporation of Recitals. The parties hereby understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

2. Exhibits. The parties hereby understand and agree that the Exhibits attached hereto are hereby incorporated in this Amendment as though more fully set forth herein.

3. Transfer of the Site Modification. Section 2.2(a) is amended and restated as follows:

The City owns the Campground Parcel and the City has (or will soon obtain) an option to acquire the Hotel Parcel from Gary and Charlotte Chaffin, Tony and Tammy Woydziak, and Ed and Linda Stewart (collectively, the “Pos T Vac Owners”) and the City has (or will soon obtain) an option to acquire the Restaurant Parcel from Boot Hill Museum, Inc. (“Boot Hill”), respectively (collectively, the “Third Party Owners”). At Closing, the City shall convey (or cause the Third Party Owners to convey their respective parcels of) the Site to the Site Parcel Owners designated by Developer, pursuant to special warranty deeds (each, a “Deed”) and subject only to the provisions set forth in Section 2.2 hereof and in the balance of this Agreement and subject to the Permitted Encumbrances. However, the parties hereby further understand and agree that a perpetual, on-going deed restriction in favor of Boot Hill requiring that the exterior structure and façade of the historic Guymon Petro building currently located on the Restaurant Parcel may not be demolished or removed without the express written consent of Boot Hill, or its successors and assigns; provided however, that Boot Hill will expressly agree that (i) Developer may renovate the interiors of the Guymon Petro building without Boot Hill’s consent, (ii) Developer may remove or replace loading docks and other similar exterior ancillary building improvements without Boot Hill’s

consent, and (iii) Developer may demolish the Guymon Petro building without Boot Hill's consent if and to the extent that the same (or portions thereof) are (a) damaged by fire or other casualty, and/or (b) subsequently found to be structurally unsound. Additionally, the Developer shall grant to Boot Hill an on-going right of first offer for a term of the lesser of (x) twenty five (25) years after Developer obtains title to the Restaurant Parcel, or (y) transfer of the Restaurant Parcel to an unrelated, non-Affiliate third party (the "ROFO Period"), if and to the extent that Developer shall desire to sell the Restaurant Parcel and/or the Guymon Petro building during the ROFO Period to an unrelated, non-Affiliate third party, the terms of such right of first offer instrument shall be in accordance with **Exhibit N** attached hereto. In consideration for the Deed(s) and City's obligation to deliver the Site in the condition set forth below, Developer shall pay an amount equal to \$100,000 for the Hotel Parcel, \$0.00 for the Campground Parcel and \$0.00 for the Restaurant Parcel (collectively, the "Purchase Price") at Closing to the City. The City hereby agrees to remove the existing building improvements on the Hotel Parcel down to grade level (but not including any removal of the building foundation and/or floor). Developer hereby agrees to provide the City with a license agreement to enter upon the Hotel Parcel after Closing so that the City can remove such building improvements on the Hotel Parcel within thirty (30) days after the City's acquisition of the Hotel Parcel (subject to day for day extension for Force Majeure), provided the City agrees that none of the costs or expenses for such building improvements removal shall be paid by the Developer (or applicable Site Parcel Owner), but shall be paid by City or through the City's portion of the STAR Bonds. In addition, the City shall grant the Parking Easement Rights and Heritage District Signage Rights to Developer effective upon completion of the Hotel Improvements and Restaurant Improvements. Developer agrees that title to the Hotel Parcel and the Restaurant Parcel may be subject to certain Short Term Leases. For purposes hereof, the term "Short Term Leases" shall be deemed to mean the leases of (x) the Hotel Parcel by the Pos T Vac Owners, and (y) the Restaurant Parcel by Boot Hill, which Short Term Leases shall provide for a term no longer than ninety (90) days after closing on the respective Site Parcels and also provide for liquidated damages if the respective tenants should holdover beyond the stated term of the Short Term Leases. The Short Term Leases shall be subject to the reasonable approval of the Developer. [*Need to see short term leases*]

4. **City Reversionary Interest Modification.** The parties acknowledge and agree that the following provision is hereby deleted from Section 2.2(b) of the Agreement and shall be null and void:

“except for and excluding the Permitted Mortgagee on the Campground Parcel, which Permitted Mortgagee shall not receive any payment from the City in connection with the City's exercise of its Reversionary Interest.”

5. **Removal of Definition of Development Ready.** Section 2.2(c) is deleted in its entirety and shall be null and void. The parties further agree as follows:

(a) The term “Development Ready” shall be removed from Section 3.1(a)(ix) and the penultimate sentence of Section 3.1(a)(ix) shall be deleted in its entirety and replaced with the following: “In the event that Developer shall fail to exercise its right to terminate this Agreement pursuant to this Section 3 before the Closing, Developer shall be deemed to have waived this condition and accepted and acquired the Site “as is, where is,” subject to City’s express obligations to remove the existing building improvements on the Hotel Site as set forth in Section 2.2(a) hereof.”

(b) The term “Development Ready” shall also be removed from the definition of “Performance Extension Events” in the Annex of Definitions and subsection (b) thereof shall be deleted and replaced with the following: “(b) City has not removed the existing building improvements on the Hotel Site Parcel as required by Section 2.2(a) hereof,”

6. **Monument Sign Cost Modification.** Section 2.3(b) is amended to add the following new sentence: “Notwithstanding the above, City and Developer agree the monument sign shall be designed to not exceed \$60,000 and that Developer shall be granted reasonable approval rights with respect to the design of the monument sign. If the cost of the monument sign exceeds \$60,000, the City shall be responsible for any such excess costs.

7. **Parking Improvements Modification.** Section 2.3(d) is hereby amended and restated as follows:

Each Parcel shall include parking improvements (the “Parking Improvements”), which, when added to the applicable Parking Easement Rights, will contain the number of spaces required by the Applicable Laws and Requirements. The costs of the Parking Improvements (x) for the Hotel Parcel, and (y) for the Campground Parcel shall be paid by the Developer, provided, to the extent that the same are eligible, may be paid for with STAR Bond proceeds. The parties hereby agree that Developer shall construct, at Developer’s cost, the on-site Parking Improvements located on the Restaurant Parcel, and that additional parking for the Restaurant Component shall be provided offsite by the City in accordance with the City Parking Agreement that City and Developer shall negotiate as a condition to Closing, as set forth in Section 3.1(a)(xv) below. The parties hereby further agree that the Hotel Component shall be supplemented by cross-parking rights on the Parking Improvements for the Waterpark Parcel in accordance with the Waterpark Cross Easement that City and Developer shall negotiate as a condition to Closing as set forth in Section 3.1(a)(xvi) below.

8. **Section 3.1 Conditions Modification.** The Parties acknowledge and agree that Section 3.1 is hereby amended to reflect the following modifications:

(a) Condition 3.1(a)(i) is amended to replace **Exhibit G** of the Original Agreement with **Exhibit G** attached hereto;

(b) Condition 3.1(a)(vi) is deemed satisfied;

(c) Condition 3.1(a)(xii) is modified to provide that NRA Rebates shall be delayed until the City shall have performed its obligation to remove the existing building improvements from the Hotel Parcel as described in Section 2.2(a) hereof;

(d) Condition 3.1(a)(xx) is added as follows:

“(xx) **CID Creation**. The City (and any required third parties) shall have created the CID District through passage of the CID Ordinance.”

9. **Modification of Section 4.1. Exhibit G** of the Original Agreement is replaced with **Exhibit G (Amended – 2015)** attached hereto.

10. **STAR Bonds Modification**. Section 4.2(a) is hereby amended and restated as follows:

(a) Amount of STAR Bonds. It is contemplated that Qualified Third Parties will purchase no less than \$3,200,000 of STAR Bonds (“Allocated STAR Bonds”) described herein; however, the parties hereby agree that Developer shall be entitled to an amount equal to \$1,770,000 of the net Allocated STAR Bond proceeds for use in funding its Project (the “STAR Bond Proceeds”). In addition to the Allocated STAR Bonds, Developer understands and agrees that Qualified Third Parties shall purchase an additional [\$_____] (or more) of STAR Bonds for other parties in the Heritage Area (the “Other STAR Bonds”). Developer hereby understands and agrees that \$1,430,000 of the proceeds of the Allocated STAR Bonds shall be available to be used by the City for other eligible improvements in the Heritage Area. All disbursements of STAR Bond Proceeds shall be made to pay Project Costs which are (i) eligible for payment or reimbursement pursuant to the STAR Bond Act, and (ii) agreed-upon by the parties and identified on **Exhibit G** attached hereto (the “Eligible STAR Bond Expenses”). The parties hereby understand that references herein to “net” STAR Bond proceeds means the principal amount of the applicable STAR Bonds, less all costs of issuance including any underwriter’s discount, and less any amounts allocated to bond reserves.

11. **Issuance of Obligations Modification**. Section 4.4 is hereby amended and restated as follows:

Issuance of Obligations. It is anticipated that the Allocated STAR Bonds for the Project shall be issued concurrently with the Closing and that the City, in its sole discretion, may authorize the issuance of STAR Bonds as provided for under Applicable Laws and Requirements, including without limitation the STAR Bond Act.

12. **STAR Bond Cap Modification**. Section 4.4(h) is hereby amended and restated as follows:

STAR Bond Cap. Any STAR Bond Proceeds used by Developer for Project Costs shall be in amounts which are less than or equal to \$1,770,000 (the “STAR Bond Cap”)

13. **Outside Date Modification.** The Parties agree to amend the Outside Date specified in Section 5.1 from August 1, 2015 to October 1, 2015.

14. **Hover Pavilion Modification.** The Parties hereby agree to remove the requirements of the Parties set forth in the first two sentences of Section 8.8 relating to the Hoover Pavilion. The remaining provisions of Section 8.8 regarding Waterpark management shall remain in full force and effect.

15. **Additional Remedy.** The parties hereby agree that a new subsection (iv) shall be added to Section 9.2(a) of the Agreement as follows:

“and/or (iv) terminate the CID and Developer’s access to reimbursements from Pay-As-You-Go CID Financing.”

16. **CID Financing.** The parties hereby agree that the Original Agreement shall be amended by adding the following as a new Article XI:

ARTICLE XI
CID FINANCING

11.1 **Source of Funds.** The Project and the Improvements will be funded by Developer’s private equity and debt, funds provided by various third parties and Public Financing. Subject to the terms and conditions of this Article XI, certain of the Improvements shall be eligible to be reimbursed with revenues generated by the CID (the “CID Improvements”), which CID Improvements shall be funded in part by the CID Sales Tax. Without limiting the generality of the foregoing, Developer, using private equity and debt, will initially advance all of the costs for the design, development and construction of the CID Improvements (the “CID Costs”). Developer, subject to the terms and conditions of this Amendment, including the CID Cap set forth in Section 11.4(a) below, shall be reimbursed for the CID Costs from and to the extent of the CID Sales Tax.

11.2 The City hereby agrees that the CID Improvements may be financed and reimbursed pursuant to K.S.A. 12-6a34 with and to the extent of CID Sales Tax revenues received and deposited into the CID Sales Tax Fund (as defined in Section 11.3 below) from time to time on a pay-as-you-go basis, without the sale of bonds or notes (“Pay-As-You-Go CID Financing”). The parties hereby agree that the CID Sales Tax shall initially be imposed on [April 1, 2017] (the “CID Start Date”) in the amount of one percent (1%) on the sale of tangible personal property at retail or rendering or furnishing services which are taxable pursuant to the Kansas Retailers’ Sales Tax Act (K.S.A. 79-3601 *et seq.*) within the CID District. The Developer agrees to provide to the DOR a list of all tenants within the CID District in advance and within the timeframes required by the DOR, so that the DOR can notify tenants within the CID District of the requirement of the tenants to collect a CID Sales Tax beginning on the CID Start Date. At the time the list of tenants is provided to the DOR, the Developer shall also provide a copy

to the City. Notwithstanding the foregoing, the Parties hereby acknowledge that the effective date of the CID Sales Tax may be further delayed to a later date or expedited to an earlier date if either such action is requested in writing at least one hundred eighty (180) days prior to the effective date of the CID Sales Tax by the owners of no less than 55% of the land and 55% of the assessed value of the land within the CID District and approved by the Commission of the City.

11.3 CID Sales Tax Fund. During the existence of the CID, all CID Sales Taxes generated within the District shall be deposited into the CID Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State and this Amendment.

11.4 Pay-As-You-Go CID Financing. The parties hereby agree that the proceeds from the CID Sales Tax shall be disbursed by the City from the CID Sales Tax Fund from time to time on a pay-as-you-go basis, but no more often than on a quarterly basis, to reimburse Developer for CID Eligible Expenses, if and to the extent that (i) there are CID Sales Tax funds in the CID Sales Tax Fund, (ii) Developer has fully satisfied all of the CID Conditions (as defined below), (iii) the term of the CID Collection Period (as defined below) has not yet expired, and (iv) Developer has not already been reimbursed from the CID Sales Tax Fund for CID Eligible Expenses in an amount equal to the CID Cap (as defined below). The parties further agree as follows:

(a) The CID Sales Tax available to Developer for reimbursement of CID Eligible Expenses shall be limited as follows: the amount of CID Eligible Expenses reimbursed to Developer from the CID Sales Tax through Pay-As-You-Go CID Financing shall in no event exceed [\$375,000] (the "CID Cap"). The CID Cap shall, for all purposes set forth herein, operate as a cap on the use of CID Sales Tax for reimbursement of any and all CID Eligible Expenses. Once Developer has received an amount equal to the CID Cap, the parties understand and agree that the CID shall thereafter terminate, and the CID Sales Tax shall terminate and no longer be required or collected within the CID District.

(b) The CID Sales Tax shall be collected within the District for a period that commences on the date that the CID Sales Tax is first imposed up to and concluding upon that date which is the earlier of the following: (i) the date that Developer has been reimbursed for all CID Eligible Expenses by Pay-As-You-Go CID Financing, or (ii) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty two (22) years from the date that the CID Sales Tax is first imposed (the "CID Collection Period"). At the end of the CID Collection Period, the parties understand and agree that the CID shall thereafter terminate, and the CID Sales Tax shall terminate and no longer be required or collected within the District.

(c) Developer shall not receive any reimbursements from Pay-As-You-Go CID Financing unless and until the conditions precedent set forth in Section 11.5 have been fully satisfied as determined by City in its sole reasonable discretion.

11.5 Conditions Precedent to CID Reimbursements. Developer hereby understands and agrees that it shall not receive any reimbursements for CID Eligible

Expenses from Pay-As-You-Go CID Financing unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its sole reasonable discretion:

(a) In accordance with the same process used for Eligible STAR Bond Expenses under Section 4.3 of the Agreement, the City has approved Certificates of Expenditure for the CID Eligible Expenses; and

(b) Developer shall be in full compliance with the terms and conditions of the Agreement and shall not be in default hereunder, nor shall there be conditions, actions or omissions of Developer which will, with the passage of time, become occurrences of default hereunder; and

(c) Developer shall have Substantially Completed the applicable Project Component for which CID Eligible Expense reimbursement is being sought.

11.6 **Payment of CID Administrative Fee.** As and when there are sufficient CID Sales Tax revenues from the CID District to pay the CID Administrative Fee, Developer hereby understands and agrees that such CID Administrative Fee shall first be paid to the City prior to the payment of CID Eligible Expenses from the CID Sales Tax Fund from Pay-As-You-Go CID Financing. For purposes hereof, the term “**CID Administrative Fee**” shall be deemed to mean an amount equal to two percent (2%) of the CID Sales Tax revenues deposited in the CID Sales Tax Fund during each year of the Term.

17. **Modifications to Form of Guaranty.** Section 5.4(c) of the form of Guaranty that is attached to the Original Agreement shall be deleted in its entirety and replaced with the following:

“(c) six (6) years from the date of Closing.”

18. **Provisions that Survive Term.** Notwithstanding anything set forth in Section 7.1 of the Agreement to the contrary, the parties hereby agree that the following provisions shall survive the Term of the Agreement and shall remain in full force and effect until the last day of the CID Collection Period: Section 7.4 (Maintenance and Use), Section 7.5 (Compliance), Section 7.6 (Payment of Taxes and Other Charges), Section 7.10 (Insurance), Section 8.5 (Sales Tax Information), Article XI (CID Financing) and Article IX (Default and Remedies, but only to the extent that the same pertains to the surviving provisions expressly set forth herein).

19. **New and Modified Definitions.** The parties hereby understand and agree that as a result of Amendment, certain defined terms in the Agreement need to be modified and new defined terms must be added to the Annex of Definitions attached thereto. Accordingly the parties agree that the defined terms set forth on **Exhibit 5** attached hereto shall be incorporated into the Annex of Definitions.

20. **Miscellaneous.** In connection with this Amendment, the parties hereby agree as follows:

(a) In any subsequent court action in which the validity or the effect of this Amendment is at issue, the party prevailing in such action shall be entitled to its costs, expenses and reasonable attorney's fees in prosecuting or defending such action.

(b) The parties hereto declare and represent that no promises, inducements or agreements not herein expressed have been made, that this Amendment contains the entire agreement between the parties hereto, and that the terms hereof are contractual and not mere recitals.

(c) This Amendment shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns.

(d) All remedies at law or in equity shall be made available for the enforcement of this Amendment.

(e) This Amendment may be executed in counterparts.

(f) This Amendment shall be construed in accordance with the laws of the State of Kansas.

[No further text on this page]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

THE CITY:

THE CITY OF DODGE CITY, KANSAS

By: _____
Mayor

DEVELOPER:

LEISURE DEVELOPMENT, L.L.C.

By: _____
Name: _____
Title: _____

EXHIBITS

- Exhibit 1: CID Petition
- Exhibit 2: CID District – Legal Description
- Exhibit 3: CID District – Boundary Map
- Exhibit 4: CID Ordinance
- Exhibit 5: Amendments/Additions to Annex of Definitions
- Exhibit G: Project Budget (Amended – 2015)

EXHIBIT 5

Amendments/Additions to Annex of Definitions

“Amendment” means the First Amendment to the Leisure Development, LLC Development Agreement.

“CID” means a community improvement district pursuant to the CID Act.

“CID Act” means K.S.A. 12-6a26 through 12-6a36 and all additions and amendments thereto.

“CID Administrative Fee” means an amount equal to two percent (2%) of the CID Sales Tax revenues deposited in the CID Sales Tax Fund during each year of the Term.

“CID Cap” means the limitation on the amount of CID Sales Tax available to Developer for reimbursement of CID Eligible Expenses as set forth in Section 11.4(a) of the Agreement, as modified by the Amendment. The CID Cap is [\$375,000].

“CID Collection Period” means that period that commences on the date that the CID Sales Tax is first imposed up to and concluding upon that date which is the earlier of the following: (a) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go CID Financing, or (b) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty two (22) years from the date that the CID Sales Tax is first imposed as set forth in Section 11.4(b) of the Amendment.

“CID Costs” means the costs for the design, development and construction of the CID Improvements, as set forth in Section 11.1 of the Agreement, as modified by the Amendment.

“CID District” means the community improvement district generally described in Recital I of Amendment and the legal description of which is more particularly set out in **Exhibit 2** attached hereto and depicted in the map attached as **Exhibit 3** hereto.

“CID Eligible Expenses” means expenses related to the CID Improvements to the extent such expenses are “costs” or a “project” as defined in the CID Act.

“CID Improvements” means that portion of the Project, the costs of which are Eligible Expenses and reimbursable with Pay-As-You-Go CID Financing hereunder, subject to the CID Cap.

“CID Ordinance” means the ordinance adopted by the City as referenced in Recital J of Amendment and attached hereto as **Exhibit 4**.

“CID Petition” means that certain petition to be submitted by the City, a copy of which is attached hereto as **Exhibit 1**.

“CID Sales Tax” means the tax authorized by K.S.A. 12-6a31 and amendments thereto, and as more particularly described in Section 11.1 of the Agreement, as modified by the Amendment.

“CID Sales Tax Fund” means the separate fund established by the City for deposit of the CID Sales Tax received from the State collected within the CID District, and that is used to finance the CID Improvements pursuant to the CID Act, as set forth in Section 11.3 of the Agreement, as modified by the Amendment.

“Eligible Expenses” shall be amended to mean expenses related to the CID Improvements to the extent such expenses are “costs” or a “project” as defined in the CID Act.

“Pay-As-You-Go CID Financing” means a method of financing pursuant to K.S.A. 12-6a34, in which the costs of the CID Improvements are financed without notes or bonds, and the costs are reimbursed as CID Sales Tax is deposited in the CID Sales Tax Fund as set forth in Section 11.2 of the Agreement, as modified by the Amendment.

Exhibit G:

Project Budget (Amended – 2015)

DODGE CITY
STAR BOND DISTRICT

HERITAGE AREA
TOTAL INVESTMENT SUMMARY

8/31/2015

SUMMARY:	HERITAGE STAR BOND Investment	NON- STAR BOND Investment	TOTAL Investment
Project Descriptions:			
Developer Uses: Leisure Hotel			
Holiday Inn Express	\$ 769,999	\$ 10,042,057	\$ 10,812,056
Guymon Petro - Restaurant	\$ 196,613	\$ 2,591,942	\$ 2,788,555
Campground	\$ 803,389	\$ 2,140,266	\$ 2,943,654
Sub-Total - Leisure	\$ 1,770,000	\$ 14,774,265	\$ 16,544,265
Developer Uses: Lewis Ford			
Site Improvements / Upgrades	\$ 750,000	\$ 1,745,737	\$ 2,495,737
City Uses: Heritage Project Plan			
Land Acquisition - Guymon, Pos-T-Vac, Coke, Vacant Lots	\$ 1,705,000	\$ 160,000	\$ 1,865,000
Offsite Construction - District Roads & Utility Infrastructure	\$ 1,274,000	\$ 1,318,000	\$ 2,592,000
Onsite - District Amenities - Signage, Detention, Relo, Lndscp	\$ 1,792,000	\$ 800,000	\$ 2,592,000
Boot Hill	\$ 3,125,000	\$ 500,000	\$ 3,625,000
Professional Services & Contingency	\$ 1,124,220	\$ -	\$ 1,124,220
Contingency	\$ 525,000	\$ -	\$ 525,000
Sub-Total - City	\$ 9,545,220	\$ 2,778,000	\$ 12,323,220
Other City District Investments			
Regional Aquatics Facility	\$ -	\$ 12,300,000	\$ 12,300,000
Sante Fe Depot Restoration/Renovation	\$ -	\$ 599,352	\$ 599,352
Trail Street Reconstruction	\$ -	\$ 1,680,047	\$ 1,680,047
Boot Hill Distillery	\$ -	\$ 775,000	\$ 775,000
Depot Build Out	\$ -	\$ 500,000	\$ 500,000
TOTAL USES:	\$ 12,065,220	\$ 35,152,400	\$ 47,217,620
	25.55%	74.45%	
*CID Sales Tax Proceeds: (to be used for Non-STAR Bond Investment Costs)		\$ 375,000	



Parks and Recreation

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: Cherise Tieben, City Manager
City Commissioners
From: Paul Lewis, Parks & Recreation Director 
Date: September 3, 2015
Subject: Building Relocation Plans
Agenda Item: New Business

RECOMMENDATION: Staff recommends approval of the proposed Building Relocation plan and authorizing staff to develop the necessary bids and agreements to implement the program for Commission approval.

BACKGROUND: Over the last several months plans have been developed for the relocation of several metal buildings that available as a result of the development of the Long Branch Lagoon water park and the Heritage District STAR bonds development. With the acquisition of the Pos-T-Vac and Chaffin warehouse along with the relocation of the park shop, the City will have six pre-engineered metal buildings that can be re-erected and fulfill a variety of needs.

Based on planning efforts with affected parties, the attached relocation plan is recommended. This plan provides the following:

- Relocation of Park Services and storage to the All-4-Fun property;
- Required storage space for Boot Hill Museum required as part of the transfer of the Guymon Petro building;
- Provides for the future development of expanded recycling services at the All-4-Fun site;
- Relocates Gymnastics, Cheer and Dance programs to the St. Mary Campus;
- Development of a fuel farm for all City departments and vehicles;
- Provides vehicle storage space for the Public Transit program;
- Provides operational and storage space for the Wright Park Zoo;
- Additional cold storage area for United Wireless Arena

JUSTIFICATION: This relocation plan is necessary due to the implantation of the Heritage STAR Bonds program and development of Long Branch Lagoon Water Park. It addresses some immediate storage and operational issues and begins an effort to enhance CREW recycling capacity with future space allocation.

FINANCIAL CONSIDERATIONS: Funding for this plan comes from a variety of sources. As outlined in the attached plan sheet, funds are available from the Capital Improvement Fund, the Special Parks fund, the Depreciation Fund from the Why Not Dodge Sales Tax, and from the STAR Bond project fund. Bids were previously approved by the Commission for some of the relocation costs. Those costs will require some modification as construction locations are being revised. Additional components such as the fuel farm and the sheds for bus storage and the zoo storage will be secured according to City policy.

PURPOSE/MISSION: This project meets the City's core value of Ongoing Improvement by enabling the Heritage STAR Bond effort and providing for present and future needs of several community functions.

LEGAL CONSIDERATIONS: N/A

ATTACHMENTS: Building Relocation Plan

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Tuesday, September 8, 2015

7:00 p.m.

MEETING #5014

CALL TO ORDER

ROLL CALL

INVOCATION BY Pastor Kirk Larson, of Grace Community Church

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

Boot Hill Distillery Community Development Block Grant Close Out

PETITIONS & PROCLAMATIONS

Welcoming City Proclamation

Suicide Prevention Week Proclamation

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

Corey Keller, Public Works Director - Fly Kansas Air Tour

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, August 17, 2015;
2. Appropriation Ordinance No. 17, September 8, 2015;
3. Cereal Malt Beverage License:
 - a. Taylor's Roadhouse #2, 302 S. 2nd Avenue;
 - b. Dillon's Store #1, 1700 N. 14th Avenue;
 - c. Circle K Stores, 609 S. 2nd Avenue;
 - d. Circle K Stores, 2615 E. Trial Street;

4. Approval of Change Order No. 2 for 14th Avenue Reconstruction;
5. Professional Service Agreement for Airport Consultant.

ORDINANCES & RESOLUTIONS

Ordinance No. 3612: An Ordinance Regulating Traffic Within the Corporate Limits of the City of Dodge City, Kansas; Incorporating by Reference the “Standard Traffic Ordinance for Kansas Cities, Edition 2015” and Repealing Ordinance No. 3587. Report by City Clerk/Director of Finance, Nannette Pogue.

Ordinance No. 3613: An Ordinance Regulating Public Offenses within the Corporate Limits of the City of Dodge City, Kansas; Incorporating by Reference the “Uniform Public Offense Code for Kansas Cities, Edition 2015” and Repealing Ordinance No. 3588. Report by City Clerk/Director of Finance, Nannette Pogue.

Ordinance No. 3614: An Ordinance Rezoning of 97 ½ N. 14th Avenue from R-2 Medium Residential to C-2 Highway Commercial. Report by Planning, Zoning, Storm Water Coordinator, Nathan Littrell.

Resolution No. 2015-22: A Resolution approving the Kansas Department of Transportation (KDOT) Enhancement TEA-21 Program to Design and Construct an Extension of the Gunsmoke Trail. Report by Director of Engineering Services, Ray Slattery.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval to accept the 2014 Audited Financial Statement. Report by Director of Finance/City Clerk, Nannette Pogue.
2. Approval of League of Kansas Municipalities Delegates. Report by Director of Finance /City Clerk, Nannette Pogue.
3. Approval of the Amendment to the Leisure Development Agreement. Report by City Manager, Cherise Tieben.
4. Authorization to give notice of closing to Pos-T-Vac and to Boot Hill Museum. Report by City Manager, Cherise Tieben.
5. Approval of Building Relocation Plans, Report by Parks & Recreation Director, Paul Lewis.

OTHER BUSINESS

EXECUTIVE SESSION

ADJOURNMENT

PROCLAMATION

WHEREAS, the City of Dodge City recognizes that cities that proactively welcome immigrants and take steps to ensure their successful integration will be strategically positioned as globally competitive, 21st century leaders; and

WHEREAS, the City of Dodge City is committed to building a welcoming and neighborly atmosphere in our community where all people, including recent immigrants, are welcome, accepted, and integrated; and

WHEREAS, City efforts and policies that promote full access for all, including recent immigrants, are crucial to individual and community success; and

WHEREAS, the City of Dodge City recognizes that we must capitalize on diverse perspectives, cultures and talents as the most valuable assets in an economy where knowledge, creativity and innovation reap the greatest benefits, and becoming a more welcoming community means more customers for our local businesses, more jobs created by immigrant entrepreneurs, and we recognize that a thriving economy benefits us all; and

WHEREAS, fostering a welcoming environment for all individuals, regardless of race, ethnicity or place of origin, enhances Dodge City's cultural fabric, economic growth, global competitiveness and overall prosperity for current and future generations.

NOW, THEREFORE, BE IT RESOLVED, the City of Dodge City, Kansas, does hereby proclaim that the City of Dodge City, Kansas is a

“WELCOMING CITY”

Joyce Warshaw, Mayor

ATTEST:

Nannette Pogue, City Clerk

PROCLAMATION

WHEREAS, September 10th is World Suicide Prevention Day and September 7-13 is National Suicide Prevention Week; and

WHEREAS, suicide is the 2nd leading cause of death for 15-44 year olds among Kansans and is the 10th leading cause of death for people of all ages in the United States; and

WHEREAS, each person's death by suicide intimately affects at least six other people, with over 200,000 newly bereaved each year; and

WHEREAS, in 2013, 426 Kansans died by suicide, and several thousand friends and family members were changed forever by losing those people; and

WHEREAS, many of those people who died never received effective behavioral health services, for many reasons including the difficulty of accessing services by healthcare providers trained in best practices to reduce suicide risk, the stigma of using behavioral health treatment, and the stigma associated with losing a loved one to suicide; and

WHEREAS, far too many Kansans die by suicide each year, and most of these deaths are preventable.

NOW, THEREFORE, I, Joyce Warshaw, Mayor of the City of Dodge City, Kansas, do hereby proclaim September 7-12, 2015 as

SUICIDE PREVENTION WEEK

in the City of Dodge City, Kansas, and encourage all citizens and organizations to learn how they can help because Suicide Prevention is Everyone's Business.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Dodge City to be affixed this 8th day of September, 2015.

Mayor

ATTEST:

City Clerk

SUICIDE PREVENTION WEEK

SEPTEMBER 7-12, 2015

MONDAY—Labor Day—Take your day off from work to discuss suicide awareness topics with someone in your family or in your community. **ASK THE QUESTION—**Have you ever thought of suicide?

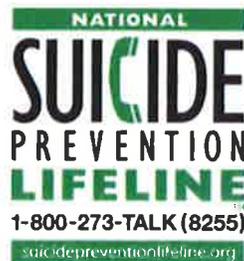
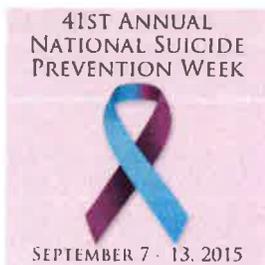
TUESDAY—Expand your **KNOWLEDGE**. Check out www.kansassuicideprevention.org, www.suicidepreventionlifeline.org, or www.sprc.org. Read or print off resources or take advantage of a free online training of **CALM** at www.sprc.org. Use #yellowribbonwks on your media information. Follow Yellow Ribbon Western Kansas on Facebook.

WEDNESDAY—Tie a **YELLOW** ribbon on your car, display **YELLOW** ribbons at your office. Share the Yellow Ribbon experience. Check out www.yellowribbon.org for additional information.

THURSDAY—BALLOON RELEASE to expand awareness and honor those who have lost their lives by suicide. Meet at the front entrance of Dodge City High School at 9am. Join in a global **CANDLELIGHT VIGIL** by lighting a candle near a window at home to show support for suicide prevention, a lost loved one, or for the survivors of suicide.

FRIDAY—CHALK DAY —Spread a positive message using chalk on your sidewalks at your home or business. Don't forget to register for the 2nd Annual Alive & Kicking 5K WALK/RUN on September 19. Call Compass Behavioral Health for more information.

Purple & turquoise ribbons are a suggestion to show support & awareness of suicide prevention. Yellow ribbons support the Yellow Ribbon Project.



FLY KANSAS

Air Tour

September 29 - October 3, 2015



Mid-America Air Museum visit



RANS Designs Tour



1st Infantry Aviation Brigade



Aviator Golf

September 29: Wellington, Pratt, Dodge City, Liberal

We'll have celebratory start-up of the tour, making a few stops as we head west to the Mid-America Air Museum. We'll connect with students of all ages along the way as we share our aviation passions.

September 30: Garden City, Colby, Hays

Joining LifeTeam, we'll help kids discover the many career possibilities in aviation as we continue to Hays where tour pilots will enjoy a tour of RANS Designs and dinner at the award winning Lb. Brewing Co.

October 1: Concordia, Junction City, Emporia

We'll inspire students in Concordia, join the Fort Riley 1st Infantry Division Brigade in Junction City and enjoy a round of aviator golf in Emporia. It's definitely not your typical golf game!

October 2: Beaumont

After a busy few days, we'll be ready to relax and unwind. Enjoy a casual pilots brunch at the historic Beaumont Hotel.

October 3: Newton

Looking for a weekend event? We'll be joining EAA Chapter 88 for their annual fly-in at the Newton airport, featuring Young Eagle flights, Commemorative Air Force aircraft, fun Activities and a banquet dinner featuring Congressman and fellow aviator Sam Graves.



Join the Tour!

Registration for the 2015 Fly Kansas Air Tour can be found at www.FlyKansas15.eventbrite.com

For questions or to become a sponsor, email the Fly Kansas Foundation at register@flykansas.org or call 316-285-7820

The Fly Kansas Air Tour is brought to you by:

Fly Kansas Air Tour presenting sponsors:



CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, August 17, 2015

7:00 p.m.

MEETING #5013

CALL TO ORDER

ROLL CALL: Mayor Joyce Warshaw, Commissioners Brian Delzeit, Rick Sowers, Jan Scoggins and Kent Smoll.

INVOCATION by Lt. Enrique Coreano of Salvation Army

PLEDGE OF ALLEGIANCE

Commissioner Kent Smoll moved to add two items to the agenda: New Business items – appointment of Gary Johnson to City appointed committees; and Executive Session – Discussion of non-elected personnel. The motion was seconded by Commissioner Brian Delzeit. The motion carried unanimously.

PETITIONS & PROCLAMATIONS

Mayor Joyce Warshaw read the Loren Doll Day Proclamation and proclaimed August 18 as Loren Doll Day.

PUBLIC HEARING

2016 Budget

Mayor Joyce Warshaw opened the Public Hearing on the 2016 Budget. The 2016 Budget was presented by City Finance Director/City Clerk, Nannette Pogue. The Mayor closed the Public Hearing.

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

Kevin Israel updated the City Commission about smoke detectors in residences and residential rentals. The department is seeking additional funding to continue a program in which they were able to provide smoke detectors at no charge to residences.

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes, August 3, 2015;
2. Approval of City Commission Meeting Minutes, August 3, 2015;
3. Approval of Joint City/County Meeting Minutes, August 10, 2015;
4. Appropriation Ordinance No. 16, August 17, 2015.

Commissioner Jan Scoggins moved to approve the Consent Calendar as presented; Commissioner Ken Smoll seconded the motion. The motion carried unanimously.

ORDINANCES & RESOLUTIONS

Resolution No. 2015-20: A Resolution Designating an Additional Bank Account at Fidelity State Bank and Trust Company, Dodge City, Kansas and Authorizing Signers was approved on a motion by Commissioner Kent Smoll. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

Resolution No. 2015-21: A Resolution that provides that a levy of property taxes to finance the 2016 budget for the City of Dodge City exceeding the amount levied to finance the 2015 budget was approved on a motion by Commissioner Jan Scoggins. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

UNFINISHED BUSINESS**NEW BUSINESS**

1. Commissioner Brian Delzeit moved to approve the 2016 Budget. Commissioner Rick Sowers seconded the motion. The motion carried unanimously.
2. Commissioner Rick Sowers made the motion that Gary Johnson, Landmark National Bank, be appointed to: 1) serve as the City of Dodge City's appointee for Great Plains Development, Inc.'s general membership; and 2) serve as the City of Dodge City's appointee for the CDBG Revolving Loan Fund and the Dodge City/Ford County Development Corp's E-Community Combined Loan Review Committee. The motion was seconded by Commissioner Jan Scoggins. The motion carried unanimously.

OTHER BUSINESS

City Manager, Cherise Tieben

- Asked if any of the Commissioners would be available for a ribbon cutting on August 26. Several Commissioners stated that would be available.
- On September 3 the Commissioners will be meeting individually with Brian Reilly with Dial Development; at 1:30 Jan Scoggins; 3:00 Brian Delzeit and Joyce Warshaw and at 5:00 Kent Smoll and Rick Sowers.

- After David Amaro approached the City Commission about having a City flag available for citizens to purchase, it was decided to order some of the city flags that are already designed and made and sell those to citizens who might want them.

Commissioner, Brian Delzeit

- Reported on activities going on at the United Wireless Arena; August 22, Professional Boxing; August 29, Boston; September 9, Don Williams; October 3, Kansas; December 11, Manheim Steamroller.

Commissioner, Rick Sowers

Commissioner, Kent Smoll

- Thanked City staff for their efforts on the 2016 budget.
- Had the opportunity to ride the Public Transportation Bus. What a great thing to have this in the community. Would encourage people to ride.

Commissioner, Jan Scoggins

- Thanked all the citizens who attended the meeting either in person or by watching on television.
- She had the opportunity to ride along with Meals on Wheels and commented what a great program that is. She thanked Sheila Grayson for directing that program

Mayor, Joyce Warshaw

- We would like to hear from our citizens. Talked about the City's request tracker program that is available on the City's website, dodgecity.org.
- She is concerned about all the at-large dogs and all of the dogs that are picked up in the City and taken to shelters in other areas. Please take care of your pets and realize that they are a commitment and responsibility.
- School starts Wednesday, watch the school zones.

EXECUTIVE SESSION

Commissioner Kent Smoll moved to Adjourn to Executive Session at 7:40 not to exceed 30 minutes to discuss non-elected personnel. To be included in the session is the City Manager and City Attorney. Commissioner Rick Sowers seconded the motion. The motion carried unanimously.

At 8:10 the Regular Session was reconvened.

ADJOURNMENT

Commissioner Brian Delzeit moved to adjourn the meeting; Commissioner Rick Sowers seconded the motion. The motion carried unanimously.

**INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City, KS

SECTION 1 - LICENSE TYPE	
Check One: <input checked="" type="checkbox"/> New License <input type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licenses premises.	

SECTION 2 - APPLICANT INFORMATION		
Kansas Sales Tax Registration Number (required):		
Name <u>Charles R Taylor Jr.</u>	Phone No. <u>620-338-3881</u>	Date of Birth <u>3/1/64</u>
Residence Street Address <u>111 McCaustland Rd #2</u>	City <u>Dodge City, KS</u>	Zip Code <u>67801</u>
Applicant Spousal Information		
Spouse Name <u>Martisha A Taylor</u>	Phone No. <u>620-682-3449</u>	Date of Birth <u>3/5/66</u>
Residence Street Address <u>111 McCaustland Rd #2</u>	City <u>Dodge City, KS</u>	Zip Code <u>67801</u>

SECTION 3 - LICENSED PREMISE	
Licensed Premise (Business Location or Location of Special Event)	Mailing Address (If different from business address)
DBA Name <u>Taylor's Roadhouse #2</u>	Name <u>Charles R Taylor Jr.</u>
Business Location Address <u>302 S. Second</u>	Address <u>Box 1623</u>
City <u>Dodge City, KS</u> State Zip <u>67801</u>	City <u>Dodge City, KS</u> State Zip <u>67801</u>
Business Phone No. <u>620-338-3881</u>	<input checked="" type="checkbox"/> I own the proposed business or special event location. <input type="checkbox"/> I do not own the proposed business or event location.
Business Location Owner Name(s) <u>Charles R Taylor Jr.</u>	

SECTION 4 - APPLICANT QUALIFICATION	
I am a U.S. Citizen	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of Kansas for at least one year prior to application.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have resided within the state of Kansas for <u>42</u> years.	
I am at least 21 years old.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of this county for at least 6 months.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Within 2 years immediately preceding the date of this application, neither I nor my spouse ¹ has been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Have Have Not
My spouse has previously held a CMB license.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
My spouse has never been convicted of one of the crimes mentioned above while licensed.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 – LICENSE TYPE	
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): <u>004-270497081F-01</u>			
Name of Corporation Dillon Stores, Div of Dillon Companies, Inc		Principal Place of Business 2700 E. 4th., P.O. Box 1608	
Corporation Street Address 2700 E. 4th., P.O. Box 1608		Corporation City Hutchinson	State KS
Date of Incorporation 05/13/1921		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name		Phone No.	
Residence Street Address		City	State
			Zip Code

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Dillon's #1		Name Kroger Business License Dept	
Business Location Address 1700 N 14th St		Address P.O. Box 305103	
City Dodge City, KS 67801	State	City Nashville, TN 37230-5103	State
Business Phone No. 620-225-6130	Zip	<input type="checkbox"/> Applicant owns the proposed business or special event location. <input type="checkbox"/> Applicant does not own the proposed business or event location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name		Position	
Residence Street Address		City	State
			Zip Code
Date of Birth			
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code
Date of Birth			
Name		Position	
Residence Street Address		City	State
			Zip Code
Age			
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code
Age			
Name		Position	
Residence Street Address		City	State
			Zip Code
Date of Birth			
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code
Age			

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 – LICENSE TYPE	
Check One: <input checked="" type="checkbox"/> New License <input type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One: <input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises. <input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): 004-465579045F-01			
Name of Corporation Circle K Stores Inc		Principal Place of Business P.O. Box 522085	
Corporation Street Address P.O. Box 522085		Corporation City Phoenix	State Arizona
Date of Incorporation 7-2-1984		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name Corporation Service Company		Phone No.	
Residence Street Address 2900 SW Wanamaker Drive, Suite 204		City Topeka	State Kansas
			Zip Code 66614

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Circle K Store		Name Circle K Stores Inc.	
Business Location Address 609 South 2nd Street		Address P.O. Box 522085	
City Dodge City	State Kansas	City Phoenix	State Arizona
Zip 67801		Zip 85072	
Business Phone No. 620-340-8038		<input checked="" type="checkbox"/> Applicant owns the proposed business or special event location. <input type="checkbox"/> Applicant does not own the proposed business or event location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name Geoffrey C. Haxel		Position President & Secretary	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
Spouse Name Lori Glyn Haxel		Position spouse	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Name Kathy Cunnington		Position Treasure and Vice President	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
Spouse Name Jeffrey David Cunnington		Position spouse	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Name Kelly McGuire		Position Vice President	
Residence Street Address 7312 Vangaurd Court		City Colleyville	State TX
Spouse Name Donna McGuire		Position spouse	
Residence Street Address 7312 Vangaurd Court		City Colleyville	State TX
			Zip Code 76034

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 – LICENSE TYPE	
Check One: <input checked="" type="checkbox"/> New License <input type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): 004-465579045F-01			
Name of Corporation Circle K Stores Inc		Principal Place of Business P.O. Box 522085	
Corporation Street Address P.O. Box 522085		Corporation City Phoenix	State Arizona
Date of Incorporation 7-2-1984		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name Corporation Service Company		Phone No.	
Residence Street Address 2900 SW Wanamaker Drive, Suite 204		City Topeka	State Kansas
			Zip Code 66614

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Circle K Store		Name Circle K Stores Inc.	
Business Location Address 2615 East Trail Street		Address P.O. Box 522085	
City Dodge City	State Kansas	City Phoenix	State Arizona
	Zip 67801		Zip 85072
Business Phone No. 620-227-2625		<input checked="" type="checkbox"/> Applicant owns the proposed business or special event location. <input type="checkbox"/> Applicant does not own the proposed business or event location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name Geoffrey C. Haxel		Position President & Secretary	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Spouse Name Lori Glyn Haxel		Position spouse	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Name Kathy Cunnington		Position Treasure and Vice President	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Spouse Name Jeffrey David Cunnington		Position spouse	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Name Kelly McGuire		Position Vice President	
Residence Street Address 7312 Vangaurd Court		City Colleyville	State TX
			Zip Code 76034
Spouse Name Donna McGuire		Position spouse	
Residence Street Address 7312 Vangaurd Court		City Colleyville	State TX
			Zip Code 76034

Memorandum

*To: City Manager
City Commissioners*

From: Ray Slattery, Director of Engineering Services

Date: August 20, 2015

*Subject: 14th Ave. Reconstruction
(ST 1502)*

Agenda Item: Consent Calendar

Recommendation: Approve Change Order No. 2 for 14th Ave. Reconstruction.

Background: 14th Ave. Reconstruction was approved on March 16, 2015.

Justification: Pavement Excavation, Fly-Ash Sub-Grade Preparation, & 9" NRDJ PCC Pavement – The additional 5 S.Y. for all these bid items represent actual field measurements. The reconstruction was actually 1' longer than plan.

Sub-Grade Repair – This bid item was deleted from the project since it was not used.

Financial Considerations: Change Order No. 2 is for a decrease of \$14,727.50.

Purpose/Mission: One of the City's core values in Ongoing Improvements. With the construction of these improvements the City is preparing for the community's future and providing new possibilities for current and future citizens of our community.

Legal Considerations: N/A

Attachments: Change Order No. 2

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Corey Keller/ Airport Manager

Date: September 1, 2015

*Subject: Approval of Airport Engineering
Consultant Professional Service
Agreement*

Agenda Item: Consent Calendar

Recommendation: Staff recommends authorizing City Staff to execute the agreement with Burns & McDonnell to serve as the City's professional engineering consultant for future FAA and non-FAA sponsored airport improvement projects.

Background: At a previous meeting the Commission approved City staff to enter into negotiations with Burns & McDonnell pending legal review of the agreement. This work has since been completed by legal staff and is now ready for commission approval.

Justification: By FAA regulations, every 5 years the Airport is required to solicit other interested engineering firms in order to be approved for Federal Airport Improvement Projects (AIP) funding for future projects. Previously the Airport Staff and the Airport Advisory Board solicited RFP's for engineering consultants. In that process the Airport Advisory Board approved Burns & McDonnell to return as the Airports engineering consult.

Financial Considerations: The Contract is for terms and conditions only there is no monetary value to the agreement.

Attachments: Burns & McDonnell Professional Service Agreement



PROFESSIONAL SERVICES AGREEMENT – TASK ORDER
Between
CITY OF DODGE CITY, KANSAS
And
BURNS & McDONNELL ENGINEERING COMPANY, INC.
Kansas City, Missouri

This AGREEMENT is made as of _____, 2015, by and between the City of Dodge City, Kansas (hereinafter called OWNER) and Burns & McDonnell Engineering Company, Inc. (hereinafter called CONSULTANT).

OWNER from time to time requires professional services in connection with the planning, design and construction for FAA and non-FAA sponsored Airport Improvement Projects, (AIP) located at Dodge City Regional Airport. Therefore, OWNER and CONSULTANT, in consideration of their mutual covenants, agree as follows:

CONSULTANT shall serve as OWNER'S professional engineering consultant in those assignments to which this AGREEMENT applies, and shall give consultation and advice to OWNER during the performance of CONSULTANT'S services.

SECTION 1 - AUTHORIZATION OF SERVICES

1.1 Services on any assignment shall be undertaken only upon written authorization of OWNER and agreement of CONSULTANT. The parties shall use the form of Task Order attached hereto as **Exhibit A**.

1.2 Assignments may include those projects as stated in the OWNER's Notice to Airport Consultants dated August 11, 2013 and as referenced in Section 1.3 and services described hereafter as Basic Services or as Additional Services of CONSULTANT.

- 1.3 Task Order projects are listed herein:
- a. Assist with documentation required to secure federal and state aviation funds
 - b. 12-unit T-Hangars
 - c. Public Hangars
 - d. Reconstruct Runway 14-32
 - e. Acquire Snow Removal Equipment Broom
 - f. Perimeter Fencing
 - g. Rehabilitate Runway 2-20
 - h. Rehabilitate Taxiway A and Connector Taxiways
 - i. Rehabilitate Taxilanes
 - j. Slurry Seal Taxiway B
 - k. Install a new Fueling System
 - l. Terminal Building
 - m. Supplemental Airport Access Road
 - n. Updating Airport Signage and Markings
 - o. Apron Rehabilitation
 - p. Airport Maintenance and Improvements that may be required to maintain the airport within FAA criteria and standards
 - q. Security Fencing

SECTION 2 - BASIC SERVICES OF CONSULTANT

2.1 General. The Basic Services to be provided may include any of those tasks listed in this Section 2, as identified in the Task Order for a specific project.

2.1.1 Civil, structural, mechanical, electrical consulting services, architectural services, or other consulting services identified in the Task Order(s).

2.1.2 Advise OWNER as to the necessity of OWNER providing or obtaining services or data from others described in Paragraph 4.3, make recommendations as to the possible sources of such services, and act as OWNER'S representative in connection with any such services.

2.2 Preliminary Planning and Preliminary Design

2.2.1 Consult with OWNER to determine OWNER'S requirements for the Project and available data.

2.2.2 Provide special analyses of OWNER'S needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.

2.2.3 Provide general economic analyses of OWNER'S requirements applicable to various alternatives.

2.2.4 Prepare a preliminary cost opinion for the Project.

2.2.5 Prepare preliminary design documents consisting of final design criteria, preliminary drawings, and outline specifications.

2.2.6 Prepare a Preliminary Design Report summarizing studies performed in accomplishing Paragraphs 2.2.2 and 2.2.3, including findings and recommendations for the Project, and furnish three review copies of the Report to OWNER.

2.3 Not Applicable

2.4 Not Applicable

2.5 Final Design Services

2.5.1 On the basis of the approved preliminary design documents, prepare for incorporation in the Contract Documents detailed drawings to show the character and scope of the Work to be performed by contractors on the Project (hereinafter called the "Contract Drawings"), and Invitation to Bid, Instructions to Bidders, Bid Form, Agreement and Bond forms, General Conditions, and Specifications (all of which, together with the Contract Drawings, are hereinafter called the "Bid Documents") for review and approval by OWNER, its legal counsel, and other advisors as appropriate, and assist OWNER in the preparation of other related documents.

2.5.2 Provide technical criteria, written descriptions, and design data for OWNER'S use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.

2.5.3 Advise OWNER of adjustments in the cost opinion for the Project caused by changes in scope, design requirements, or construction costs and furnish a revised cost opinion for the Project based on the final Bid Documents.

2.5.4 Furnish three approval copies of the final Bid Documents.

2.6 Bidding or Negotiating Services

2.6.1 Assist OWNER in obtaining and evaluating bids or negotiating proposals and preparing construction contracts.

2.6.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime construction contractor(s), for those portions of the work as to which such acceptability is required by the Bid Documents.

2.6.3 Make recommendations regarding award of construction contracts.

2.7 Construction Phase Services

2.7.1 Consult with and advise OWNER and act as OWNER'S CONSULTANT as provided in CONSULTANT'S standard General Conditions for the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of CONSULTANT as assigned in said General Conditions shall not be modified without CONSULTANT'S written consent.

2.7.2 Consult with and advise OWNER and act as OWNER'S CONSULTANT as may be provided in OWNER'S construction contract conditions furnished pursuant to Paragraph 4.11 herein. The extent and limitations of the duties, responsibilities, and authority of CONSULTANT as may be assigned in said construction contract conditions or in supplements prepared thereto shall not be modified without CONSULTANT'S written consent.

2.7.3 As OWNER'S CONSULTANT, CONSULTANT shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs, or for Contractor's failure to perform construction work in accordance with the Contract Documents, all of which shall remain the sole responsibility of the OWNER'S Contractor.

2.7.4 Review Contractor(s) schedules for Work progress, equipment and materials procurement, submittals, and values for partial pay purposes, and project cash flow requirements.

2.7.5 Review and accept Submittals of Contractor(s) for conformance with the design concept and intent of the Contract Documents.

2.7.6 Make visits to the Site at intervals appropriate to the stages of construction to (consult with and advise CONSULTANT'S Resident Project Representative, if any, and) observe the progress and quality of the executed Work, and to determine, in general, if the Project is proceeding in accordance with the Contract Documents. CONSULTANT shall not be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.

2.7.7 Issue all instructions of OWNER to Contractor(s); prepare routine Supplemental Instructions, Change Orders and Construction Change Directives, as required; act as interpreter of the terms and conditions of the Contract Documents and judge of the performance thereunder by the parties thereto, and make decisions on claims of OWNER and Contractor(s) relating to the execution and progress of the Work and other matters and questions related thereto; but CONSULTANT shall not be liable for the results of any such interpretations or decisions rendered by CONSULTANT in good faith.

2.7.8 Review Contractor(s) applications for payment and supporting data, determine the amounts owing to Contractor(s), and approve in writing all payments to Contractor(s) in accordance with the Contract Documents.

2.7.9 Render periodic Work progress reports to OWNER.

2.7.10 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in general in accordance with the Contract Documents, so that CONSULTANT may approve, in writing, final payment to each Contractor.

2.8 Post-Construction Services

2.8.1 Provide qualified CONSULTANTs during equipment start-up and instruct OWNER'S personnel in equipment function and intended use.

2.8.2 Prepare a reproducible Record Set of drawings revised to show significant changes made during construction of the Project in accordance with records provided by Contractor and CONSULTANT'S Resident Project Representative, if any.

SECTION 3 - ADDITIONAL SERVICES OF CONSULTANT

3.1 General

If authorized in writing by OWNER and agreed to in writing by CONSULTANT, CONSULTANT shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Grant and Loan Assistance

Prepare applications and supporting documents for governmental grants, loans, or advances.

3.1.2 Financial Consultation

Consult with OWNER'S fiscal agents and bond attorneys and provide such Consulting data as required for any bond prospectus or other financing requirements.

3.1.3 Property Procurement Assistance

Determine land and easement requirements and provide consultation and assistance on property procurement as related to professional services being performed.

3.1.4 Administrative Assistance

Provide Contract and Project administration to the degree authorized by OWNER.

3.1.5 Obtaining Services of Others

Provide through subcontract the services or data set forth in Paragraph 4.3.

3.1.6 Furnishing renderings or models of the Project for OWNER'S use.

3.1.7 Miscellaneous Studies

Investigations involving detailed consideration of operations, maintenance, and overhead expenses, and the preparation of rate schedules, earnings, and expense statements; feasibility studies; appraisals and valuations; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

3.1.8 Extraordinary Construction-Related Services

3.1.8.1 Additional or extended services during construction made necessary by a force majeure, act of God, governmental action, severe weather, vandalism, terrorism, or other extraordinary event.

3.1.8.2 Consultation or other services after completion of the Construction Phase, such as frequent inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any construction contract.

3.1.8.3 Preparing to serve or serving as a witness for OWNER in any litigation or other legal or administrative proceeding involving the Project.

3.1.9 Preparation of an operating manual for use by OWNER.

3.1.10 Extra Services not specifically defined above that may be authorized by OWNER.

3.2 Resident Services during Construction

3.2.1 If requested by OWNER or recommended by CONSULTANT and agreed to in writing by the other party, a Resident Project Representative and assistants shall be furnished and shall act as directed by CONSULTANT in order to provide more extensive representation at the Project site during the Construction Phase.

3.2.2 The Resident Project Representative, through more extensive on-site observations of the work in progress, field checks of materials and equipment, and maintenance of jobsite records on conditions and activities, shall assist CONSULTANT in determining that the Project is proceeding in accordance with the Contract Documents. However, the furnishing of such resident project representation shall not make CONSULTANT responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs, or for Contractor(s)' failure to perform the construction work in accordance with the Contract Documents.

3.3 Contingent Additional Services

3.3.1 If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the CONSULTANT'S control, the CONSULTANT shall notify the OWNER prior to commencing such services. If the OWNER deems that such services described in Section 3.3 are not required, the OWNER shall give prompt written notice to the CONSULTANT. If the OWNER indicates in writing that all or part of such Contingent Additional Services are not required, the CONSULTANT shall have no obligation to provide those services.

3.3.2 Making revisions in Drawings, Specifications, or other documents when such revisions are:

3.3.2.1 inconsistent with approvals or instructions previously given by the OWNER, including revisions made necessary by adjustments in the OWNER'S program or Project Budget.

3.3.2.2 required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents.

3.3.2.3 due to changes required as a result of the OWNER'S failure to render a decision in a timely manner.

3.3.3 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the OWNER'S schedule, or the method of bidding or negotiating and contracting for construction.

3.3.4 Preparing Drawings, Specifications, and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Work Change Directives.

3.3.5 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revision to Drawings, Specifications, and other documentation resulting therefrom.

3.3.6 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.7 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the OWNER or Contractor under the Contract for Construction.

3.3.8 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.9 Prolonged construction administration more than sixty (60) days after substantial completion, or acceleration of the work schedule involving services beyond normal working hours.

3.3.10 Preparing documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Final Design Phase.

SECTION 4 - RESPONSIBILITIES OF OWNER

OWNER shall, within a reasonable time, so as not to delay the services of CONSULTANT:

4.1 Provide full information as to OWNER'S requirements for the Project.

4.2 Assist CONSULTANT by placing at CONSULTANT'S disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

4.3 Furnish consulting services or data, such as core borings, probings and subsurface explorations; hydrographic surveys; laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic, and utility surveys; zoning and deed restrictions; and other special data or consultations, all of which CONSULTANT may rely upon in performing its services under this AGREEMENT.

4.4 Guarantee access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services under this AGREEMENT.

4.5 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by CONSULTANT and render in writing decisions pertaining thereto.

4.6 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.

4.7 Designate in writing a person to act as OWNER'S representative with respect to the services to be performed under this AGREEMENT. Such person shall have complete authority to transmit instructions; receive information; interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements, and systems to be used in the Project; and other matters pertinent to the services covered by this AGREEMENT.

4.8 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any defect in the Project.

4.9 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

4.10 Furnish, or direct CONSULTANT to provide necessary Additional Services as stipulated in Section 3 of this AGREEMENT or other services as required.

4.11 If CONSULTANT'S standard bidding requirements, agreement forms, and General Conditions are not to be used, but OWNER'S documents are to be used instead, OWNER shall provide copies of such documents for CONSULTANT'S use in coordinating the Contract Drawings and Specifications.

SECTION 5 - PERIOD OF SERVICE

5.1 This AGREEMENT will become effective upon the first written notice by OWNER authorizing services hereunder.

5.2 This AGREEMENT shall be applicable to all assignments authorized by OWNER and accepted by CONSULTANT subsequent to the date of its execution. All assignments authorized prior to the execution of this document, even if performed in whole or in part before the execution date, shall be governed by the terms and conditions of this AGREEMENT.

5.3 The provisions of this AGREEMENT have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the services stated in the AGREEMENT. CONSULTANT'S obligation to render services hereunder will extend for an initial period of twelve months (hereinafter the "primary term") and subject to renewal for four (4) additional and separate twelve (12) month terms (hereinafter the "renewal term"). It is understood and agreed by the parties hereto that renewal of this Agreement at the conclusion of the primary term shall be automatic unless this AGREEMENT is otherwise terminated as herein provided.

SECTION 6 - COMPENSATION

6.1 Compensation. OWNER shall pay CONSULTANT for services rendered and reimbursable expenses as follows, or as stated in the Task Order(s):

6.1.1 Amount of Payment: Method A – Fixed Lump Sum Payment.

For the Scope of Services described, the OWNER shall pay the CONSULTANT the lump sum amount as stated in the written Task Order for the specific project. For additional, reduced, or changed scope of services, the amount of payment shall be adjusted on a mutually agreeable lump-sum basis. Or,

6.1.2 Amount of Payment: Method B – Cost Plus a Fixed Payment.

For the Scope of Services described, the OWNER shall pay the CONSULTANT the sum of the following:

- a. Individual's Hourly Rate, plus
- b. CONSULTANT's current Audited Overhead rate to cover general and administrative expenses, and payroll burden (as applicable to the specific Task Order) for office personnel, resident field personnel and contract labor.
- c. A ten percent fixed payment of the sum of a. and b.
- d. Direct hourly rate is determined by dividing each individual's current annual base salary by 2,088 hours per year. Overtime rate for nonexempt personnel shall be 1.5 times the hourly rate. Exempt and nonexempt are as defined by the United States Fair Labor Standards Act.

6.1.3 For outside expenses incurred by CONSULTANT, such as authorized travel and subsistence, commercial services, courier deliveries, and incidental expenses, the cost to CONSULTANT.

6.1.4 For reproduction, printing, long distance telephone calls, fax services, vehicles, and testing apparatus, amounts as determined from CONSULTANT's schedule of rates in effect at the time the service is provided.

6.1.5 For services rendered by others as subcontractor(s) to CONSULTANT, such as surveying, real property descriptions, soil borings, subsurface investigations, laboratory testing, field quality control tests, progress photographs, or other activities required or requested by OWNER, the cost to CONSULTANT.

6.1.6 For time expended by outside individual professional service subcontractor(s) employed by the CONSULTANT in providing services to the OWNER, the cost to the CONSULTANT. Expenses incurred by such outside subcontractors in service to the OWNER shall be reimbursable in accordance with Subparagraph 6.1.3 above.

6.1.7 For expenses incurred by CONSULTANT in providing resident field services such as vehicle lease or rental, telephone services, miscellaneous resident office expenses, commercial services, field personnel moving expenses to the field site location, per diem or mileage allowances for personnel assigned in the field, authorized travel and subsistence expenses of personnel temporarily assigned from CONSULTANT's offices to the field, and other such items incidental to operating a field office, the cost to CONSULTANT.

6.1.8 The total payment for the Scope of Services described in each Task Order shall not exceed as stated in the written Task Order for the specific project without written approval of the OWNER.

6.2 Statements

Monthly statements, in CONSULTANT'S standard format, will be submitted by the CONSULTANT to the OWNER.

6.2.1 Method A – Fixed Lump Sum Payment. Statements will be based on the CONSULTANT'S estimated percent of services completed at the end of the preceding month.

6.2.2 Method B – Cost Plus a Fixed Payment. Statements will be submitted for payment covering services performed, costs and expenses incurred, and appropriate fee or markup (if applicable) during the preceding month.

6.3 Payments

Statements are payable upon receipt. A late payment charge of 1.5 percent per month or any partial month will be added to amounts not received within 30 days of the statement date. Time is of the essence in payments of statements, and timely payment is a material part of the consideration of this AGREEMENT. Costs, including reasonable attorney's fees, incurred by the CONSULTANT in collecting any delinquent amount shall be reimbursed by the OWNER. If a portion of CONSULTANT'S statement is disputed by OWNER, the undisputed portion shall be paid by OWNER by the due date. The OWNER shall advise the CONSULTANT in writing of the basis for any disputed portion of any statement.

6.4 Taxes

Taxes, other than United States federal and state income taxes, and Kansas City, Missouri earnings tax, as may be imposed by the United States, state, and local authorities, shall be in addition to the payment stated under "Amount of Payment".

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

7.1.1 During the course of performance of these services, CONSULTANT will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$1,000,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability:	\$1,000,000 Per Claim and Annual Aggregate

If requested, CONSULTANT will provide to OWNER certificates as evidence of the specified insurance.

7.1.2. Construction Contractors shall be required to provide (or OWNER may provide) Owners' Protective Liability Insurance naming the OWNER as a Named Insured and the CONSULTANT as an additional insured, or, to endorse OWNER and CONSULTANT using ISO Form GC 20101185 endorsement or its equivalent as Additional Insureds on all construction Contractors' liability insurance policies covering claims for personal injuries and property damage in at least the amount required of CONSULTANT in Section 7.1.1, above. Construction Contractors shall be required to provide certificates evidencing such insurance to the OWNER and CONSULTANT.

7.1.3. OWNER and CONSULTANT waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance (including deductibles) during and after the completion of CONSULTANT'S services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered into by OWNER, and all construction Contractors shall be required to provide waivers of subrogation in favor of OWNER and CONSULTANT for damage or liability covered by any construction Contractor's policy of insurance.

7.2 Professional Responsibility

7.2.1. CONSULTANT will exercise reasonable skill, care, and diligence in the performance of CONSULTANT'S services and will carry out its responsibilities in accordance with customarily accepted professional consulting practices. If the CONSULTANT fails to meet the foregoing standard, CONSULTANT will perform at its own cost, and without reimbursement from OWNER, the professional services necessary to correct errors and omissions which are caused by CONSULTANT'S failure to comply with above standard, and which are reported to CONSULTANT within one year from the completion of CONSULTANT'S services for the Project.

7.2.2. The obligations and representations contained in Paragraph 7.2.1 are CONSULTANT'S sole obligation and OWNER'S exclusive remedy with respect to defects in the quality of services detected prior to project completion under a Task Order. OWNER'S failure to properly operate and maintain the project shall relieve CONSULTANT of its liability for any damage caused in whole or in part by improper operation or maintenance.

7.2.3 No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service or oral or written representation by CONSULTANT or its employees or consultants.

7.2.4 Subject to Paragraph 7.14.1 and Section 8, the obligations and remedies stated in this Section 7.2, Professional Responsibility, are the sole and exclusive obligations of CONSULTANT and remedies of OWNER, regardless of the cause of action pled including, without limitation, all types of negligence.

7.3 Cost Opinions and Projections

Cost opinions and projections prepared by CONSULTANT relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on CONSULTANT'S experience, qualifications, and judgment as a design professional. Since CONSULTANT has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, CONSULTANT does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by CONSULTANT.

7.4 Changes

OWNER shall have the right to make changes within the general scope of CONSULTANT'S services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by an authorized representative of the OWNER and the President or any Vice President of the CONSULTANT.

7.5 Suspension of Services

Should OWNER fail to fulfill its responsibilities as provided under Section 4 to the extent that CONSULTANT is unduly hindered in CONSULTANT'S services or if OWNER fails to make any payment to CONSULTANT on account of CONSULTANT'S services and expenses within 90 days after receipt of CONSULTANT'S bill therefor, CONSULTANT may, after giving seven days' written notice to OWNER, suspend services under this AGREEMENT until OWNER has satisfied OWNER'S obligations under this AGREEMENT.

7.6 Termination

7.6.1. Reference Section 7.21 Federal Contract Provision per the FAA Airport Improvement Program.

7.7 Delays

In the event the services of the CONSULTANT are suspended or delayed by the OWNER, the CONSULTANT shall be entitled to additional compensation for reasonable costs incurred by the CONSULTANT in temporarily closing down or delaying the Project and reassigning Project staff (including, but not limited to, unavoidable down time and any termination expenses incurred where reassignment is not reasonably possible) and in organizing Project files, records, and work in progress for suspension and later resumption of the CONSULTANT'S services.

7.8 Deleted

7.9 Rights and Benefits

CONSULTANT'S services will be performed solely for the benefit of the OWNER and not for the benefit of any other persons or entities.

7.10 Dispute Resolution

7.10.1 Scope of Section: The procedures of this Section 7.10 and its subparts shall apply to any and all disputes between OWNER and CONSULTANT (including disputes involving an officer, director or employee of either party) which arise from, or in any way are related to, this AGREEMENT, including, but not limited to the interpretation of this AGREEMENT, the enforcement of its terms, any acts, errors, or omissions of OWNER or CONSULTANT in the performance of this AGREEMENT, whether in contract or in tort, and disputes concerning payment.

7.10.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate and, if necessary, mediate their disputes as set forth in this Paragraph. If timely Notice is given under

Paragraph 7.10.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 7.10.3, 7.10.4, and 7.10.5 have been complied with.

7.10.3 Notice of Dispute

7.10.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

7.10.3.2 For disputes arising after the making of final payment, OWNER shall give CONSULTANT written Notice at the address listed in Paragraph 7.18 within ninety (90) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this AGREEMENT that authorize the relief requested.

7.10.4 Negotiation: Within seven (7) days of receipt of the Notice, the Project Managers for the OWNER and CONSULTANT shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level within twenty-one (21) days after Notice then, upon written request of either side, the matter shall be referred to the Division President of the CONSULTANT and the following executive officer of OWNER, City Manager. These officers shall meet at the Project Site or such other location as is agreed upon within thirty (30) days of the written request to resolve the dispute.

7.10.5 Mediation: If the OWNER'S and CONSULTANT'S said officers are unable to resolve the dispute, then either side may request that the matter be submitted to mediation before a mediator mutually agreed upon. If the parties cannot agree on a mediator, then the American Arbitration Association shall appoint one upon request. Any administrative or mediator's fees shall be split equally between the parties. The mediation shall take place in Ford County, Kansas unless the parties mutually agree on another location.

7.10.6 Arbitration:

7.10.6.1 If the parties are unable to resolve their dispute after at least one session of mediation, then any claim, dispute or other matter in question arising out of or related to this AGREEMENT (including disputes involving an officer, director or employee of either party), whether in contract or in tort, shall be subject to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party to this AGREEMENT and with the American Arbitration Association.

7.10.6.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.10.6.3 No arbitration arising out of or relating to this AGREEMENT shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this AGREEMENT (other than disputes involving an officer, director or employee of either party, or subcontractor to CONSULTANT), except by written consent containing a specific reference to this AGREEMENT and signed by the OWNER, CONSULTANT, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein.

7.10.6.4 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this AGREEMENT shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. The award rendered by the

arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.10.6.5 Any legal action necessary to compel, confirm, vacate, enforce, modify or otherwise affect the mediation or arbitration shall be filed in state or federal courts in the State of Kansas and each party expressly consents to jurisdiction therein.

7.10.7 Deleted.

7.10.8 Deleted.

7.11 The OWNER represents that it has sufficient funds or the means of obtaining funds to remit payment to the CONSULTANT for services rendered by the CONSULTANT.

7.12 Publications

Recognizing the importance of professional development on the part of CONSULTANT'S employees and the importance of CONSULTANT'S public relations, CONSULTANT may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to CONSULTANT'S services for the Project. Such publications will be provided to OWNER in draft form for OWNER'S advance review. OWNER shall review such drafts promptly and provide OWNER'S comments to CONSULTANT. OWNER may require deletion of proprietary data or confidential information from such publications, but otherwise OWNER will not unreasonably withhold approval. The cost of CONSULTANT'S activities pertaining to any such publication shall be for CONSULTANT'S account.

7.13 Deleted.

7.14 Indemnification

7.14.1 Except for those projects identified in Section 7.13, and subject to the provisions of Sections 4 and 8 of this Agreement, CONSULTANT agrees to indemnify OWNER for damages, costs and expenses (including reasonable attorney's fees) but only to the extent caused by the negligent acts, errors or omissions of CONSULTANT, its officers, directors, shareholders, employees, agents, and consultants, and any of them. Nothing in this Agreement shall require CONSULTANT to provide a defense of the OWNER against any claim, suit or complaint.

7.14.2 OWNER agrees to indemnify CONSULTANT for damages, costs and expenses (including reasonable attorney's fees) but only to the extent caused by the negligent acts, errors or omissions of OWNER, its officers, directors, shareholders, employees and agents and any of them.

7.14.3 OWNER agrees that it will require all construction Contractors to indemnify, defend, and hold harmless OWNER and CONSULTANT from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, subcontractors, and suppliers.

7.14.4 If the services under a Task Order involve construction, and CONSULTANT does not provide services during construction including, but not limited to, on-site observation, site visits, submittals review, and design clarifications, OWNER agrees to indemnify and hold harmless CONSULTANT from or against any liability arising from the Project or this AGREEMENT.

7.15 Computer Models

CONSULTANT may use or modify CONSULTANT'S proprietary computer models in service of OWNER under this AGREEMENT, or CONSULTANT may develop computer models during CONSULTANT'S service to OWNER under this AGREEMENT. Such use, modification, or development by CONSULTANT does not constitute a license to OWNER to use or modify CONSULTANT'S computer models. Said proprietary computer models shall remain the sole property of the CONSULTANT. OWNER and

CONSULTANT will enter into a separate license agreement if OWNER wishes to use CONSULTANT'S computer models.

7.16 Reuse of Documents

All documents including Contract Drawings and Specifications prepared or furnished by CONSULTANT (and CONSULTANT'S independent professional associates and subcontractors) pursuant to this AGREEMENT are instruments of service in respect of the Project, and CONSULTANT shall have the ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT, or to CONSULTANT'S independent professional associates or subcontractors, and OWNER shall indemnify and hold harmless CONSULTANT and CONSULTANT'S independent professional associates and subcontractors from and against all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by OWNER and CONSULTANT.

7.17 Electronic Media

Any electronic media (computer disks, tapes, and similar items) furnished with respect to CONSULTANT'S services are for OWNER'S information and convenience only. Such media are not to be considered part of CONSULTANT'S instruments of service. (Due to the potential that information contained in electronic media can be modified by OWNER or others, CONSULTANT, at its option, may remove all indicia of CONSULTANT'S ownership and involvement from each electronic display.)

CONSULTANT shall not be liable for loss or damage directly or indirectly, arising out of use of electronic media including, but not limited to, any loss of business or incidental or consequential damage. OWNER shall assume all risk and release, indemnify, and hold harmless CONSULTANT, its officers, directors, employees, servants, agents, successors, and assigns, from and against each and every claim or cause of action that OWNER may have or which may arise in the future respecting use of the electronic media.

If there is a discrepancy between the electronic media files and the signed and sealed hard copies, the hard copies shall govern.

7.18 Notices

Any Notice required under this AGREEMENT will be in writing, addressed to the appropriate party at the following addresses:

OWNER'S address:

The City of Dodge City, Kansas
c/o Mr. Corey Keller, Superintendent of Public Works & Airport Manager
806 2nd Avenue
P.O. Box 880
Dodge City, Kansas 67801

CONSULTANT'S address:

Burns & McDonnell Engineering Company, Inc.
c/o David G. Hadel, P.E.
9400 Ward Parkway
Kansas City, Missouri 64114

7.19 Successor and Assigns

OWNER and CONSULTANT each binds itself and its successors, executors, administrators, and assigns to the other party of this AGREEMENT and to the successors, executors, administrators, and assigns of

such other party, in respect to all covenants of this AGREEMENT; except as above, neither OWNER nor CONSULTANT shall assign, sublet, or transfer its interest in the AGREEMENT without the written consent of the other.

7.20 Controlling Law

This AGREEMENT shall be subject to, interpreted, and enforced according to the laws of the State of Kansas without regard to any conflicts of law provisions.

7.21 Federal Contract Provisions per the Federal Aviation Administration (FAA) Airport Improvement Program. Reference Exhibit B as attached herein. The term "SPONSOR" shall apply to OWNER.

7.22 Entire Agreement

This AGREEMENT represents the entire AGREEMENT between the CONSULTANT and OWNER relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to CONSULTANT'S services described herein are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event OWNER issues to CONSULTANT a purchase order, no preprinted terms thereon shall become a part of this AGREEMENT. Said purchase order document, whether or not signed by CONSULTANT, shall be considered as a document for the OWNER'S internal management of its operations.

SECTION 8 – LIMITATION OF LIABILITY

8.1 To the fullest extent permissible by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of CONSULTANT, its officers, directors, shareholders, employees, agents, and subcontractors, and any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any form of negligence, professional errors or omissions (including breach of contract or warranty) of CONSULTANT, its officers, directors, employees, agents or subcontractors, or any of them, SHALL NOT EXCEED the total compensation actually received by CONSULTANT under this Agreement (including all Task Orders), or the sum of Five Hundred Thousand Dollars (\$500,000), whichever is greater. The parties agree that specific consideration has been given by the CONSULTANT for this limitation and that it is deemed adequate.

8.2 In no event will CONSULTANT be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of OWNER, or governmental fines or penalties.

IN WITNESS WHEREOF, the parties have made and executed this AGREEMENT as of the day and year first above written.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION
PROVISION WHICH MAY BE ENFORCED BY THE PARTIES**

OWNER: City of Dodge City, Kansas

**CONSULTANT: Burns & McDonnell
Engineering Company, Inc.**

By: _____

By: _____

Name: Joyce Warshaw

Name: David G. Yeamans

Title: Mayor

Title: President – A&F

By: _____

By: _____

Name: Corey Keller
Superintendent of Public Works &
Title: Airport Manager

Name: David G. Hadel, P.E.
Title: Manager, Aviation Services

ATTEST:

By: _____

Name: Nannette Pogue

Title: City Clerk

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**EXHIBIT A
EXAMPLE
AUTHORIZATION NO. ____**

PROFESSIONAL ENGINEERING SERVICES
FOR
"INSERT PROJECT NAME"
AT DODGE CITY REGIONAL AIRPORT

Project No. _____

In accordance with SECTION 1 – AUTHORIZATION OF SERVICES of the Agreement for Professional Engineering Services (the "AGREEMENT"), dated _____, by and between THE CITY OF DODGE CITY (OWNER) and BURNS & McDONNELL ENGINEERING COMPANY, INC. (CONSULTANT), the following Airport Improvement Project ("AIP") authorization is hereby given and mutually agreed upon:

- A. PROJECT NAME AND DESCRIPTION OF IMPROVEMENTS:**
- B. DESCRIPTION OF SERVICES TO BE PERFORMED:**
- C. METHOD OF COMPENSATION:**
- D. AMOUNT OF COMPENSATION:**
- E. ESTIMATED TIME OF COMPLETION:**
- F. ENGINEERS' NOTICE TO PROCEED DATE:**

IN WITNESS WHEREOF, the parties hereto have caused this Authorization to be executed in four (4) counterparts by their duly authorized representatives and made effective the day and year first written above.

-----oooOooo-----

OWNER: City of Dodge City, Kansas

**CONSULTANT: Burns & McDonnell
Engineering Company, Inc.**

By: _____
Name: Joyce Warshaw
Title: Mayor

By: _____
Name: David G. Hadel, P.E.
Title: Manager, Aviation Services

By: _____
Name: Corey Keller
Superintendent of Public Works &
Airport Manager
Title: Airport Manager

ATTEST:

By: _____
Name: Nannette Pogue
Title: City Clerk

END OF AUTHORIZATION

EXHIBIT “B”

Federal Provisions

Federal Aviation Administration, (FAA) Airport Improvement Program

1. ACCESS TO RECORDS AND REPORTS.

(Reference: 2 CFR § 200.326, 2 CFR § 200.333)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

2. BREACH OF CONTRACT TERMS.

(Reference 2 CFR § 200 Appendix II(A))

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. CIVIL RIGHTS - GENERAL.

(Reference: 49 USC § 47123)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

(a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

4. CIVIL RIGHTS – TITLE VI ASSURANCES.

Appropriate clauses from the Standard DOT Title VI Assurances must be included in all contracts and solicitations. The clauses are as follows:

- 1) Title VI Solicitation Notice
- 2) Title VI Clauses for Compliance with Nondiscrimination Requirements.
- 3) Title VI Required Clause for Land Interests Transferred from the United States
- 4) Title VI Required Clause for Real Property Acquired Or Improved by the sponsor subject to the nondiscrimination Acts and Regulations.
- 5) Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program
- 6) Title VI List Of Pertinent Nondiscrimination Statutes And Authorities

4.1. MANDATORY CONTRACT LANGUAGE.

4.1.1. Title VI Solicitation Notice

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

4.1.2. Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

4.1.3. Title VI Clauses for Deeds Transferring United States Property

(Source: Appendix B of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (Title of Sponsor) will accept title to the lands and maintain the project constructed thereon in accordance with (Name of Appropriate Legislative Authority), for the (Airport Improvement Program or other program for which land is transferred), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (Title of Sponsor) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (Exhibit A attached hereto or other exhibit describing the transferred property) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (Title of Sponsor) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (Title of Sponsor), its successors and assigns.

The (Title of Sponsor), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (Title of Sponsor) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in

and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

4.1.4. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

(Source: Appendix C of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (**Title of Sponsor**) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (**Title of Sponsor**) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (**Title of Sponsor**) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (**Title of Sponsor**) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

4.1.5. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

(Source: Appendix D of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **(Title of Sponsor)** pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, **(Title of Sponsor)** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, **(Title of Sponsor)** will there upon revert to and vest in and become the absolute property of **(Title of Sponsor)** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

4.1.6. Title VI List of Pertinent Nondiscrimination Authorities

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination

because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

5. CLEAN AIR AND WATER POLLUTION CONTROL.

(Reference: 49 CFR § 18.36(i)(12)) Note, when the DOT adopts 2 CFR 200, this reference will change to 2 CFR § 200 Appendix II(G))

5.1. Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

6. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS.

(Reference: 2 CFR § 200 Appendix II (E))

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

7. **DEBARMENT AND SUSPENSION (NON-PROCUREMENT).**

(Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

8. DISADVANTAGED BUSINESS ENTERPRISE.

(Reference: 49 CFR part 26)

Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29)- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

9. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

(Reference: 29 USC § 201, et seq.)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

10. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.

(Reference: 49 CFR part 20, Appendix A)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

11. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

(Reference 20 CFR part 1910)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

12. RIGHT TO INVENTIONS.

(Reference 2 CFR § 200 Appendix II(F))

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

13. TERMINATION OF CONTRACT.

(Reference 2 CFR § 200 Appendix II(B))

13.1. TERMINATION OF CONTRACT

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

14. TRADE RESTRICTION

(Reference: 49 CFR part 30)

14.1. The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

15. TEXTING WHEN DRIVING

(References: Executive Order 13513, and DOT Order 3902.10)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: August 25, 2015
Subject: Ordinance No. 3612 and Ordinance No. 3613
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the approval of Ordinance No. 3612 and 3613

Background: **Ordinance No. 3612** adopts the “2015 Edition of the Standard Traffic Ordinance” by reference. The changes made to this code during the 2015 legislature include the following:

- Section 1. Definitions.
- Section 23 Accident involving death or personal injuries; duties of drivers, reports; penalties (Amended)
- Section 25 Duty of driver to give certain information after accident; failure to provide proof of liability insurance or financial security; duty to render aid after accident; proof of liability insurance or financial security by electronic means, restrictions (amended)
- Section 30 Driving under the Influence of intoxicating liquor or drugs; penalties (amended)
- Section 30.1 Driving commercial motor vehicle under the influence of intoxicating liquor or drugs; penalties (amended by HB 2043)
- Section 30.2.1 Refusal to submit to alcohol or drug test (amended by HB 2043)
- Section 138 Riding on motorcycles (amended by HB 2044)
- Section 142 Equipment for motorcycle operator or rider (amended by HB 2044)
- Section 171 Lighting equipment and warning devices on church buses and day care program buses (amended)
- Section 182. Child passenger safety restraining system (amended by HB 2044)
- Section 182.1 Seat belts (amended by HB 2044)
- Section 193 Driver’s License in possession (amended)

- Section 198 Vehicle license; illegal tag (amended by HB 2013)
- Section 200 Motor vehicle liability insurance (amended)

Ordinance No. 3613 adopts the “2015 Edition of the Uniform Public Offense Code” by reference. The changes made to the Uniform Public Offense Code during the 2014 legislative session include the following:

- Section 1.1 Definitions
- Section 3.2 Battery against a law enforcement officer (amended by HB 2055)
- Section 3.2.2 Battery against a school employee (new section)
- Section 3.12 Breach of privacy (amended)
- Section 5.1 Contributing to a child’s misconduct or deprivation (amended)
- Section 5.2 Furnishing alcoholic liquor or cereal malt beverage to a minor (amended)
- Section 5.5 Watercraft; lifesaving devices required (amended)
- Section 5.7 Selling, giving or furnishing cigarettes or tobacco products to a minor (amended)
- Section 6.2 Intent; permanently deprive (amended by HB 2048)
- Section 6.7 Criminal trespass (amended)
- Section 6.7.1 Trespassing on railroad property (amended)
- Section 6.17 Criminal use of a financial card (amended)
- Section 6.18 Motor vehicle dealers; selling motor vehicles without a license (amended)
- Section 6.24 Unlawfully selling scrap metal. (reserved for future use, HB 2048)
- Section 6.25 Unlawfully buying scrap metal (reserved for future use, HB 2048)
- Section 7.14 Electioneering (amended)
- Section 9.1 Disorderly conduct (amended)
- Section 9.8 Criminal desecration (amended)
- Section 9.10 Harassment by telecommunications device (amended)
- Section 9.11 Unlawful public demonstration at a funeral (amended)
- Section 10.1 Criminal use of weapons (amended by SB 45)
- Section 10.1.1 Criminal carrying of a weapon (amended by SB 45)
- Section 10.4 Confiscation, disposition of weapons (reserved for future use)
- Section 10.14 Operation of a motorboat or sailboat (amended)
- Section 10.15 Operating a vessel under the influence of alcohol or drugs; penalties (amended)
- Section 10.16 Throwing objects (amended)
- Section 10.20 Unlawfully obtaining a prescription-only drug (amended)
- Section 10.24 Smoking prohibited (amended by HB 2124)

- Section 11.1 Promoting obscenity (amended)
- Section 11.8 Gambling (amended by HB 2155)
- Section 11.11 Cruelty to animals (amended)

Justification: Each year the State Legislature passes numerous laws that affect the laws of the State as well as those of the individual cities. The League of Kansas Municipalities compiles a small booklet which incorporates all of the laws in Kansas that deal with public offenses and traffic offenses. These are the “Uniform Public Offense Code” and the “Standard Traffic Ordinance”. Cities are allowed to adopt these codes by reference, so the entire code is not included in the adopting ordinance and is not published in the local paper. Each employee that deals with any of these codes or ordinances is furnished a book to reference when necessary, to cite persons with violations of the ordinances. I have three of each of these books in my office for your review.

Financial Considerations: The cost of the booklets for the pertinent employees’ use is approximately \$1,000.

Purpose/Mission: Ensure the City is up to date on all of the laws passed in the State of Kansas as well as make sure all employees have easy access to these laws.

Legal Considerations: None

Attachments: Ordinance Nos. 3612 and 3613. The Standard Traffic Ordinance and Uniform Public Offense Code booklets are available in my office if any one would like to review them.

ORDINANCE NO. 3612

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; INCORPORATING BY REFERENCE THE "STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, EDITION 2015" AND REPEALING ORDINANCE NO. 3587

Be it Ordained by the Governing Body of the City of Dodge City:

Section 1: INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by Reference for the purpose of regulating traffic within the corporate limits of the City of Dodge City, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 2015, prepared and published in book form by the League of Kansas Municipalities, Topeka Kansas. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 3612" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

Section 2: TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.

- (a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.
- (b) All traffic violations which are included within this ordinance, and which are not ordinance traffic infractions, as defined in subsection (a) of this section shall be considered traffic offenses.

Section 3: REPEAL. Ordinance No. 3587 is hereby repealed.

Section 4: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the governing body of the City of Dodge City, Kansas, and approved by the Mayor this 8th day of September, 2015.

Joyce Warshaw, MAYOR

ATTEST:

Nannette Pogue, CITY CLERK

ORDINANCE NO. 3613

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, EDITION 2015 AND REPEALING ORDINANCE NO. 3588

Be it Ordained by the Governing Body of the City of Dodge City:

Section 1: INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by Reference for the purpose of regulating public offenses within the corporate limits of the City of Dodge City, Kansas, that certain code known as the "Uniform Public Offense Code, "Edition of 2015, prepared and published in book form by the League of Kansas Municipalities, Topeka Kansas. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 3613" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

Section 2: REPEAL. Ordinance No. 3588 is hereby repealed.

Section 3: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the governing body of the City of Dodge City, Kansas, and approved by the Mayor this 8th day of September, 2015.

Joyce Warshaw, MAYOR

ATTEST

Nannette Pogue, CITY CLERK

Memorandum

*To: City Manager
City Commissioners*
From: Nathan Littrell
Date: September 8, 2015
Subject: Rezoning for 97 ½ N. 14th Ave.
Agenda Item: Ordinance #3614

Recommendation: The Dodge City Planning Commission held a public hearing on August 11, 2015 and recommends approval of this zoning amendment.

Background: The applicant, Economic Pro Building, LLC, wishes to have this lot rezoned from R-2 Medium Residential to C-2 Highway Commercial to allow for construction of a shop with an office for their business on this property.

Justification: The proposed use and rezoning meets all of the requirements of the Dodge City Zoning Regulations and conforms to the Dodge City Comprehensive Plan.

Financial Considerations: None

Purpose/Mission: To promote development and provide overall growth to the community.

Legal Considerations: None

Attachments: Ordinance #3614 and map showing proposed area to be rezoned.

ORDINANCE NO. 3614

AN ORDINANCE OF THE CITY OF DODGE CITY, KANSAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY, CHANGING THE LOT LOCATED AT 97 ½ N. 14TH AVE FROM R-2, MEDIUM RESIDENTIAL, TO C-2, COMMERCIAL HIGHWAY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CIY, KANSAS:

SECTION 1: The following described real property located in Dodge City, Ford County, Kansas is hereby rezoned:

Lot 12, Westview Place No. 1 Addition
Dodge City, Ford County, Kansas

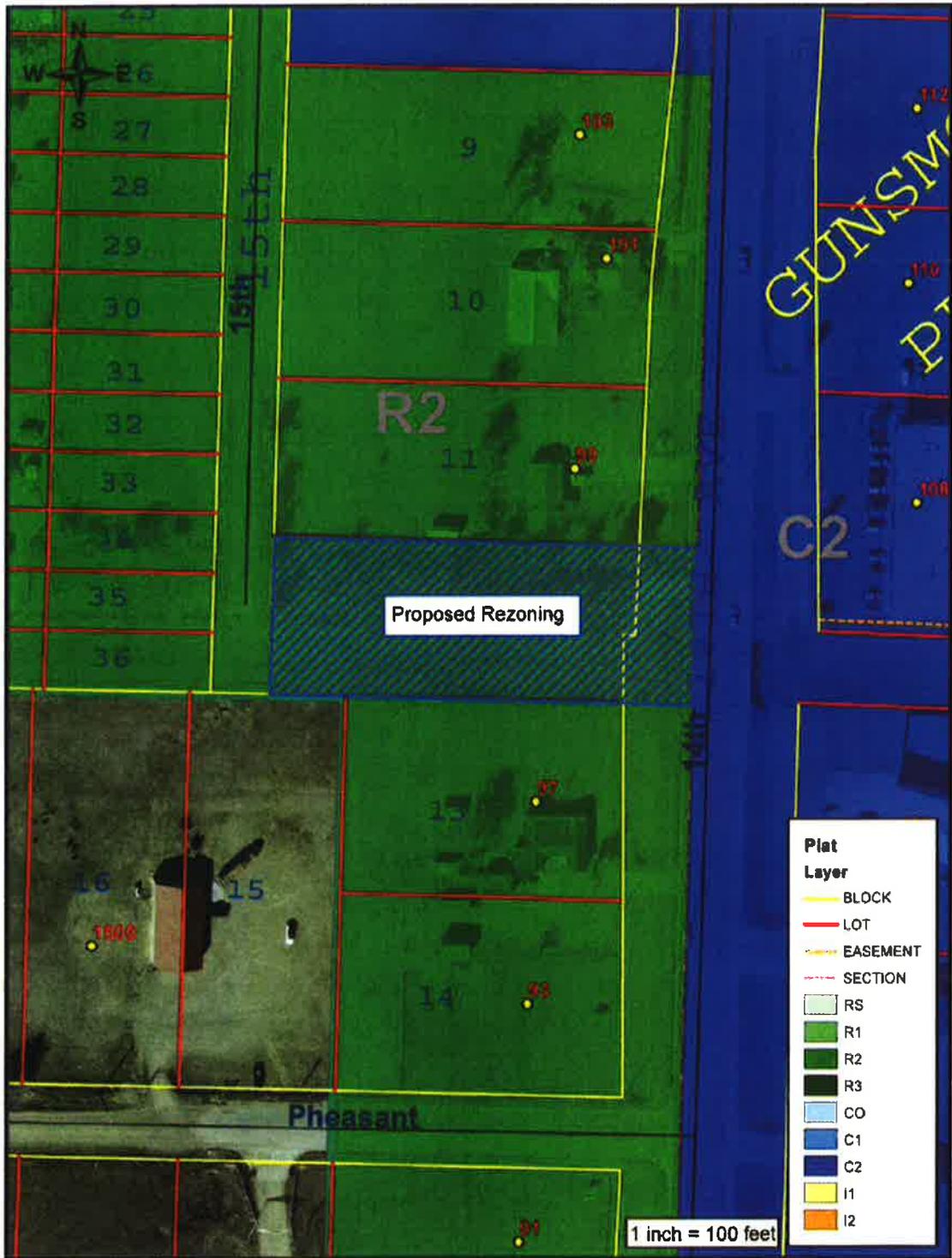
SECTION 2: This ordinance shall take effect, from and following its publication in the official paper, as required by law.

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR SESSION AND APPROVED BY THE MAYOR, THIS EIGHTH DAY OF SEPTEMBER, 2015.

JOYCE WARSHAW, MAYOR

ATTEST:

NANNETTE POGUE, CITY CLERK



Memorandum

To: City Manager
City Commissioners
From: Ray Slattery, 
Director of Engineering
Services
Date: August 25, 2015
Subject: Resolution 2015-22
Agenda Item: Ordinances and Resolutions

Recommendation: Approve Resolution 2015-22

Background: In 2013 the City applied for and was awarded a project through the TEA-21 reimbursement program administered by KDOT to design and construct an extension of the Gunsmoke Bike/Pedestrian Trail through Chilton Park. Design started in early 2014. The trail extension will start where the trail ends at Soule St. and extend through Chilton Park. There will be a connection of the trail extension to the path on the south side of Comanche St in the southeast corner of Chilton Park. The trail extension will also turn west at the south end of Chilton Park and extend to the intersection of Burr Parkway and Comanche St. The plan review, bidding was managed by KDOT's Bureau of Local Projects. On August 19, 2015, KDOT opened bids for this project. Bryant & Bryant Construction Inc. of Halstead, Ks. submitted the low bid of \$458,077. The city is responsible for 20% of the cost of construction and construction engineering. Construction Inspection will be completed by SMH and KDOT Staff.

Justification: This Resolution will commit the City to fund 20% of the cost of construction and construction engineering of the trail extension. Funds were budgeted in 2013 for this and some additional funds will come from the 2015 Special Street Fund.

Financial Considerations: The Resolution will authorize KDOT to proceed with the project and commit city funds to pay for 20% of the construction and construction engineering cost, which is \$106,000.

Purpose/Mission: Provide for the Ongoing Improvements of the City's Trail Program. It also adds to a quality of life project.

Legal Considerations: N/A

Attachments: Resolution 2015-22 and the bid tab for the project.

RESOLUTION NO. 2015-22

**AUTHORITY TO AWARD CONTRACT
COMMITMENT OF CITY FUNDS**

August 21, 2015

2 Copies to City

Project Number: TE-0384-01

TEA-T038(401)

City of Dodge City

WHEREAS bids were received at Topeka, Kansas on 08/19/2015 for the performance of work covered by plans on the above numbered project, and

WHEREAS the bidder and the low bid or bids on work covered by this project were:

CONTRACTOR	TYPE OF WORK	AMOUNT
<p>BRYANT & BRYANT CONSTRUCTION INC 703 MCNAIR ST HALSTEAD, KS 67056-2420</p>	<p>Ped/Bike Path in the City of Dodge City</p>	<p>\$ 458,077.00</p>

WHEREAS bids are considered satisfactory and have been recommended by the Secretary of Transportation of the State of Kansas, hereinafter referred to as the SECRETARY, for consideration and acceptance of the work on this project as covered by such bid or bids.

A combination of the bid plus an estimated \$70,451.31 for construction engineering less \$423,368.64 of Federal Funds = \$105,842.16 matching City Funds.

BE IT FURTHER RESOLVED that City funds in the amount of \$105,842.16 which are required for the matching of Federal Funds are hereby pledged by the City to be remitted to the Chief of Fiscal Services of the Department of Transportation of the State of Kansas on or before 10/08/2015 for use by the SECRETARY in making payments for construction work and engineering on the above designated project with final cost being determined upon completion and audit of the project.

The City/County certifies that no known or foreseeable legal impediments exist that would prohibit completion of the project and that the project complies with all applicable codes, standards and or/regulations required for completion.

Adopted this 8th day of September, 2015, at Dodge City, Kansas.

Recommended for Approval:

City of Dodge City

Ray Slattery

City Engineer

Joyce Warshaw, Mayor

Attest:

(Seal)

Nannette, Pogue,

City Clerk

BID OPENING
GUNSMOKE TRAIL - BIKE PATH
KDOT TE-0384

Contractor	Start Date	Bid Price
JAG		\$657,925.00
SMOKEY HILL		\$507,205.01
BRYANT & BRYANT		\$458,076.75
APAC KANSAS		\$618,787.75

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: August 26, 2015
Subject: Accept 2014 Audited Financial Statements
Agenda Item: New Business

Recommendation: I recommend the City Commission formally accept the 2014 Audited Financial Statements

Background: The 2014 audited financial statements will be presented by John Hendrickson of Kennedy and McKee at the work session prior to the regular meeting. They will go through the highlights and give the City Commission a chance to ask any questions.

Justification: Annually the City is required to have their financial statements audited.

Financial Considerations: none

Purpose/Mission: We strive for high service standards

Legal Considerations: None

Attachments: A hard copy of the audit will be available to each of the City Commissioners. The scanned version is on the website.

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue, Finance Director/City Clerk
Date: August 28, 2015
Subject: Appointment of League Voting Delegates
Agenda Item: New Business

Recommendation: I would recommend that City Commissioners and City Manager that plan to attend the annual League of Kansas Municipalities Annual Conference be appointed as voting delegates and staff members be appointed as alternates.

Background: Annually, the League of Kansas Municipalities holds their meeting during the annual conference. Dodge City is allowed 4 voting and 4 alternate delegates to that meeting. The annual conference is being held in Topeka, October 10-12, 2015.

Justification: At the League of Kansas Municipalities annual conference each City can have 4 voting delegates and 4 alternates.

Financial Considerations: None

Purpose/Mission: Together we value progress, growth and new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: None

Purpose/Mission: Together, we value progress, growth & new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: See attached amendment.

Memorandum

To: City Commissioners
From: Cherise Tieben
Date: September 3, 2015
Subject: Leisure Agreement Amendment
Agenda Item: New Business

Recommendation: Staff recommends approval of the amendment to the Leisure Development Agreement which was passed on April 6, 2015

Background: As you are all aware, the Leisure Development Agreement contained an obligation by Leisure to develop a hotel, RV park and restaurant on specific properties now commonly referred to as the Guymon Petro building (restaurant), Postvac/Chaffin property (hotel) and the SW corner of Wright Park (RV park). In return they would receive \$1.5 million in star bond proceeds which are directly attributable to their project. The City was obligated to provide access to the RV park, complete the water park, provide parking, provide area signage, landscape enhancements and a variety of other less noticeable improvements throughout the area encompassed by the development agreement. Leisure requested: use of an additional \$270,000 in Star Bonds and a reduction in the sale price of the land to \$100,000. In return, we relieved ourselves of the following: a previous obligation to construct a portion of their parking lot which connects to the water park, having the hotel site pad ready and a substantial reduction in the scope of way finding signage. The amendment also clarifies a variety of less impactful items that have come to light as a result of the substantial negotiations involved in this concluding this Development.

Justification: The negotiations are a result of items which arose during the due diligence period that were necessary to resolve in order to move forward with the development and in order to move forward with the issuance of the Star Bonds.

Financial Considerations: The items which are proposed are financially neutral to the City.

Purpose/Mission: Together, we value progress, growth & new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: See attached amendment.

**FIRST AMENDMENT TO LEISURE DEVELOPMENT, LLC
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO LEISURE DEVELOPMENT, LLC DEVELOPMENT AGREEMENT (the “Amendment”) is made as of _____, 2015, by and between the **CITY OF DODGE CITY, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “City”) and **LEISURE DEVELOPMENT, L.L.C.**, a Kansas limited liability company (“Developer”).

RECITALS:

A. The City owns certain real property and holds option(s) to acquire certain other real property, all situated in Ford County, Kansas (the “Site”), which consists of the “Hotel Parcel,” the “Restaurant Parcel,” and the “Campground Parcel” (collectively the “Site Parcels” or the “Site”).

B. On March 19, 2012, pursuant to the STAR Bonds Financing Act, K.S.A. 12 17,160 et seq., as amended (the “STAR Bond Act”), the City approved a STAR Bond Project District (the “STAR Bond District”) by passage of Ordinance No. 3527, which STAR Bond District encompasses an area which is larger than the Site, but includes the Site. More specifically, the STAR Bond District contains two (2) separate non-contiguous areas totaling approximately 500 acres located within the City – (i) one area is approximately 166 acres located in the historic downtown area of Dodge City, Kansas (the “Heritage Area”), and (ii) the other area is generally located between U.S. Highway 50 and 108th Road, south of Frontview Road (the “Entertainment Area”). The STAR Bond Project Area, including that portion thereof which constitutes the Site, shall have the same boundaries as the Heritage Area of the District.

C. On March 16, 2015, pursuant to the STAR Bond Act, the City set and provided public notice for a public hearing on April 20, 2015 in order to consider the Heritage Area Project Plan for the Heritage Area (the “Project Plan”). Developer shall have development rights on the Site – which represents a portion of the Heritage Area (“Development Plan”).

D. On April 20, 2015 the Dodge City Commission approved the Project Plan and the Development Plan, and authorized the execution and delivery of a development agreement with Developer, and on April 24, 2015, the parties fully executed and delivered that certain Leisure Development, LLC Development Agreement (the “Original Agreement”) pursuant to which Developer agreed, subject to the terms and conditions set forth in the Original Agreement, to design, construct, develop, complete and operate the Hotel Improvements, Restaurant Improvements, and Campground Improvements as described in Section 2.3 thereof (collectively, the “Project”) in and on the Hotel Parcel, Restaurant Parcel and Campground Parcel, respectively.

E. In order to pay for certain costs associated with the design, development and construction of the Project, Developer has requested additional public incentive financing from the City. Specifically, Developer has requested that the City create a community improvement district (“CID”) to be imposed on the Site Parcels in order to pay for certain costs incurred in connection with the Project.

F. The City has the authority to create a CID pursuant to K.S.A. 12-6a26 *et seq.*, as amended from time to time (the “CID Act”) for the purpose of financing certain economic development-related projects. Under the CID Act, the owners of the land within the boundaries of a proposed CID may petition the City to request the creation of a CID and to impose special assessments and/or CID sales taxes (“CID Sales Tax”) to pay for or reimburse the costs of a portion of a CID project.

G. The City, as the current owner of the Campground Parcel and a portion of the Hotel Parcel, and Boot Hill Museum, Inc., as the current owner of the Restaurant Parcel, intend to submit a proper petition (the “CID Petition”) to the City requesting the formation of a CID with geographic boundaries including all of the Site Parcels (the “CID District”). A copy of the CID Petition is attached hereto as **Exhibit 1**. A legal description of the boundaries of the CID District is hereby set forth on **Exhibit 2** attached hereto and a map generally showing the boundaries of the CID District is attached hereto as **Exhibit 3**.

H. The City intends to submit an ordinance for the creation of the CID District (the “CID Ordinance”) pursuant to the CID Act. As contemplated in the CID Petition, the CID Ordinance shall call for the imposition of a CID Sales Tax of 1%, within the CID District, to be used to pay for and/or reimburse certain CID Costs (as defined in Section 11.1 of the new Article XI set forth in Section 4 below). The CID Ordinance shall specify that the CID Sales Tax is to commence on [April 1, 2017], or any other effective date that the City may approve by ordinance if a change in the effective date is requested in writing by the owners of no less than 55% of the land and 55% of the assessed value of the land within the CID District. The proposed CID Ordinance is attached hereto as **Exhibit 4**.

I. The parties agree that the development of the Project would not be feasible without the public-private partnership as set forth in this Amendment, and therefore the parties wish to amend the Original Agreement in order to provide the necessary financing for the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Aspen Square Agreement as follows:

1. **Nature of the First Amendment**. In connection with this First Amendment to Assignment, Assumption and Amended and Restated Development Agreement, the parties hereby agree as follows:

(a) **References**. The Original Agreement as modified by this Amendment shall be referred to as the “Agreement.”

(b) **Other Terms**. All other terms and provisions of the Original Agreement not amended hereby, shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the Original Agreement, the terms of this Amendment shall govern and control.

(c) Agreement to Remain in Effect. Subject to Section 1(b) above, the Agreement as herein amended shall be and remain in full force and effect in accordance with the terms thereof. References in the Original Agreement to “the Agreement” or “this Agreement” shall be deemed to mean the Original Agreement as amended by this Amendment.

(d) Severability. It is the intent of the parties that the provisions of this Amendment shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Amendment or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Amendment as modified, enforceable and the balance of this Amendment shall not be affected thereby, the balance being construed as severable and independent.

(e) Capitalized Terms. Capitalized terms used but not defined in this Amendment shall have the respective meanings set forth in the Original Agreement.

(f) Incorporation of Recitals. The parties hereby understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

2. Exhibits. The parties hereby understand and agree that the Exhibits attached hereto are hereby incorporated in this Amendment as though more fully set forth herein.

3. Transfer of the Site Modification. Section 2.2(a) is amended and restated as follows:

The City owns the Campground Parcel and the City has (or will soon obtain) an option to acquire the Hotel Parcel from Gary and Charlotte Chaffin, Tony and Tammy Woydziak, and Ed and Linda Stewart (collectively, the “Pos T Vac Owners”) and the City has (or will soon obtain) an option to acquire the Restaurant Parcel from Boot Hill Museum, Inc. (“Boot Hill”), respectively (collectively, the “Third Party Owners”). At Closing, the City shall convey (or cause the Third Party Owners to convey their respective parcels of) the Site to the Site Parcel Owners designated by Developer, pursuant to special warranty deeds (each, a “Deed”) and subject only to the provisions set forth in Section 2.2 hereof and in the balance of this Agreement and subject to the Permitted Encumbrances. However, the parties hereby further understand and agree that a perpetual, on-going deed restriction in favor of Boot Hill requiring that the exterior structure and façade of the historic Guymon Petro building currently located on the Restaurant Parcel may not be demolished or removed without the express written consent of Boot Hill, or its successors and assigns; provided however, that Boot Hill will expressly agree that (i) Developer may renovate the interiors of the Guymon Petro building without Boot Hill’s consent, (ii) Developer may remove or replace loading docks and other similar exterior ancillary building improvements without Boot Hill’s

consent, and (iii) Developer may demolish the Guymon Petro building without Boot Hill's consent if and to the extent that the same (or portions thereof) are (a) damaged by fire or other casualty, and/or (b) subsequently found to be structurally unsound. Additionally, the Developer shall grant to Boot Hill an on-going right of first offer for a term of the lesser of (x) twenty five (25) years after Developer obtains title to the Restaurant Parcel, or (y) transfer of the Restaurant Parcel to an unrelated, non-Affiliate third party (the "ROFO Period"), if and to the extent that Developer shall desire to sell the Restaurant Parcel and/or the Guymon Petro building during the ROFO Period to an unrelated, non-Affiliate third party, the terms of such right of first offer instrument shall be in accordance with **Exhibit N** attached hereto. In consideration for the Deed(s) and City's obligation to deliver the Site in the condition set forth below, Developer shall pay an amount equal to \$100,000 for the Hotel Parcel, \$0.00 for the Campground Parcel and \$0.00 for the Restaurant Parcel (collectively, the "Purchase Price") at Closing to the City. The City hereby agrees to remove the existing building improvements on the Hotel Parcel down to grade level (but not including any removal of the building foundation and/or floor). Developer hereby agrees to provide the City with a license agreement to enter upon the Hotel Parcel after Closing so that the City can remove such building improvements on the Hotel Parcel within thirty (30) days after the City's acquisition of the Hotel Parcel (subject to day for day extension for Force Majeure), provided the City agrees that none of the costs or expenses for such building improvements removal shall be paid by the Developer (or applicable Site Parcel Owner), but shall be paid by City or through the City's portion of the STAR Bonds. In addition, the City shall grant the Parking Easement Rights and Heritage District Signage Rights to Developer effective upon completion of the Hotel Improvements and Restaurant Improvements. Developer agrees that title to the Hotel Parcel and the Restaurant Parcel may be subject to certain Short Term Leases. For purposes hereof, the term "Short Term Leases" shall be deemed to mean the leases of (x) the Hotel Parcel by the Pos T Vac Owners, and (y) the Restaurant Parcel by Boot Hill, which Short Term Leases shall provide for a term no longer than ninety (90) days after closing on the respective Site Parcels and also provide for liquidated damages if the respective tenants should holdover beyond the stated term of the Short Term Leases. The Short Term Leases shall be subject to the reasonable approval of the Developer. [*Need to see short term leases*]

4. **City Reversionary Interest Modification.** The parties acknowledge and agree that the following provision is hereby deleted from Section 2.2(b) of the Agreement and shall be null and void:

“except for and excluding the Permitted Mortgagee on the Campground Parcel, which Permitted Mortgagee shall not receive any payment from the City in connection with the City's exercise of its Reversionary Interest.”

5. **Removal of Definition of Development Ready.** Section 2.2(c) is deleted in its entirety and shall be null and void. The parties further agree as follows:

(a) The term “Development Ready” shall be removed from Section 3.1(a)(ix) and the penultimate sentence of Section 3.1(a)(ix) shall be deleted in its entirety and replaced with the following: “In the event that Developer shall fail to exercise its right to terminate this Agreement pursuant to this Section 3 before the Closing, Developer shall be deemed to have waived this condition and accepted and acquired the Site “as is, where is,” subject to City’s express obligations to remove the existing building improvements on the Hotel Site as set forth in Section 2.2(a) hereof.”

(b) The term “Development Ready” shall also be removed from the definition of “Performance Extension Events” in the Annex of Definitions and subsection (b) thereof shall be deleted and replaced with the following: “(b) City has not removed the existing building improvements on the Hotel Site Parcel as required by Section 2.2(a) hereof,”

6. **Monument Sign Cost Modification.** Section 2.3(b) is amended to add the following new sentence: “Notwithstanding the above, City and Developer agree the monument sign shall be designed to not exceed \$60,000 and that Developer shall be granted reasonable approval rights with respect to the design of the monument sign. If the cost of the monument sign exceeds \$60,000, the City shall be responsible for any such excess costs.

7. **Parking Improvements Modification.** Section 2.3(d) is hereby amended and restated as follows:

Each Parcel shall include parking improvements (the “Parking Improvements”), which, when added to the applicable Parking Easement Rights, will contain the number of spaces required by the Applicable Laws and Requirements. The costs of the Parking Improvements (x) for the Hotel Parcel, and (y) for the Campground Parcel shall be paid by the Developer, provided, to the extent that the same are eligible, may be paid for with STAR Bond proceeds. The parties hereby agree that Developer shall construct, at Developer’s cost, the on-site Parking Improvements located on the Restaurant Parcel, and that additional parking for the Restaurant Component shall be provided offsite by the City in accordance with the City Parking Agreement that City and Developer shall negotiate as a condition to Closing, as set forth in Section 3.1(a)(xv) below. The parties hereby further agree that the Hotel Component shall be supplemented by cross-parking rights on the Parking Improvements for the Waterpark Parcel in accordance with the Waterpark Cross Easement that City and Developer shall negotiate as a condition to Closing as set forth in Section 3.1(a)(xvi) below.

8. **Section 3.1 Conditions Modification.** The Parties acknowledge and agree that Section 3.1 is hereby amended to reflect the following modifications:

(a) Condition 3.1(a)(i) is amended to replace **Exhibit G** of the Original Agreement with **Exhibit G** attached hereto;

(b) Condition 3.1(a)(vi) is deemed satisfied;

(c) Condition 3.1(a)(xii) is modified to provide that NRA Rebates shall be delayed until the City shall have performed its obligation to remove the existing building improvements from the Hotel Parcel as described in Section 2.2(a) hereof;

(d) Condition 3.1(a)(xx) is added as follows:

“(xx) **CID Creation**. The City (and any required third parties) shall have created the CID District through passage of the CID Ordinance.”

9. **Modification of Section 4.1. Exhibit G** of the Original Agreement is replaced with **Exhibit G (Amended – 2015)** attached hereto.

10. **STAR Bonds Modification**. Section 4.2(a) is hereby amended and restated as follows:

(a) Amount of STAR Bonds. It is contemplated that Qualified Third Parties will purchase no less than \$3,200,000 of STAR Bonds (“Allocated STAR Bonds”) described herein; however, the parties hereby agree that Developer shall be entitled to an amount equal to \$1,770,000 of the net Allocated STAR Bond proceeds for use in funding its Project (the “STAR Bond Proceeds”). In addition to the Allocated STAR Bonds, Developer understands and agrees that Qualified Third Parties shall purchase an additional [\$_____] (or more) of STAR Bonds for other parties in the Heritage Area (the “Other STAR Bonds”). Developer hereby understands and agrees that \$1,430,000 of the proceeds of the Allocated STAR Bonds shall be available to be used by the City for other eligible improvements in the Heritage Area. All disbursements of STAR Bond Proceeds shall be made to pay Project Costs which are (i) eligible for payment or reimbursement pursuant to the STAR Bond Act, and (ii) agreed-upon by the parties and identified on **Exhibit G** attached hereto (the “Eligible STAR Bond Expenses”). The parties hereby understand that references herein to “net” STAR Bond proceeds means the principal amount of the applicable STAR Bonds, less all costs of issuance including any underwriter’s discount, and less any amounts allocated to bond reserves.

11. **Issuance of Obligations Modification**. Section 4.4 is hereby amended and restated as follows:

Issuance of Obligations. It is anticipated that the Allocated STAR Bonds for the Project shall be issued concurrently with the Closing and that the City, in its sole discretion, may authorize the issuance of STAR Bonds as provided for under Applicable Laws and Requirements, including without limitation the STAR Bond Act.

12. **STAR Bond Cap Modification**. Section 4.4(h) is hereby amended and restated as follows:

STAR Bond Cap. Any STAR Bond Proceeds used by Developer for Project Costs shall be in amounts which are less than or equal to \$1,770,000 (the “STAR Bond Cap”)

13. **Outside Date Modification.** The Parties agree to amend the Outside Date specified in Section 5.1 from August 1, 2015 to October 1, 2015.

14. **Hover Pavilion Modification.** The Parties hereby agree to remove the requirements of the Parties set forth in the first two sentences of Section 8.8 relating to the Hoover Pavilion. The remaining provisions of Section 8.8 regarding Waterpark management shall remain in full force and effect.

15. **Additional Remedy.** The parties hereby agree that a new subsection (iv) shall be added to Section 9.2(a) of the Agreement as follows:

“and/or (iv) terminate the CID and Developer’s access to reimbursements from Pay-As-You-Go CID Financing.”

16. **CID Financing.** The parties hereby agree that the Original Agreement shall be amended by adding the following as a new Article XI:

ARTICLE XI
CID FINANCING

11.1 **Source of Funds.** The Project and the Improvements will be funded by Developer’s private equity and debt, funds provided by various third parties and Public Financing. Subject to the terms and conditions of this Article XI, certain of the Improvements shall be eligible to be reimbursed with revenues generated by the CID (the “CID Improvements”), which CID Improvements shall be funded in part by the CID Sales Tax. Without limiting the generality of the foregoing, Developer, using private equity and debt, will initially advance all of the costs for the design, development and construction of the CID Improvements (the “CID Costs”). Developer, subject to the terms and conditions of this Amendment, including the CID Cap set forth in Section 11.4(a) below, shall be reimbursed for the CID Costs from and to the extent of the CID Sales Tax.

11.2 The City hereby agrees that the CID Improvements may be financed and reimbursed pursuant to K.S.A. 12-6a34 with and to the extent of CID Sales Tax revenues received and deposited into the CID Sales Tax Fund (as defined in Section 11.3 below) from time to time on a pay-as-you-go basis, without the sale of bonds or notes (“Pay-As-You-Go CID Financing”). The parties hereby agree that the CID Sales Tax shall initially be imposed on [April 1, 2017] (the “CID Start Date”) in the amount of one percent (1%) on the sale of tangible personal property at retail or rendering or furnishing services which are taxable pursuant to the Kansas Retailers’ Sales Tax Act (K.S.A. 79-3601 *et seq.*) within the CID District. The Developer agrees to provide to the DOR a list of all tenants within the CID District in advance and within the timeframes required by the DOR, so that the DOR can notify tenants within the CID District of the requirement of the tenants to collect a CID Sales Tax beginning on the CID Start Date. At the time the list of tenants is provided to the DOR, the Developer shall also provide a copy

to the City. Notwithstanding the foregoing, the Parties hereby acknowledge that the effective date of the CID Sales Tax may be further delayed to a later date or expedited to an earlier date if either such action is requested in writing at least one hundred eighty (180) days prior to the effective date of the CID Sales Tax by the owners of no less than 55% of the land and 55% of the assessed value of the land within the CID District and approved by the Commission of the City.

11.3 CID Sales Tax Fund. During the existence of the CID, all CID Sales Taxes generated within the District shall be deposited into the CID Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State and this Amendment.

11.4 Pay-As-You-Go CID Financing. The parties hereby agree that the proceeds from the CID Sales Tax shall be disbursed by the City from the CID Sales Tax Fund from time to time on a pay-as-you-go basis, but no more often than on a quarterly basis, to reimburse Developer for CID Eligible Expenses, if and to the extent that (i) there are CID Sales Tax funds in the CID Sales Tax Fund, (ii) Developer has fully satisfied all of the CID Conditions (as defined below), (iii) the term of the CID Collection Period (as defined below) has not yet expired, and (iv) Developer has not already been reimbursed from the CID Sales Tax Fund for CID Eligible Expenses in an amount equal to the CID Cap (as defined below). The parties further agree as follows:

(a) The CID Sales Tax available to Developer for reimbursement of CID Eligible Expenses shall be limited as follows: the amount of CID Eligible Expenses reimbursed to Developer from the CID Sales Tax through Pay-As-You-Go CID Financing shall in no event exceed [\$375,000] (the "CID Cap"). The CID Cap shall, for all purposes set forth herein, operate as a cap on the use of CID Sales Tax for reimbursement of any and all CID Eligible Expenses. Once Developer has received an amount equal to the CID Cap, the parties understand and agree that the CID shall thereafter terminate, and the CID Sales Tax shall terminate and no longer be required or collected within the CID District.

(b) The CID Sales Tax shall be collected within the District for a period that commences on the date that the CID Sales Tax is first imposed up to and concluding upon that date which is the earlier of the following: (i) the date that Developer has been reimbursed for all CID Eligible Expenses by Pay-As-You-Go CID Financing, or (ii) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty two (22) years from the date that the CID Sales Tax is first imposed (the "CID Collection Period"). At the end of the CID Collection Period, the parties understand and agree that the CID shall thereafter terminate, and the CID Sales Tax shall terminate and no longer be required or collected within the District.

(c) Developer shall not receive any reimbursements from Pay-As-You-Go CID Financing unless and until the conditions precedent set forth in Section 11.5 have been fully satisfied as determined by City in its sole reasonable discretion.

11.5 Conditions Precedent to CID Reimbursements. Developer hereby understands and agrees that it shall not receive any reimbursements for CID Eligible

Expenses from Pay-As-You-Go CID Financing unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its sole reasonable discretion:

(a) In accordance with the same process used for Eligible STAR Bond Expenses under Section 4.3 of the Agreement, the City has approved Certificates of Expenditure for the CID Eligible Expenses; and

(b) Developer shall be in full compliance with the terms and conditions of the Agreement and shall not be in default hereunder, nor shall there be conditions, actions or omissions of Developer which will, with the passage of time, become occurrences of default hereunder; and

(c) Developer shall have Substantially Completed the applicable Project Component for which CID Eligible Expense reimbursement is being sought.

11.6 **Payment of CID Administrative Fee.** As and when there are sufficient CID Sales Tax revenues from the CID District to pay the CID Administrative Fee, Developer hereby understands and agrees that such CID Administrative Fee shall first be paid to the City prior to the payment of CID Eligible Expenses from the CID Sales Tax Fund from Pay-As-You-Go CID Financing. For purposes hereof, the term “CID Administrative Fee” shall be deemed to mean an amount equal to two percent (2%) of the CID Sales Tax revenues deposited in the CID Sales Tax Fund during each year of the Term.

17. **Modifications to Form of Guaranty.** Section 5.4(c) of the form of Guaranty that is attached to the Original Agreement shall be deleted in its entirety and replaced with the following:

“(c) six (6) years from the date of Closing.”

18. **Provisions that Survive Term.** Notwithstanding anything set forth in Section 7.1 of the Agreement to the contrary, the parties hereby agree that the following provisions shall survive the Term of the Agreement and shall remain in full force and effect until the last day of the CID Collection Period: Section 7.4 (Maintenance and Use), Section 7.5 (Compliance), Section 7.6 (Payment of Taxes and Other Charges), Section 7.10 (Insurance), Section 8.5 (Sales Tax Information), Article XI (CID Financing) and Article IX (Default and Remedies, but only to the extent that the same pertains to the surviving provisions expressly set forth herein).

19. **New and Modified Definitions.** The parties hereby understand and agree that as a result of Amendment, certain defined terms in the Agreement need to be modified and new defined terms must be added to the Annex of Definitions attached thereto. Accordingly the parties agree that the defined terms set forth on **Exhibit 5** attached hereto shall be incorporated into the Annex of Definitions.

20. **Miscellaneous.** In connection with this Amendment, the parties hereby agree as follows:

(a) In any subsequent court action in which the validity or the effect of this Amendment is at issue, the party prevailing in such action shall be entitled to its costs, expenses and reasonable attorney's fees in prosecuting or defending such action.

(b) The parties hereto declare and represent that no promises, inducements or agreements not herein expressed have been made, that this Amendment contains the entire agreement between the parties hereto, and that the terms hereof are contractual and not mere recitals.

(c) This Amendment shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns.

(d) All remedies at law or in equity shall be made available for the enforcement of this Amendment.

(e) This Amendment may be executed in counterparts.

(f) This Amendment shall be construed in accordance with the laws of the State of Kansas.

[No further text on this page]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

THE CITY:

THE CITY OF DODGE CITY, KANSAS

By: _____
Mayor

DEVELOPER:

LEISURE DEVELOPMENT, L.L.C.

By: _____
Name: _____
Title: _____

EXHIBITS

- Exhibit 1: CID Petition
- Exhibit 2: CID District – Legal Description
- Exhibit 3: CID District – Boundary Map
- Exhibit 4: CID Ordinance
- Exhibit 5: Amendments/Additions to Annex of Definitions
- Exhibit G: Project Budget (Amended – 2015)

EXHIBIT 5

Amendments/Additions to Annex of Definitions

“Amendment” means the First Amendment to the Leisure Development, LLC Development Agreement.

“CID” means a community improvement district pursuant to the CID Act.

“CID Act” means K.S.A. 12-6a26 through 12-6a36 and all additions and amendments thereto.

“CID Administrative Fee” means an amount equal to two percent (2%) of the CID Sales Tax revenues deposited in the CID Sales Tax Fund during each year of the Term.

“CID Cap” means the limitation on the amount of CID Sales Tax available to Developer for reimbursement of CID Eligible Expenses as set forth in Section 11.4(a) of the Agreement, as modified by the Amendment. The CID Cap is [\$375,000].

“CID Collection Period” means that period that commences on the date that the CID Sales Tax is first imposed up to and concluding upon that date which is the earlier of the following: (a) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go CID Financing, or (b) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty two (22) years from the date that the CID Sales Tax is first imposed as set forth in Section 11.4(b) of the Amendment.

“CID Costs” means the costs for the design, development and construction of the CID Improvements, as set forth in Section 11.1 of the Agreement, as modified by the Amendment.

“CID District” means the community improvement district generally described in Recital I of Amendment and the legal description of which is more particularly set out in **Exhibit 2** attached hereto and depicted in the map attached as **Exhibit 3** hereto.

“CID Eligible Expenses” means expenses related to the CID Improvements to the extent such expenses are “costs” or a “project” as defined in the CID Act.

“CID Improvements” means that portion of the Project, the costs of which are Eligible Expenses and reimbursable with Pay-As-You-Go CID Financing hereunder, subject to the CID Cap.

“CID Ordinance” means the ordinance adopted by the City as referenced in Recital J of Amendment and attached hereto as **Exhibit 4**.

“CID Petition” means that certain petition to be submitted by the City, a copy of which is attached hereto as **Exhibit 1**.

“CID Sales Tax” means the tax authorized by K.S.A. 12-6a31 and amendments thereto, and as more particularly described in Section 11.1 of the Agreement, as modified by the Amendment.

“CID Sales Tax Fund” means the separate fund established by the City for deposit of the CID Sales Tax received from the State collected within the CID District, and that is used to finance the CID Improvements pursuant to the CID Act, as set forth in Section 11.3 of the Agreement, as modified by the Amendment.

“Eligible Expenses” shall be amended to mean expenses related to the CID Improvements to the extent such expenses are “costs” or a “project” as defined in the CID Act.

“Pay-As-You-Go CID Financing” means a method of financing pursuant to K.S.A. 12-6a34, in which the costs of the CID Improvements are financed without notes or bonds, and the costs are reimbursed as CID Sales Tax is deposited in the CID Sales Tax Fund as set forth in Section 11.2 of the Agreement, as modified by the Amendment.

Exhibit G:

Project Budget (Amended – 2015)

DODGE CITY
STAR BOND DISTRICT

HERITAGE AREA
TOTAL INVESTMENT SUMMARY

8/31/2015

SUMMARY:	HERITAGE STAR BOND Investment	NON- STAR BOND Investment	TOTAL Investment
Project Descriptions:			
Developer Uses: Leisure Hotel			
Holiday Inn Express	\$ 769,999	\$ 10,042,057	\$ 10,812,056
Guymon Petro - Restaurant	\$ 196,613	\$ 2,591,942	\$ 2,788,555
Campground	\$ 803,389	\$ 2,140,266	\$ 2,943,654
Sub-Total - Leisure	\$ 1,770,000	\$ 14,774,265	\$ 16,544,265
Developer Uses: Lewis Ford			
Site Improvements / Upgrades	\$ 750,000	\$ 1,745,737	\$ 2,495,737
City Uses: Heritage Project Plan			
Land Acquisition - Guymon, Pos-T-Vac, Coke, Vacant Lots	\$ 1,705,000	\$ 160,000	\$ 1,865,000
Offsite Construction - District Roads & Utility Infrastructure	\$ 1,274,000	\$ 1,318,000	\$ 2,592,000
Onsite - District Amenities - Signage, Detention, Relo, Lndscp	\$ 1,792,000	\$ 800,000	\$ 2,592,000
Boot Hill	\$ 3,125,000	\$ 500,000	\$ 3,625,000
Professional Services & Contingency	\$ 1,124,220	\$ -	\$ 1,124,220
Contingency	\$ 525,000	\$ -	\$ 525,000
Sub-Total - City	\$ 9,545,220	\$ 2,778,000	\$ 12,323,220
Other City District Investments			
Regional Aquatics Facility	\$ -	\$ 12,300,000	\$ 12,300,000
Sante Fe Depot Restoration/Rennoation	\$ -	\$ 599,352	\$ 599,352
Trail Street Reconstruction	\$ -	\$ 1,680,047	\$ 1,680,047
Boot Hill Distillery	\$ -	\$ 775,000	\$ 775,000
Depot Build Out	\$ -	\$ 500,000	\$ 500,000
TOTAL USES:	\$ 12,065,220	\$ 35,152,400	\$ 47,217,620
	25.55%	74.45%	
*CID Sales Tax Proceeds: (to be used for Non-STAR Bond Investment Costs)		\$ 375,000	



Parks and Recreation

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: Cherise Tieben, City Manager
City Commissioners
From: Paul Lewis, Parks & Recreation Director 
Date: September 3, 2015
Subject: Building Relocation Plans
Agenda Item: New Business

RECOMMENDATION: Staff recommends approval of the proposed Building Relocation plan and authorizing staff to develop the necessary bids and agreements to implement the program for Commission approval.

BACKGROUND: Over the last several months plans have been developed for the relocation of several metal buildings that available as a result of the development of the Long Branch Lagoon water park and the Heritage District STAR bonds development. With the acquisition of the Pos-T-Vac and Chaffin warehouse along with the relocation of the park shop, the City will have six pre-engineered metal buildings that can be re-erected and fulfill a variety of needs.

Based on planning efforts with affected parties, the attached relocation plan is recommended. This plan provides the following:

- Relocation of Park Services and storage to the All-4-Fun property;
- Required storage space for Boot Hill Museum required as part of the transfer of the Guymon Petro building;
- Provides for the future development of expanded recycling services at the All-4-Fun site;
- Relocates Gymnastics, Cheer and Dance programs to the St. Mary Campus;
- Development of a fuel farm for all City departments and vehicles;
- Provides vehicle storage space for the Public Transit program;
- Provides operational and storage space for the Wright Park Zoo;
- Additional cold storage area for United Wireless Arena

JUSTIFICATION: This relocation plan is necessary due to the implantation of the Heritage STAR Bonds program and development of Long Branch Lagoon Water Park. It addresses some immediate storage and operational issues and begins an effort to enhance CREW recycling capacity with future space allocation.

FINANCIAL CONSIDERATIONS: Funding for this plan comes from a variety of sources. As outlined in the attached plan sheet, funds are available from the Capital Improvement Fund, the Special Parks fund, the Depreciation Fund from the Why Not Dodge Sales Tax, and from the STAR Bond project fund. Bids were previously approved by the Commission for some of the relocation costs. Those costs will require some modification as construction locations are being revised. Additional components such as the fuel farm and the sheds for bus storage and the zoo storage will be secured according to City policy.

PURPOSE/MISSION: This project meets the City's core value of Ongoing Improvement by enabling the Heritage STAR Bond effort and providing for present and future needs of several community functions.

LEGAL CONSIDERATIONS: N/A

ATTACHMENTS: Building Relocation Plan
