

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

Monday, March 7, 2016

12:30 p.m.

MEETING #5031

## **CALL TO ORDER**

## **ROLL CALL**

## **INVOCATION BY**

## **PLEDGE OF ALLEGIANCE**

## **PETITIONS & PROCLAMATIONS**

Problem Gambling Awareness Month 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).

## **CONSENT CALENDAR**

1. Approval of City Commission Work Session Minutes, February 15, 2016;
2. Approval of City Commission Meeting Minutes, February 15, 2016;
3. Appropriation Ordinance No. 5, March 7, 2016;
4. Cereal Malt Beverage License:
  - (a) Kwik Shop 703, 1811 Central Avenue,
  - (b) Kwik Shop 762, 1500 W. Wyatt Earp Blvd.,
5. Approval of SMH Consultants Engineering Services for Heritage District Public Parking, Landscaping and Signage Improvements;
6. Approval of Concession Facilities Agreement;
7. Approval of Building Solutions Invoice for Improvements to City Right-of-Way;

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3625:** An Ordinance Authorizing and Providing for the Issuance of Sales Tax Refunding Revenue Bonds. Series 2016, of the City of Dodge City, Kansas, for the Purpose of Providing Funds to Refund a Portion of the City's Outstanding Sales Tax Revenue Bonds;

Making Certain Covenants and Agreements to Provide for the Payment and Security Thereof; and Authorizing Certain Other Documents and Actions in Connection Therewith.

**Resolution No. 2016-05:** A Resolution Prescribing the Form and Details of and Authorizing and Directing the Sales and Delivery of Sales Tax Refunding Revenue Bonds, Series 2016, of the City of Dodge City, Kansas, Previously Authorized by Ordinance No. 3625 of the City; Making Certain Covenants and Agreements to Provide for the Payment and Security Thereof; and Authorizing Certain Other Documents and Actions Connected Within.

### **NEW BUSINESS**

1. Approval of Reallocation of Bond Funds for Comanche Street Extension Project to Sixth Avenue Extension Street Project. Report by Director of Engineering Services, Ray Slattery.
2. Approval of Change Order #OCO025: 4<sup>th</sup> Avenue Table Top Intersection. Report by Director of Engineering Services, Ray Slattery.

### **UNFINISHED BUSINESS**

### **OTHER BUSINESS**

### **ADJOURNMENT**

**PROCLAMATION**

**WHEREAS**, the National Council on Problem Gambling and the Southwest Kansas Problem Gambling Task Force has designated March 2016 as Problem Gambling Awareness Month; and

**WHEREAS**, problem gambling is a public health issue affecting millions of Americans of all ages, races, and ethnic backgrounds; and

**WHEREAS**, problem gambling has a significant societal and economic cost for individuals, families, businesses and communities; and

**WHEREAS**, problem gambling is treatable and treatment is effective in minimizing this harm to both individuals and society as a whole; and

**WHEREAS**, numerous individuals, professionals and organizations have dedicated their efforts to the education of the public about problem gambling and the availability and effectiveness of treatment; and

**WHEREAS**, the National Council on Problem Gambling and the Southwest Kansas Problem Gambling Task Force invite all residents of Dodge City and Southwest Kansas to participate in Problem Gambling Awareness Month.

**NOW, THEREFORE**, by virtue of the authority vested in me as the Mayor of the City of Dodge City, do hereby proclaim the month of March 2016 as

**Problem Gambling Awareness Month**

in Dodge City and encourage all citizens to support the National Council on Problem Gambling and Southwest Kansas Problem Gambling Task Force in their efforts to have the conversation with friends, family, patients and clients about gambling addiction.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Dodge City to be affixed, this 8th day of March, 2016.

\_\_\_\_\_  
Joyce Warshaw, Mayor

\_\_\_\_\_  
Nannette Pogue, City Clerk



# **CITY COMMISSION WORK SESSION MINUTES**

City Hall Commission Chambers

Monday, February 15, 2016

5:30 p.m.

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

## **WORK SESSION**

1. Discussion of Tax Lid – Information regarding the Property Tax Lid that was enacted by the Kansas Legislatures during the 2015 session was presented by Ernestor DeLaRosa, Assistant to the City Manager.
2. 2016 Street Program – The 2016 Street Program was presented by Ray Slattery and Tanner Rutchman

## **ADJOURNMENT**

Commissioner Brian Delzeit moved to adjourn the work session. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Nannette Pogue, City Clerk

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

Monday, February 15, 2016

7:00 p.m.

MEETING #5030

## **CALL TO ORDER**

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

**PLEDGE OF ALLEGIANCE** – The Boy Scouts presented the colors.

## **PETITIONS & PROCLAMATIONS**

Mayor Joyce Warshaw proclaimed February, 2016, as Girl Scout Cookie Month and encouraged all citizens to support the Annual Girl Scout Cookie Sales which begins February 13 and ends March 20.

Mayor Joyce Warshaw proclaimed February 15-22, 2016, as Scouting Anniversary Week and urged citizens to express appreciation to the community organizations that sponsor scouting and to the volunteers who serve with the partner organizations and to the youth in the Santa Fe Trail Council of the Boy Scouts of America. Mayor Joyce Warshaw presented each Boy Scout with a City pin.

**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).**

## **CONSENT CALENDAR**

1. Approval of City Commission Work Session Minutes, February 1, 2016;
2. Approval of City Commission Meeting Minutes, February 1, 2016;
3. Approval of Joint City County Commission Meeting Minutes, February 8, 2016;
4. Appropriation Ordinance No. 4, February 15, 2016;
5. Cereal Malt Beverage License:
  - (a) El Mariachis Taqueria, 307 Military Avenue.

Commissioner Brian Delzeit moved to approve the Consent Calendar as presented; Commissioner Rick Sowers seconded the motion. The motion carried unanimously.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3624:** An Ordinance Amending and Adopting Revisions to Chapter IV, Building and Construction, of the Dodge City Code; and Amending Ordinance No. 3435 of the City of

Dodge City; Adding Section 4-406 Irrigation Installation Requirements was approved on a motion by Commissioner Jan Scoggins. The motion was seconded by Commissioner Kent Smoll. The motion carried unanimously.

**Resolution No. 2016-04:** A Resolution Amending Appendix A of the Dodge City Municipal Code Revising Fees and Rates for Mariah Hills Golf Course was approved on a motion by Commissioner Jan Scoggins. The motion was seconded by Commissioner Kent Smoll. The motion carried unanimously.

## **NEW BUSINESS**

Commissioner Rick Sowers moved to approve a Contract with StanGuard for Management of the Long Branch Lagoon Water Park Operation and Authorized the Mayor to Execute a Signed Copy Provided by StanGuard. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

## **OTHER BUSINESS**

City Manager, Cherise Tieben

- Several reminders for the Commission:
- February 29 at 8:00 a.m. – Special City Commission meeting in the Gunsmoke Conference Room;
- March 2 at 2:00 p.m. – Ground breaking for Leisure Development at the site of the new motel in the Heritage District;
- March 3 from 4:30 – 6:00 p.m. a Volunteer Reception at the Depot;
- March 7 – Dodge City Night in Topeka at 5:30 p.m.;
- March 12 – Chamber of Commerce Banquet at 6:00 p.m.;
- March 19 – Legislative Coffee;
- April 4 – Super Joint meeting with the City, County, School District and DCCC regarding the housing program. The meeting will be held at 5:30 p.m., tentatively at the Learning Center;
- Several of the Commissioners were emailed regarding possibly attending the Great Graduations;
- Asked the Commissioners how they were accessing their agendas. Most were accessing the pdf sent out by Connie

Commissioner Jan Scoggins

- Thanks Officer Harris for teaching everyone how to dance at the Night to Shine. This was an outstanding event held at the Church of the Nazarene.

Commissioner, Kent Smoll

- Several great entertainment opportunities will be coming to the United Wireless Arena – Monster Trucks on February 20, Jeff Foxworthy and Larry the Cable Guy on February 28, and Rascal Flatts on March 17. Great entertainment in Southwest Kansas.

Commissioner Rick Sowers

Commissioner, Brian Delzeit

Mayor Joyce Warshaw

- Dodge City continues to be a great place to work and play.

**ADJOURNMENT**

Commissioner Rick Sowers moved to adjourn the meeting; Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Nannette Pogue, City Clerk

# 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

<b>SECTION 1 – LICENSE TYPE</b>	
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.	

<b>SECTION 2 – APPLICANT INFORMATION</b>			
Kansas Sales Tax Registration Number (required): 00486112339F01			
Name of Corporation Kwik Shop, Inc.		Principal Place of Business	
Corporation Street Address 734 Eat 4th		Corporation City Hutchinson	State KS Zip Code 67501
Date of Incorporation 04/01/1960	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

<b>SECTION 3 – LICENSED PREMISE</b>			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Kwik Shop 703		Name Kroger-RASC-Business License	
Business Location Address 1500 W Wyatt Earp		Address 2620 Elm Hill Pike, P.O. Box 305103	
City Dodge City, KS 67801	State	City Nashville	State TN Zip 37230-5103
Business Phone No. 620-669-8504	<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) Dillon Real Estate-Hutchinson, KS			

<b>SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK</b>			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name KROGER COPORATION		Position	Date of Birth
Residence Street Address 1014 VINE STREET		City CINCINNATI	State OH Zip Code 45207
Spouse Name		Position	Date of Birth
Residence Street Address		City	State Zip Code
Name		Position	Date of Birth
Residence Street Address		City	State Zip Code
Spouse Name		Position	Age
Residence Street Address		City	State Zip Code
Name		Position	Date of Birth
Residence Street Address		City	State Zip Code
Spouse Name		Position	Age
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

<b>SECTION 1 – LICENSE TYPE</b>	
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.	

<b>SECTION 2 – APPLICANT INFORMATION</b>			
Kansas Sales Tax Registration Number (required): 00486112339F01			
Name of Corporation Kwik Shop, Inc.		Principal Place of Business	
Corporation Street Address 734 Eat 4th		Corporation City Hutchinson	State KS Zip Code 67501
Date of Incorporation 04/01/1960	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

<b>SECTION 3 – LICENSED PREMISE</b>			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (if different from business address)	
DBA Name Kwik Shop # 762		Name Kroger-RASC-Business License	
Business Location Address 1811 CENTRAL		Address 2620 Elm Hill Pike, P.O. Box 305103	
City Dodge City, KS 67801	State KS	City Nashville	State TN Zip 37230-5103
Business Phone No. 620-227-8871		<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) Dillon Real Estate-Hutchinson, KS			

<b>SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK</b>			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name KROGER COPORATION	Position	Date of Birth	
Residence Street Address 1014 VINE STREET	City CINCINNATI	State OH	Zip Code 45207
Spouse Name	Position	Date of Birth	
Residence Street Address	City	State	Zip Code
Name	Position	Date of Birth	
Residence Street Address	City	State	Zip Code
Spouse Name	Position	Age	
Residence Street Address	City	State	Zip Code
Name	Position	Date of Birth	
Residence Street Address	City	State	Zip Code
Spouse Name	Position	Age	
Residence Street Address	City	State	Zip Code



# 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: March 3, 2016

Cc: Ray Slattery, Director Engineering Services

Subject: Heritage District Engineering

Agenda Item: Consent Calendar

---

**RECOMMENDATION:** Staff recommends approving the contract with SMH Consultants to provide engineering services for Heritage District improvements and authorizing the Mayor to execute the agreement.

**BACKGROUND:** Recently staff presented a recommendation to the Commission to approve SMH Consultants for engineering services for the Heritage District STAR bonds project. That recommendation was accepted and staff was directed to negotiate a scope of services and the contract document. Based on those efforts, staff is recommending the attached contract be approved and the Mayor to execute the agreement.

**JUSTIFICATION:** SMH has already been heavily involved in many of the initiatives that are underway in the Heritage area. They were selected by Water's Edge to provide landscape and civil work for the Long Branch Lagoon water park project. SMH was also involved in the early work associated with the STAR bonds project providing survey data, legal descriptions and other information necessary for the Heritage STAR bond project approval. That previous work gives them a strong awareness of the overall plans and positions them to move forward in a timely fashion.

**FINANCIAL CONSIDERATIONS:** SMH's initial fee proposal for this project was \$28,317. Through the scoping definition, additional components were added including design of the Fourth Ave. /Wyatt Earp intersection improvements, parking lot lighting, and additional survey work. With those additions, the cost with this contract is now \$46,102. That amount is still approximately half of other proposals that were received

**PURPOSE/MISSION:** This project fits the City's core value of Ongoing Improvement and our efforts to make Dodge City the best place to live.

**LEGAL CONSIDERATIONS:** N/A

**ATTACHMENTS:** Heritage District Engineering Contract

**CONSULTING SERVICES AGREEMENT**

Client: <u>City of Dodge City</u>	Project: <u>Heritage District Parking, Landscaping and Signage</u>
Address: <u>806 N. Second Avenue Dodge City, KS 67801</u>	Project Location: <u>Dodge City</u>
Telephone: <u>620-225-8100</u>	SMH Project Manager: <u>Kurth Lancaster, PLA</u>
Contact: <u>Paul Lewis, DPR</u>	SMH Job No.: <u>1512DG4050</u>
Client Job No.: _____	

This AGREEMENT is made by and between **The City of Dodge City, Kansas**, hereinafter referred to as "CLIENT", and SMH Consultants, P.A., hereinafter referred to as "CONSULTANT", for professional consulting services not presently specified under any other agreement between CLIENT and CONSULTANT. CONSULTANT agrees to provide client with requested consulting services more specifically described as follows, hereinafter referred to as the "PROJECT." The PROJECT is commonly known as:

*The Heritage District Public Parking, Landscaping, and Signage Improvements*

The following Attachments are hereby incorporated into and made a part of this AGREEMENT:

- GENERAL CONDITIONS
- Attachment A: Scope of Services
- Attachment B: Personnel and Reimbursable Rates
- Attachment C: Not-to-Exceed Hourly Fee Estimate
- Other: Work Completion Schedule

---

By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay consultant for services described herein upon receipt of invoice by CLIENT.

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
  - THE HOURLY ESTIMATED NOT-TO-EXCEED TOTAL COST OF CONSULTANT'S SERVICES IS \$46,102.00
- 

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT.

CLIENT

CONSULTANT

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

PLEASE SIGN AND RETURN ONE COPY TO SMH CONSULTANTS, P.A.



## **GENERAL CONDITIONS**

### **SECTION I – Services by CONSULTANT**

#### **1.1 Scope of Services**

CONSULTANT shall provide the certain services under this AGREEMENT as such services are described in ATTACHMENT A. The intent of the Scope of Work and the estimate contained in ATTACHMENT A is to identify the services to be provided by CONSULTANT. However, it is specifically understood that by written notice to and with the consent and agreement of CONSULTANT, CLIENT may increase the Scope of Work. These services may include the use of outside services, outside testing laboratories and special equipment.

#### **1.2 Fees**

The Fee Estimate for the above-described services is attached hereto and made a part of this AGREEMENT as ATTACHMENT C. It is mutually understood that the Fee Estimate set forth in ATTACHMENT C is non-binding.

### **SECTION II – Payment to CONSULTANT**

#### **2.1 Payment for Personnel Services**

##### **2.1.1 Payment**

Payment for the services rendered by CONSULTANT's personnel shall be based on the hours of chargeable time and in accordance with CONSULTANT's Personnel and Reimbursable Rates, which is identified, attached hereto, and made a part of this AGREEMENT as ATTACHMENT B.

##### **2.1.2 Chargeable Time**

Chargeable time for CONSULTANT's personnel is that portion of their time devoted to providing services requested by CLIENT. Chargeable time for field personnel located away from CONSULTANT's office for more than one (1) week is a minimum of eight (8) hours per day and five (5) days per calendar week, except for federally declared legal holidays or during an employee's sick leave or vacation time. Travel time from CONSULTANT's office to an assigned work site and return to CONSULTANT's office is chargeable time; or, if more economical for CLIENT, CONSULTANT may lodge its personnel overnight near the PROJECT site in lieu of travelling back to CONSULTANT's office at the end of each day.

##### **2.1.3 Overtime Rates**

The basis for payment to CONSULTANT for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly overtime rate as specified in ATTACHMENT B.

#### **2.2 Payment for Direct Expenses**

##### **2.2.1 Payment**

For expenses incurred directly by CONSULTANT, payment to CONSULTANT by the CLIENT shall be in the form of a reimbursement by the CLIENT for such expenses.

##### **2.2.1 Direct Expenses**

For the purposes of this AGREEMENT, expenses to be contracted and managed by CONSULTANT and payable by CLIENT to CONSULTANT shall include, but shall not be limited to: outside services, including, but not limited to, both the services and reimbursable expenses for firms other than CONSULTANT which are necessary, in CONSULTANT's sole discretion, for the work the CONSULTANT is directed to perform; laboratory tests and related reports necessary for the work the CONSULTANT is directed to perform, either by the CONSULTANT or by an outside service for the CONSULTANT; special equipment expenses, including, but not limited to, the costs of the CONSULTANT locating, acquiring, leasing or renting any equipment and/or facilities not currently owned, leased or rented by CONSULTANT at the time of the request for services which are necessary to enable the CONSULTANT to provide the services requested; vehicles furnished by CONSULTANT for CONSULTANT's authorized travels and for CONSULTANT's field personnel; and per diem expense of actual costs of maintaining CONSULTANT's field personnel on or near the PROJECT site, for each day of field assignment away from CONSULTANT's office.

### **2.3 Payment Conditions**

**2.3.1** CONSULTANT shall submit monthly invoices for all personnel services and expenses under this AGREEMENT and a final invoice upon completion of services.

**2.3.2** Invoices are due and payable upon receipt by CLIENT. Interest at a rate of one and one-half percent (1.5%) per month or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after the date of invoice. Payment will first be credited to interest and then to principal.

**2.3.3** In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the CLIENT will pay the undisputed portion.

**2.3.4** If CLIENT fails to make payment in full to CONSULTANT within sixty (60) days after the date of the disputed invoice, CONSULTANT may, after giving seven (7) days written notice to CLIENT, suspend services under this AGREEMENT until paid in full, including any and all applicable interest. CONSULTANT shall have no liability of any kind to CLIENT for delays or damages caused by such suspension of services. CLIENT agrees to pay all costs of collection, including reasonable attorneys' fees, incurred by CONSULTANT as a result of CLIENT's failure to make payments in accordance with this AGREEMENT.

**2.3.5** The billing rates specified in ATTACHMENT B for subsequent years may be adjusted annually in accordance with CONSULTANT's costs of doing business, and such adjustments shall be binding on CLIENT.

### **2.4 Independent Contractor**

**2.4.1** The parties acknowledge and agree that CONSULTANT will be providing services to CLIENT hereunder as an independent contractor and not as an employee. Accordingly, CLIENT shall have no responsibility for the collection or payment of any federal, state or local payroll tax in connection with any fees paid to CONSULTANT pursuant to this AGREEMENT, including, but not limited to, income taxes, Social Security taxes, unemployment compensation taxes, and any other fees, charges or licenses required by law.

**2.4.2** Because CONSULTANT is engaged in its own independent business, neither it nor its employees are eligible for, nor entitled to, and shall not participate in, any of CLIENT's pension, health or other fringe benefit plans, if any such plans exist. Such participation in these fringe benefit plans is limited solely to CLIENT's employees.

**2.4.3** Because CONSULTANT is engaged in its own independent business and is not an employee of CLIENT, CLIENT will not obtain workers' compensation insurance for CONSULTANT or its employees. The CONSULTANT agrees to obtain any legally required workers' compensation for itself and its employees and to furnish a copy of such certificate of workers' compensation insurance to CLIENT, at CLIENT's request.

## **SECTION III – Terms of AGREEMENT**

### **3.1 Term**

CONSULTANT's obligations to perform under this AGREEMENT shall extend from the date of execution until terminated by either party and/or the completion of the PROJECT, whichever comes first.

### **3.2 Termination of AGREEMENT**

In the event of breach by either party of the terms and conditions of the AGREEMENT and where such breach has not been rectified by the party in default within thirty (30) days of first being notified of such breach, this AGREEMENT may be terminated by the other party in writing. CLIENT may not terminate such AGREEMENT if CONSULTANT has made a good faith attempt to cure such default within the thirty (30) day period.

If, for any reason of force majeure (i.e., causes beyond the control and without the negligence or malfeasance of the party, including but not limited to: war, civil unrest, government action, flood, earthquake, epidemics) either party considers it no longer possible or safe for the CONSULTANT to carry out the duties specified, or should the AGREEMENT be invalidated for any other reason beyond the control of CLIENT or the CONSULTANT, the AGREEMENT may be terminated by either party without liability of any kind, with fifteen (15) day's written notice, provided that CLIENT will reimburse the

CONSULTANT for services already satisfactorily performed and justifiable expenses incurred prior to communication of notice of termination.

### **3.3 Payment for Work Upon Abandonment or AGREEMENT Termination**

If CLIENT terminates this AGREEMENT, CONSULTANT shall be paid on the basis of work completed to the effective date of termination. Payment for the work shall be as established under Section II above.

### **3.4 Damages and Injunctive Relief**

The parties hereto recognize, acknowledge and agree that because of the damages that could be done to CONSULTANT by breach of any covenant contained in this Section 3.4 by CLIENT, CONSULTANT shall be entitled, in addition to any other rights or remedies afforded to CONSULTANT by law or under the terms of this AGREEMENT, to enforce these covenants, and all of their provisions, by injunction, specific performance or other relief in a court of law or equity. In the event of any breach or threatened breach by the CLIENT of the covenants contained in this section, CONSULTANT shall therefore be entitled, in addition to any other rights or remedies afforded by law or under this AGREEMENT, to any injunction restraining or prohibiting CLIENT from doing anything that violates the covenants contained in this AGREEMENT. All remedies set forth above shall be construed to be cumulative and not exclusive of other remedies granted to CONSULTANT herein or by law.

## **SECTION IV – General Considerations**

### **4.1 Assignment and Responsibility for Personnel**

**4.1.1** The assignment of personnel and all phases of the undertaking of the services related to the PROJECT, which CONSULTANT shall provide hereunder, shall be subject to the general oversight and general guidance of CLIENT.

**4.1.2** While upon the premises of CLIENT or property under its control, all employees, agents and subconsultants of CONSULTANT shall be subject to CLIENT's rules and regulations respecting its property and the conduct of its employees thereon, provided such rules and regulations do not interfere with CONSULTANT providing its services to CLIENT.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, CONSULTANT shall be and remain an independent contractor and that the employees, agents or subconsultants of CONSULTANT shall not be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

### **4.2 Insurance**

CONSULTANT shall upon request furnish to CLIENT a certificate of insurance showing amounts and types of insurance carried by CONSULTANT.

### **4.3 Compliance with Law**

**4.3.1** The CONSULTANT shall not discriminate against any independent contractor, employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin.

### **4.4 Ownership and Reuse of Documents**

**4.4.1** All drawings, specifications, test reports and other materials and work products, which have been prepared or furnished by CLIENT prior to the AGREEMENT, shall remain CLIENT's property. CLIENT shall make available to CONSULTANT copies of these materials as is necessary for the CONSULTANT to perform the services requested hereunder.

**4.4.2** All drawing, specifications, test reports and other materials and work products, including computer aided drawings, designs and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect of the PROJECT and CONSULTANT shall retain an ownership and property interest therein whether or not the PROJECT is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the PROJECT by CLIENT and others; however, such documents are not intended or represented to be suitable

for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by CONSULTANT in performing the services herein, and to the condition or availability of the computer data after an accepted period of thirty (30) days from delivery to CLIENT. Any reuse of such material without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses and expenses including, but not limited to, 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 CLIENT and CONSULTANT.

#### **4.5 Location of Underground Utilities**

It shall be the CLIENT's responsibility to locate and physically mark all underground utilities and structures, which lie within the work area prior to the start of subsurface investigations. If the CLIENT elects not to assume this responsibility, CLIENT shall notify CONSULTANT and shall compensate CONSULTANT for all costs associated with locating and physically marking said underground utilities and structures according to CONSULTANT's billing rates for the PROJECT, which shall be over and above the estimated PROJECT fee set forth on ATTACHMENT C hereto. CLIENT shall indemnify and hold CONSULTANT harmless from any damages or delays resulting from unmarked or improperly marked underground utilities and structures. The parties agree and acknowledge that for reasons of safety, CONSULTANT will not begin work until the location of underground utilities has been accomplished.

#### **4.6 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect cost and/or execution of the PROJECT. These conditions and cost/execution effects are not the responsibility of the CONSULTANT. CLIENT shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from such changes or unanticipated underground conditions.

#### **4.7 CONSULTANT's Personnel at PROJECT Site**

**4.7.1** The presence or duties of the CONSULTANT personnel at the PROJECT site, whether as onsite representatives or otherwise, do not make the CONSULTANT or its personnel in any way responsible for those duties that belong to the CLIENT and/or construction contractor(s) or other entities, and do not relieve construction contractor(s) or any other person and/or entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences and procedures necessary for coordinating and completing all portions of the construction work in accordance with the PROJECT documents and any health or safety precautions required by such construction work. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor(s) or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

**4.7.2** The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed work will conform generally to the PROJECT documents and that the integrity of the design concept as reflected in the PROJECT documents has been implemented and preserved by the contractor(s). CONSULTANT neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s) failure to perform their work in accordance with the PROJECT documents. Contractor(s) shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from changes or unanticipated underground conditions.

#### **4.8 Opinions of Cost, Financial Considerations and Schedules**

In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for the PROJECT, the CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by other, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions. CONSULTANT's opinion of probable total PROJECT costs and construction costs provided for as set forth on ATTACHMENT C hereto are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgments and experience. CONSULTANT makes no warranty that the CLIENT's actual costs will not vary from the CONSULTANT's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of the cost, feasibility or schedule of the PROJECT, CLIENT should employ an independent cost estimator, contractor, or other appropriate advisor at CLIENT's sole expense.

#### **4.9 Disposition of Samples and Equipment**

**4.9.1** No samples and/or materials will be kept by CONSULTANT longer than thirty (30) days after submission of the final report unless agreed otherwise by CLIENT and CONSULTANT in writing.

**4.9.2** In the event that samples and/or materials contain, or are suspected to contain, substances or constituents that are hazardous or detrimental to health, safety, or the environment as defined by relevant federal, state, or local statutes, regulations or ordinances, CONSULTANT will, after completion of testing, return such samples and materials to CLIENT, or have the samples and materials disposed of in accordance with CLIENT's directions and all applicable laws. CLIENT recognizes and agrees that CONSULTANT at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**4.9.3** All laboratory and field equipment contaminated in CONSULTANT's performance of services will be cleaned at CLIENT's expense. Contaminated consumables will be disposed of and replaced at CLIENT's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of CLIENT. At CLIENT's expense, such equipment shall be delivered to CLIENT, or disposed of in the same manner as specified in paragraph 4.9.2 above. CLIENT agrees to pay CONSULTANT the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to CLIENT pursuant to this AGREEMENT.

#### **4.10 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.10.1** If CONSULTANT, while performing services for CLIENT pursuant to this AGREEMENT, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule and the estimated cost of CONSULTANT's services will be reconsidered and that this AGREEMENT shall immediately become subject to renegotiation or termination.

**4.10.2** In the event that the AGREEMENT is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that CONSULTANT shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this AGREEMENT, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.10.3** CLIENT also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for CONSULTANT to take immediate measures to protect the health and safety of CONSULTANT's employees and the public. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated pollutants and/or hazardous substances are suspected or encountered. CLIENT hereby authorizes CONSULTANT to take measures that in CONSULTANT's sole discretion are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of taking such additional precautionary measures to protect CONSULTANT's employees' and the public's health and safety. Notwithstanding the foregoing, this paragraph 4.10.3 is not intended to impose upon CONSULTANT any additional duties or obligations.

## **SECTION V – Professional Responsibility**

### **5.1 Performance of Services**

CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by the members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee regarding the performance of the services in this AGREEMENT is included or intended in this AGREEMENT, or may be implied in any report, opinion, or other document prepared by CONSULTANT.

### **5.2 No Special or Consequential Damages**

CLIENT and CONSULTANT agree that to the fullest extent permitted by law, CONSULTANT will not be liable to CLIENT for any special, indirect, or consequential damages whatsoever, whether caused by CONSULTANT's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or any other cause or causes.

### **5.3 Indemnification**

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify and hold CONSULTANT, its agents, subconsultants, and employees harmless from and against any and all claims, damages, losses and expenses, defense costs including, but not limited to, attorneys' fees, and court arbitration costs and other liabilities arising out of or resulting from, wholly or in part, the performance of CONSULTANT's services on the PROJECT hereunder, including the transport or disposal of hazardous samples or contaminated equipment by CONSULTANT on behalf of CLIENT, or the presence, release, or threatened release of asbestos, hazardous substances, or pollutants on or from the PROJECT property.

### **5.4 Third Party Beneficiaries**

CLIENT and CONSULTANT expressly agree that this AGREEMENT does not confer upon any third party any rights as a beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as a result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it. CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

## **SECTION VI – CONFIDENTIALITY AND NON-DISCLOSURE**

### **6.1 Confidential Information**

"Confidential Information" shall be defined as any and all data and information in any format or form, electronic, written or oral, relating to the business, affairs, personnel and/or operations of the CONSULTANT, which at any time may be communicated or revealed to the CLIENT, either directly or indirectly, including, but not limited to, contracts, reports, memoranda, legal documentation, financial data, present or future business plans or strategies, customer data, technology, design and techniques, personal information, and/or any information related to the negotiations in connection with the PROJECT and/or the underlying reason for entering into the PROJECT.

Confidential Information will not include information which:

- (a) has rightfully been in the possession of the CLIENT prior to the date of disclosure of such information by the CONSULTANT;
- (b) has been in the public domain prior to the date of disclosure of such information by the CONSULTANT;
- (c) later becomes part of the public domain by publication or by other means except by means of an unauthorized act or omission on the part of the CLIENT; or
- (d) is lawfully obtained by the CLIENT from a third party independent of the CONSULTANT who, to the knowledge of the CLIENT, is not under any obligation of confidence to the CONSULTANT.

## **6.2 Relevancy of Confidential Information**

The CLIENT understands that the CONSULTANT has endeavored to include in the Confidential Information those materials which the CONSULTANT believes to be relevant to the PROJECT, but the CLIENT acknowledges that there are no representations or warranties, whether express or implied, as to the accuracy or completeness of the Confidential Information. Nothing herein shall be construed as a commitment by the CONSULTANT to enter into the PROJECT with the CLIENT.

## **6.3 Representatives of CLIENT**

The CLIENT agrees to provide the Confidential Information only to those of its directors, officers, employees, attorneys, agents, advisors and/or representatives directly concerned with the evaluation of the PROJECT who need to know the Confidential Information so as to enable the CLIENT to evaluate entering into the PROJECT (collectively, the "Representatives") and who agree to be bound by this AGREEMENT.

## **6.4 Use of Confidential Information**

The CLIENT shall receive and maintain the Confidential Information in the strictest of confidence and shall only use the Confidential Information for the limited purpose of enabling the CLIENT to evaluate entering into the PROJECT with the CONSULTANT and for no other purpose or use, and shall not disclose such Confidential Information or any part thereof to any other person or entity except with the CONSULTANT's prior written consent. Also, without the prior written consent of the CONSULTANT, the CLIENT will not disclose the fact that the Confidential Information has been made available to the CLIENT, that discussions or negotiations are taking place, or any other facts with respect to the PROJECT, including the status thereof, except as required by law, and then only upon furnishing the CONSULTANT with prompt written notice to allow the CONSULTANT to oppose such process.

## **6.5 Survival of AGREEMENT and Confidentiality**

This AGREEMENT shall survive the cessation of any discussions between the parties with regard to the PROJECT. The restrictions and obligations upon the parties under this AGREEMENT concerning the confidentiality and/or non-disclosure of the Confidential Information shall not expire or terminate.

## **6.6 Return of Confidential Information**

At the option of the CONSULTANT and upon its request, the CLIENT shall promptly return or destroy all notes, memoranda, correspondence, documents and any other material containing or derived from Confidential Information, including all copies thereof, either furnished hereunder or prepared by the CLIENT. Any destruction of such Confidential Information shall be confirmed in writing upon the request of the CONSULTANT.

## **6.7 Forced Disclosure**

In the event the CLIENT is required by judicial or administrative process to disclose the Confidential Information, the CLIENT shall promptly notify the CONSULTANT and allow the CONSULTANT to oppose such process.

## **6.8 No Conveyance of Confidential Information or Rights Therein**

Nothing in this AGREEMENT, nor any action taken by the CLIENT during any discussions or negotiations prior to the consummation of the PROJECT shall be construed to convey to the CLIENT any right, title or interest in the Confidential Information, or any license to use, sell, exploit, copy or further develop in any way any Confidential Information. No license is hereby granted or implied under any patent, copyright or trademark, any application for any of the foregoing, or any trade name, trade secret or other proprietary information, in which the CONSULTANT has any right, title or interest.

## **6.9 Enforcement**

Each party retains all rights and remedies with respect to the Confidential Information afforded it under any applicable laws of the State of Kansas and the United States both during and after the term of this AGREEMENT, including, without limitation, any trade secret or other laws designed to protect proprietary or confidential information. This AGREEMENT will be construed, interpreted and applied in accordance with the laws of the State of Kansas. It is hereby agreed that any and all claims, disputes or controversies

whatsoever or arising from or in connection with this AGREEMENT shall be commenced, filed and litigated exclusively in the District Court of Riley County, Kansas or the applicable federal district court in Kansas, as determined by CONSULTANT, and the parties hereby consent to the personal jurisdiction of said court, and waive any objection to such jurisdiction and venue.

## **SECTION VII – Miscellaneous**

### **7.1 Applicable Law**

This AGREEMENT shall be construed in accordance with and governed by the laws of the state of Kansas, without regard to the principles of conflicts of law.

### **7.2 Severability**

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and the AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **7.3 Survival and Further Assurances**

It is the intention of the parties that all covenants, agreements, representations, warranties, and obligations of any kind contained in this AGREEMENT shall survive and continue after the completion of the PROJECT.

### **7.4 Headings**

Headings used in this AGREEMENT are for convenience only and shall not be used to interpret or construe its provisions.

### **7.5 Successors and Assigns**

**7.5.1** CLIENT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this AGREEMENT.

**7.5.2** Neither CONSULTANT nor CLIENT are permitted to assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Notwithstanding the foregoing, nothing contained in this paragraph 7.5.2 shall prevent CONSULTANT from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

### **7.6 Counterparts**

This AGREEMENT shall be binding upon and shall inure to the benefit of each of the parties hereto and to their respective successors, heirs, personal representatives and assigns and may be executed in two (2) or more counterparts each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

### **7.7 Time is of the Essence**

Time shall be considered of the essence in the performance of this AGREEMENT.

### **7.8 Entire Agreement**

This AGREEMENT embodies the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes any and all prior agreements and negotiations between the parties, whether written or oral. There have been and are no agreements, representations or warranties between the parties other than those set forth or provided herein.

### **7.9 Amendment and Modification**

This AGREEMENT may not be modified except in writing and signed by all parties.

**7.10 Waiver of Breach**

The waiver by either party of a breach of any provision of this AGREEMENT shall not operate or be construed as a waiver of any subsequent breach by either party.

**7.11 Rights not Exclusive to CONSULTANT**

All rights and remedies granted in this AGREEMENT to CONSULTANT shall be cumulative and not exclusive of all the other rights and remedies which CONSULTANT may have at law or in equity, and CONSULTANT may exercise all or any of such rights and remedies at any one or more times without being deemed to have waived any or all other rights and remedies which CONSULTANT may have.

**7.12 Notices**

Unless contrary provisions are expressly set forth herein, all notices of any kind shall be in writing and shall, at the option of the party giving the notice, be

- (i) personally delivered; or
- (ii) delivered by reputable overnight courier; or
- (iii) sent by fax or email; or
- (iv) sent by certified or registered mail, postage prepaid;

to the person entitled to receive the notice at the last address provided in writing by such person to the other signatory hereto. All such notices shall be deemed given on the date the notice is actually received at the address indicated.

**7.13 Authority**

The undersigned agents that signed this AGREEMENT have proper corporate authority to bind their respective companies to the terms and conditions of this AGREEMENT.

**7.14 No Partnership**

The parties do not intend that any partnership or agency relationship be created by this AGREEMENT.

***Heritage District Phase I – Dodge City, KS  
Parking and Landscape Improvements  
Scope of Professional Services***



***General Project Description:*** This project involves the improvement of parking areas (civil engineering and landscape architecture) between 1<sup>st</sup> Avenue and just west of 5<sup>th</sup> Avenue immediately south of the railroad tracks in Dodge City, Kansas.

**SMH Consultants (SMH) proposes to perform the following tasks for the City of Dodge City:**

**Part I (Project Management)**

1. Project management including management of SMH resources, accounting, and invoicing.
2. Coordination with the owner regarding the design elements impacting the design of the site. This task also includes an initial site visit with the owner to familiarize the Project Engineer, Design Engineer and Landscape Architect with the site's characteristics.

**Part II (Additional Data Collection)**

1. Additional boundary, topographical, and utility survey of the areas west of 5<sup>th</sup> Avenue to the Pride Ag Property and along Wyatt Earp Boulevard at 4<sup>th</sup> Avenue.
2. Conversion of land survey data collected into a working drawing for use during the design process.

**Part III (Construction Documents)**

1. Site plan showing all existing and proposed improvements, existing easements, right of way and utilities. The site plan will include detailed overall layout information for the improvements with dimensioning.
2. Grading plan with existing and proposed contours and/or spot elevations at key grading points. The grading plan will include detailed information for the improvements including ADAAG compliance information in terms of allowable slopes.
3. Plan and profile of proposed storm sewer appurtenances to drain the proposed parking lots and open areas of the site with connection to the City of Dodge City's underground storm sewer system.
4. Horizontal and vertical control plan detailing the horizontal and vertical location of key construction features for the improvements.

5. Paving details as required by the pavement designs for the improvements.
6. Various details including ADA signage, bumper blocks, curb, typical sections for pavement, typical sections for sidewalk, and erosion control device installation.
7. Landscape plan showing the proposed landscape areas with plant materials. This task includes landscape calculations to illustrate compliance with the City of Dodge City's landscape ordinance.
8. Landscape details as required by the landscape design.
9. On sheet specifications as required for the landscape design.
10. Irrigation performance specification required to properly irrigate the landscaped areas.
11. Design of lighting and power systems for parking lot improvements, coordination of electric serve points and requirements with the local power company, preparation of photometric plans for submission and approval by The City, Development opinions of probable construction costs associated with the parking lot lighting, and specifications and drawings for construction bidding purposes of the lighting portion of the project. (All lighting design by LST Engineers per a sub-contract.)
12. Storm erosion and sediment control plan and storm water pollution prevention planning as required by the City of Manhattan and the Kansas Department of Health and Environment (KDHE). This task also includes permitting from the KDHE, including the permit fee. From submittal of the permit application to approval typically takes 6-8 weeks.
13. On sheet specifications as required to address construction of the civil site improvements as required.
14. Quality control and assurance of all final designs and plans by an in-house independent reviewer.

#### **Part IV (Conceptual and Design Development Signage Design)**

1. Conceptual signage designs for 4<sup>th</sup> Avenue tenant signage, monument sign at waterpark and hotel entrance, and district signage/columns along Wyatt Earp. The concepts will be based on early concepts that have been provided by the City.
2. Develop final conceptual signage designs based on City comments and input from the conceptual designs presented in task one.

3. Design development drawings of the signage concepts will be developed based on the approved final conceptual signage designs. The design development drawings will be plan and elevations including dimensions, materials, colors, and etc. This task does not include construction documents and structural services.

### **Additional Services**

Any services not indentified in the fore mentioned scope of services requested by the architect or owners will be provided at 2015 hourly rates.

### **Notes:**

1. No storm water drainage detention design services are included with this scope of services.
2. This scope of work does not include any construction phase services. SMH can provide shop drawing review, inspection, construction engineering, and materials testing if contracted to do so. It is our understanding that these services are going to be provided by the staff of the City of Dodge City.
3. There may be studies (i.e. additional traffic, additional drainage, sewer and etc.) not identified in this scope of services that are required by the City of Dodge City or other jurisdictional agencies that are not included in this scope of services. As the need for these studies arises a separate scope of work will be developed for approval by the client.
4. Construction documents and structural services for signage is not included in this scope of services and fee. As the need for these arises after the completion of the conceptual and design development signage designs a separate scope of work will be developed for approval by the client.

**2016 Personnel and Reimbursable Rates**  
*SMH Consultants*

	<u><b>Standard Rate</b></u>	<u><b>Overtime Rate</b></u>
<i>Survey Crew</i>	\$125.00/hour	\$167.00/hour
<i>GPS /Robot Crew</i>	\$100.00/hour	\$123.75/hour
<i>CADD Technician</i>	\$75.00/hour	\$92.00/hour
<i>Managing Principal Professional Surveyor</i>	\$125.00/hour	\$160.00/hour
<i>Professional Surveyor</i>	\$110.00/hour	\$33.00/hour
<i>Managing Principal Engineer</i>	\$146.00/hour	\$187.00/hour
<i>Principal Engineer</i>	\$136.00/hour	\$173.00/hour
<i>Project Engineer</i>	\$115.00/hour	\$139.00/hour
<i>Design Engineer</i>	\$84.00/hour	\$101.00/hour
<i>Landscape Architect</i>	\$99.00/hour	\$127.00/hour
<i>Construction Engineering/Inspection</i>	\$79.00/hour	\$99.00/hour
<i>Clerical</i>	\$53.00/hour	\$65.00/hour
<i>Mileage</i>	\$0.54/mile	
<i>Concrete Cylinder Breaks</i>	\$21/each	

**Fee Estimate**

Heritage District Phase I  
Phase I, Kansas

SC = Survey Crew  
CT = CADD Technician  
MPLS = Managing Principal Land Surveyor

RLS = Registered Land Surveyor  
MPE = Managing Principal Engineer  
PE = Project Engineer

DE = Design Engineer  
LA = Landscape Architecture  
CL = Clerical



	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CL	Rate =	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CL	Expenses	Totals Hours	Total Fee	
	Estimated Hours										Estimated Fee												
<b>PART I - PROJECT MANAGEMENT</b>																							
1. Project Management					6	6		4		6					\$876.00	\$690.00		\$396.00	\$318.00		22	\$2,280.00	
2. Project Coordination					4	6		8							\$584.00	\$690.00		\$792.00			18	\$2,066.00	
																						<b>PART I - PROJECT ADMINISTRATION = \$4,346.00</b>	
<b>PART II - ADDITIONAL DATA COLLECTION</b>																							
1. Land Survey	32										\$4,000.00			\$125.00							33	\$4,125.00	
2. Survey Conversion		13		1								\$975.00		\$125.00							14	\$1,100.00	
																						<b>PART II - ADDITIONAL DATA COLLECTION = \$5,225.00</b>	
<b>PART III - CONSTRUCTION DOCUMENTS</b>																							
1. Site Plan		32				2	6		6		\$2,400.00				\$230.00	\$504.00	\$594.00				46	\$3,728.00	
2. Grading Plan						6	46								\$690.00	\$3,864.00					52	\$4,554.00	
3. P & P of Storm Storm Sewer					16				20		\$1,200.00				\$690.00	\$1,680.00					42	\$3,570.00	
4. H & V Control Plan					12				4		\$900.00				\$115.00	\$336.00					17	\$1,351.00	
5. Paving Details					4				2		\$300.00				\$115.00	\$168.00					7	\$583.00	
6. Various Details					12				6		\$900.00				\$115.00	\$504.00					19	\$1,519.00	
7. Landscape Plan									32									\$3,168.00			32	\$3,168.00	
8. Landscape Details									2									\$198.00			2	\$198.00	
9. On Sheet Landscape Specifications									3									\$297.00			3	\$297.00	
10. Irrigation Performance Specification									3									\$297.00			3	\$297.00	
11. Parking Lot Lighting Design (Sub-Contract)																		\$5,000.00				\$5,000.00	
12. SESC Plan and Permitting						2			12						\$230.00	\$1,008.00					14	\$1,238.00	
13. On Sheet Civil Specifications						1			8						\$146.00	\$920.00					9	\$1,066.00	
14. Quality Assurance					8				4		\$600.00				\$876.00	\$230.00	\$336.00				20	\$2,042.00	
																						<b>PART III - CONSTRUCTION DOCUMENTS = \$28,611.00</b>	
<b>PART IV - CONCEPT &amp; DESIGN DEV OF SIGNAGE</b>																							
1. Conceptual Designs									32									\$3,168.00			32	\$3,168.00	
2. Final Conceptual Designs									16									\$1,584.00			16	\$1,584.00	
3. Design Development Designs									32									\$3,168.00			32	\$3,168.00	
																						<b>PART IV - CONCEPT AND DESIGN DEV OF SIGNAGE = \$7,920.00</b>	
<b>Totals =</b>	0.00	0.00	0.00	0.00	10.00	12.00	0.00	58.00	6.00		\$0.00	\$0.00	\$0.00	\$0.00	\$1,460.00	\$1,380.00	\$0.00	\$1,188.00	\$318.00	\$0.00	40.00		

**Fee Estimate = \$46,102.00**



**Heritage District Phase I Improvements  
Public Parking, Landscaping and Signage  
Design Task Completion Schedule**

**On or Before**

February 5 <sup>th</sup> , 2016	Notice to Proceed with Design Received by SMH
February 11 <sup>th</sup> , 2016	Design Kick-off Meeting with the City
April 22 <sup>nd</sup> , 2016	Public Parking and Landscaping Plan Review Set Submitted to City
May 6 <sup>th</sup> , 2016	Comments Received from City based on Review Set
May 20 <sup>th</sup> , 2016	Final Plans Sealed and Delivered to City for Bidding
April 29 <sup>th</sup> , 2016	Initial Concept Plans for Signage Submitted to City
June 17 <sup>th</sup> , 2016	Final Concept Plans for Signage Submitted to City for Approval
July 15 <sup>th</sup> , 2016	Notice to Proceed from City of Design Development Plans of Signage Based on Approval
August 19 <sup>th</sup> , 2016	Final Design Development Plans of Signage

Notes:

1. The schedule presented is based on comments from the City of Dodge City regarding the desire for the parking lot construction to be completed early fall of 2016 and the signage to be constructed by the end of 2016.
2. Delays in City reviews can potentially require schedule modifications.



## City of Dodge City

806 N. Second Ave. Phone: 620-225-8100  
PO Box 880 FAX: 620-225-8144  
Dodge City, KS 67801 www.dodgecity.org

---

# Memorandum

To: City Manager  
City Commissioners

From: Ernestor De La Rosa, Assistant to the City  
Manager  
Paul Lewis, Parks & Recreation Director

Date: March 1, 2016

Subject: Athletic Field Concessions

Agenda Item: Consent Calendar

---

**Recommendation:** Staff recommends approving the agreement with Ezequiel Alvarez to provide concession operations at City athletic fields and authorizing to the Mayor to sign the agreement pending execution by Ezequiel Alvarez.

**Background:** With the transition by the Southwest Sports Association and in an effort to improve the performance of concession operations at City athletic fields, staff published a Request for Proposals to contract out those services. One proposal was received from Ezequiel Alvarez and in recent weeks staff has worked with the organization to draft an agreement.

Under the proposed agreement, Ezequiel Alvarez will provide concession services at Legends Park and St. Mary Soccer Complex for all events and activities including local league play, tournaments, and any other special events where services are warranted. They will have access to existing City equipment but are responsible to replace or acquire any additional equipment they may need.

This agreement is a one year contract that automatically renews on an annual basis unless either party provides written notice of termination.

**Justification:** Ezequiel Alvarez is a local resident of 28 years in Dodge City. He currently owns and operates an ice cream shop since 2003. Ezequiel has the knowledge, experience and has full staff in place to take on this operation. As he already have a presence in our community, staff recommends approval to provide concession services throughout the season at St. Mary Soccer Complex and Legends Parks.

**Financial Considerations:** Ezequiel Alvarez will pay the City 20 percent of the adjusted gross revenue on a monthly basis for the right to operate concessions. The agreement also calls for a full reporting at the end of each month so all parties can evaluate the financial structure of the

arrangement. Those funds will be credited to the Sales Tax account similar to when concessions were City operated.

Ezequiel Alvarez will have responsibility to provide all personnel, purchase all materials, purchase any concession equipment necessary and pay all required sales tax. The City will be required to maintain and repair capital equipment, i.e. ice machines, water heaters, etc.

**Purpose/Mission:** This arrangement provides an effective option to maximize net revenue and is consistent with the City's core value of ongoing improvement.

**Legal Considerations:** None.

**Attachments:** Concession Facilities Agreement.

**CITY OF DODGE CITY  
CONCESSION FACILITIES AGREEMENT  
ST. MARY SOCCER COMPLEX AND LEGENDS PARK**

This Agreement (this "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Dodge City, KS ("City") and Ezequiel Alvarez doing business as Paleteria Rio Grande, a Kansas sole proprietorship ("Provider").

WHEREAS, City is the owner and operator of a soccer complex located in Dodge City, known as "St. Mary Soccer Complex" and a baseball/softball complex known as "Legends Park". St. Mary Soccer Complex and Legends Park have been constructed and operated, by the City, with sales tax revenues resulting from the June 10, 1997 city/county sales tax election and under the terms and conditions of an Interlocal Agreement between City and Ford County, Kansas; and,

WHEREAS, the purpose and intent of the construction and operation of St. Mary Soccer Complex was to bolster local economic development within the community by attracting and conducting soccer and baseball/softball tournaments, bringing visitors and participants from outside the area to the community, and providing quality facilities for the use and enjoyment of local residents; and,

WHEREAS, City and Provider desire to enhance the use of St. Mary Soccer Complex and Legends Park as tournament venues for the purposes stated above; and,

WHEREAS, Provider has knowledge and experience in operating and managing concession facilities in Dodge City and will provide services which will enhance the use of St. Mary Soccer Complex and Legends Park as tournament venues by providing excellent concession services to visitors and participants; and,

WHEREAS, City, with approval of the Ford County Commission and upon the recommendation of the Community Facilities Advisory Board ("CFAB"), desires to enter into this Agreement for the use of the concession facilities and equipment at St. Mary Soccer Complex and Legends Park under the direction, organization and supervision of Provider who desires to provide such operation and concession management under the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MONIES TO BE PAID HEREUNDER AND THE MUTUAL PROMISES OF THE PARTIES, IT IS AGREED AS FOLLOWS:

1. Provider agrees to abide by this Agreement, and for so long as, and conditioned upon, Provider's compliance with all provisions hereunder and all applicable laws, City hereby grants to Provider the use of the concession facilities and equipment at Legends Park and St. Mary Soccer Complex for the sale of food and beverages known hereinafter collectively as the "Concessions."
2. Provider shall have the temporary use of the premises solely for the purpose of purveying and selling of the Concessions. . City shall have reasonable access to the premises as provided hereunder in order to determine compliance with this Agreement, applicable

laws, and in emergency situations, at all times acknowledging Provider's right to be free from unreasonable interference.

3. During the initial term and any renewal terms, Provider agrees to provide concession services for all regularly scheduled games, tournaments, special events and activities within the contracted facilities, except for Dodge City A's games scheduled at Cavalier Field. If Provider desires not to open for selected events, Provider must obtain permission from City Parks and Recreation not less than seven (7) days prior to the event. City may exempt any City sponsored event by providing the Provider thirty (30) days written notice.
4. The initial term of this Agreement shall be March 1, 2016 through November 30, 2016. This Agreement will automatically renew for one year (1) terms beginning December 1, 2016 unless either party gives written notice of termination of this Agreement not less than thirty (30) days prior to the end of the initial or any renewal term.
5. Provider agrees to pay City twenty percent (20%) of the adjusted gross revenue for the use of the contracted facilities for the sale of the Concessions. Said payments shall be paid on a monthly basis with the first payment due on April 1, 2016 and subsequent payments due the first day of each month thereafter continuing through December 1<sup>st</sup> for each term or partial term this Agreement remains in force.
6. For each term this Agreement is in force, Provider shall provide City with a complete monthly financial report, due the first day of each month. The financial report must include all revenues, expenses and profits derived from the Concessions operations for the month just completed.
7. Provider shall indemnify City, its agents, officers and employees, and hold them harmless from any and all claims, demands, damages, losses, injuries, actions, and expenses of any nature and in any manner arising or resulting from any operations of Provider hereunder. The provisions of this section shall survive any termination or expiration of this Agreement.
  - a. Provider shall provide and maintain throughout the term of this Agreement, public liability and products liability insurance in the name of City and Provider. Said insurance shall be written on an occurrence basis and have minimum limits of One Million Dollars (\$1,000,000.00) for any one accident or occurrence, Two Million Dollars (\$2,000,000.00) aggregate and Fifty Thousand Dollars (\$50,000.00) property damage insurance for each accident. Provider shall also maintain workers compensation insurance for its employees and agents as required by Kansas law.
  - b. An insurance certificate with an endorsement listing City as an additional insured and an endorsement giving City no less than thirty (30) days notice of cancellation, modification or non-renewal shall be submitted by Provider to City for approval and shall be from an insurance company authorized to do business in Kansas and approved by City. Provider shall pay the premium thereof in advance. Provider shall provide the insurance certificate with endorsements to City's Parks and Recreation Director not later than February 15<sup>th</sup> for any term this Agreement is in force.

8. Provider agrees to conduct concession operations in a clean, healthful, and orderly manner and shall have responsible adult supervision on duty and on site during all hours of operation. Provider shall comply with all applicable federal, state, and city laws, rules and regulations, including but not limited to, sanitation, licensing, and operation. Provider shall obtain all necessary licenses or permits prior to the use of the concession facilities.
9. The rights granted hereunder are not assignable without the prior written consent of City.
10. No Concessions will be dispensed in glass containers, at and/or within any municipally-owned facilities or property, including the St. Mary Soccer Complex and Legends Park.
11. Provider accepts the Concession facilities in their current condition on the beginning date of this Agreement, and agrees to maintain this condition during this Agreement's term. City is not obligated to supply storage facilities or any equipment to Provider.
12. Provider is responsible for purchasing all inventory and equipment necessary for providing the Concessions after March 1, 2016 ("New Inventory"). Prior to March 1, 2016, an inventory of all existing City equipment ("Existing Inventory") will be conducted. All Existing Inventory will be delivered to Provider for use at no additional cost, but the Existing Inventory shall only be used at City's Concession facilities. If at any time, the Existing Inventory becomes unusable and Provider wishes to remove any of the Existing Inventory, Provider and City's Parks and Recreation Director will consult on the proper method of disposal of such Existing Inventory. Should this Agreement be terminated by either party, then in such event, all Existing Inventory shall be returned to City. Any New Inventory purchased by Provider shall remain the property of Provider.
  - a. Repairs to Existing Inventory – Provider shall be solely responsible and shall pay for all repairs required to Existing Inventory. For repairs to any item of Existing Inventory with a replacement cost of greater than One Thousand, Five Hundred Dollars (\$1,500.00), City may elect to reimburse Provider for expenses greater than Three Hundred Dollars (\$300.00) if in City's sole determination such repairs are advisable. Provider is required to notify City's Parks and Recreation Director of the need for repairs to any item for which Provider will be seeking reimbursement, prior to initiating such repairs.
13. Provider shall, upon termination of this Agreement, remove within thirty (30) calendar days all equipment belonging to Provider from City's premises, so long as such removal does not cause damage to City property. Provider shall leave the Concessions facilities in a condition at least as good as they were on the beginning date of this Agreement, normal wear and tear excepted.
14. Throughout the term hereof, City reserves the right in its sole and absolute discretion to make or enter into exclusive product marketing agreements, which shall be binding on Provider. Provider may not enter into any product marketing agreements without the prior written consent of City.
15. Either party may terminate this Agreement at any time by providing thirty (30) days written notice. Upon such termination, at Provider's request, Provider shall pay City the total amount due under Section 5 above for the current term. Upon such termination, at

City's request, Provider shall not be required to make any additional payments due under Section 5 above for the current term.

16. In the event of a breach of this Agreement or violation of any law by Provider, City may terminate this Agreement by giving Provider five (5) days notice in writing, specifying the matter(s) in which Provider is in default. In the event such matter(s) are not remedied within the five (5) day period, this Agreement shall be ended and be of no further force and effect and City shall have the right to enter and begin operations. Provider shall immediately remove its equipment, or said equipment shall become the property of City and all payments due City for the term shall become immediately due and payable to City.
17. In the event the Concession facilities become unavailable to Provider, the duty to perform under this Agreement shall either be abated or suspended, including the payment of money due hereunder.
18. Notice and Demand: Any notice, demand or communication under this Agreement by any party to the other party shall be given or delivered by first class mail, registered or certified mail, postage paid, return receipt requested or delivered in person as follows to:

a. If to City:

City Manager  
City of Dodge City  
PO Box 880  
Dodge City, Kansas 67801  
(620) 225-8100

b. If to Provider:

Ezequiel Alvarez, Owner  
2421 Mellencamp Avenue  
Dodge City, KS 67801  
(620) 560-3688

This Agreement shall be binding on the Parties hereto and their successors and assigns

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the day and year first written above.

**CITY OF DODGE CITY, KANSAS**

By: \_\_\_\_\_  
JOYCE WARSHAW, Mayor

ATTEST:

\_\_\_\_\_  
NANETTE POGUE, City Clerk

**PROVIDER (Paeteria Rio Grande)**

By: \_\_\_\_\_  
EZEQUIEL ALVAREZ, Owner

ATTEST:

\_\_\_\_\_

## Memorandum

*To: City Commissioners*  
*From: Cherise Tieben*  
*Date: March 4, 2016*  
*Subject: Building Solutions Invoice*  
*Agenda Item: Consent Calendar*

---

**Recommendation:** Staff recommends ratification and payment of the Building Solutions invoice for improvements made over a period of the last year at the Lewis Ford Motors Development.

**Background:** Staff worked directly with Mr. Lewis to address concerns along the City right of way throughout this project. The bill is a culmination of different incentives that were agreed to by staff and verbally approved individually and at different times throughout the last year via discussions with Commissioners. The incentives were necessary in order to assist with this project as a result of unusual circumstances in the historic district.

**Justification:** Improvements in the historic district and oddities involving the right-of-way improvements in this area justified the expenses.

**Financial Considerations:** The total \$46,450.00 will be paid from a variety of funds and programs.

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

**Legal Considerations:** A release will be prepared for signature of both parties prior to payment.

**Attachments:** Invoice



Lewis Automotive Group  
Lewis Ford  
200 Military  
Dodge City, KS 67801

2/18/16

RE: City of Dodge City  
ROW Work Agreement at Lewis Ford.  
Itemized Invoice

Jim,

This bill is for a portion of the work beyond the ROW and outside of your property line limits. This work is to be billed to the City of Dodge City per the attached City of Dodge City letters and emails of agreement.

Reimburse for 6" x 4' Sidewalk North Side of Parking Lot ( 1,320 SF)	\$ 5,610.00
Reimburse for 7" Street Parking & Approach Paving ( 5,168 SF)	\$ 25,840.00

Per a separate City agreement, See Attached, regarding the East Property Line, the City agreed to:

Reimburse lump sum amount towards the installation of the Brick Pavers. \$ 15,000.00

Note: The In-Kind work which the City agreed to provide was properly carried out and by City forces and has not been itemized here for clarity.

**TOTAL AMOUNT DUE THIS INVOICE: ----- \$ 46,450.00**

THANK YOU !

## *Memorandum*

*To: Cherise Tieben, City Manager*  
*From: Nannette Pogue, Finance Director/City Clerk*  
*Date: March 4, 2016*  
*Subject: Ordinance No. 3625 and Resolution No. 2016-05*  
*Agenda Item: Ordinances and Resolutions*

---

**Recommendation:** I recommend the City Commission approve Ordinance No. 3625 and Resolution No. 2016-05

**Background:** Ordinance No. 3625 authorizes and provides for the issuance of Sales Tax Refunding Revenue Bonds, Series 2016 for the purpose of providing funds to refund a portion of the City's outstanding Sales Tax Revenue Bonds that were issued in 2009 to fund the Special Events Center.

The City has previously taken action to refund the 2009 Sales Tax Revenue Bonds.

By approving Ordinance No. 3625 the City Commission will authorize the issuance of Sales Tax Refunding Revenue Bonds, Series 2016 of the City in the principal amount of \$32,435,000 for the purpose of providing a portion of the funds to: (a) refund the Sales Tax Revenue Bonds; and (b) pay costs of issuance of the Series 2016-A Bonds. The bonds that were not callable were not refunded.

The bonds were sold on March 3 to refund the bonds and the Mayor signed the Bond Purchase Agreement. The open market securities improved the transaction with resulting net present value savings of \$2,245,731 which is 7.03% of the refunded bonds. The par amount of the transaction is \$32,435,000 with a true interest cost of 2.955%. Gross annual savings average \$149,867.

The ordinance also authorizes the Mayor and City Clerk to sign documents necessary to complete all of the transactions.

Resolution No. 2016-05 prescribes the form and details of the sale and delivery of the bonds and makes certain covenants and agreements to provide for the payment and security of those bonds.

**Justification:** In order to achieve interest cost savings, reduce debt service requirements of the City for certain years, restructure the debt payments on the Bonds

and provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and its inhabitants to refund the Revenue Bonds.

**Financial Considerations:** There will be an average of \$149,867 of annual savings for the refunded bonds.

**Purpose/Mission:** We value progress and growth for the community's future.

**Legal Considerations:** All have been satisfied by bond counsel. They have prepared all of the ordinances, resolutions and other documents necessary to legally complete the sale.

**Attachments:** Ordinance No. 3625 and Resolution No. 2016-05.

**ORDINANCE NO.3625**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SALES TAX REFUNDING REVENUE BONDS, SERIES 2016, OF THE CITY OF DODGE CITY, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND A PORTION OF THE CITY'S OUTSTANDING SALES TAX REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

---

**WHEREAS**, the City of Dodge City, Kansas (the "City") is a city of the first class duly created, organized and existing under the Constitution and laws of the State of Kansas; and

**WHEREAS**, pursuant to Resolution No. 97-11, adopted by the governing body of the City on April 28, 1997, and K.S.A. 12-187 *et seq.*, as amended (the "Act"), a special election was duly held in the City on June 10, 1997, on the question of whether to implement a special City-wide retailers' sales tax at a rate of one-half percent (0.5%) (the "City Sales Tax"); the collection of one-quarter percent (1/4%) of which will commence on October 1, 1997 and the remaining one-quarter percent (1/4%) of which will commence on January 1, 2000 upon the expiration of the City's 1994 Sales Tax, in order to jointly finance, in conjunction with Ford County, Kansas (the "County"), the construction, equipping and operation of certain public projects, including installing air conditioning in the Civic Center, constructing an outdoor motor sports complex, constructing field sports facilities, constructing and equipping a special events center and other public projects (collectively the "Projects") and authorizing the issuance of revenue bonds of the City payable from and secured by the proceeds of the City Sales Tax, and it was found and determined that more than a majority of the qualified electors of the City voting on the question had voted in favor of the implementation of the City Sales Tax for the purpose aforesaid and the issuance of such revenue bonds; and

**WHEREAS**, pursuant to Resolution No. 1997-12 and the Act, a special election was also duly held in the County on June 10, 1997, on the question of whether to implement a special County-wide retailers' sales tax at a rate of one-half percent (0.5%) (the "County Sales Tax"); the collection of one-quarter percent (1/4%) of which will commence on October 1, 1997 and the remaining one-quarter percent (1/4%) of which will commence on upon the expiration of the County's 1991 Sales Tax, in order to finance, in conjunction with the City, the construction, equipping and operation of the Projects and authorizing the issuance of revenue bonds of the County payable from and secured by the proceeds of the County Sales Tax to be retained by the County, and it was found and determined that more than a majority of the qualified electors of the County voting on the question had voted in favor of the implementation of the County Sales Tax for the purpose aforesaid and the issuance of such revenue bonds; and

**WHEREAS**, pursuant to Resolution No. 97-11, the governing body of the City declared an intent, in order to finance a portion of the costs of the Project, to issue sales tax revenue bonds secured by the City's share of the County Sales Tax, a notice of such intent was duly published in accordance with the provisions of the Act and no sufficient protest was filed against the issuance of such revenue bonds within the time period prescribed in the Act; and

**WHEREAS**, the City and the County have entered into an Interlocal Cooperation Agreement, dated July 21, 1997 (the "Cooperation Agreement") whereby the City and County agree to: (a) jointly fund the construction, equipping and operation of the Projects; (b) deposit the proceeds to be derived by the City and County from the City Sales Tax and the County Sales Tax into a separate fund to be established and

maintained by the City; (c) create a Project Review and Advisory Committee (the "Project Committee") to oversee the location, construction and operation of the Projects; (d) permit the County to assign its rights to issue revenue bonds against its portion of the County Sales Tax to the City; and (e) authorize the City, upon recommendation of the Project Committee, to issue sales tax revenue bonds secured by the City Sales Tax, the City's portion of the County Sales Tax and the County's portion of the County Sales Tax (collectively the "Sales Tax"); and

**WHEREAS**, pursuant to such authority the City has heretofore issued and has outstanding its: (a) Sales Tax Revenue Bonds, Series 2009 (the "Series 2009 Bonds"), in the original principal amount of \$40,300,000, to finance a portion of the costs of the Projects; and (b) Sales Tax Revenue Bonds, Series 2015, in the original principal amount of \$9,840,000, to finance a portion of the costs of the Projects; and

**WHEREAS**, the City heretofore issued and has Outstanding the Refunded Bonds and is authorized by K.S.A. 10-116a and K.S.A. 12-187 *et seq.* to issue refunding revenue bonds of the City for the purpose of refunding the Refunded Bonds; and

**WHEREAS**, in order to achieve interest cost savings through early redemption of the Refunded Bonds, to reduce debt service requirements of the City for certain years, to restructure the debt payments on the Refunded Bonds and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City to refund the Refunded Bonds; and

**WHEREAS**, the City has not heretofore issued and does not have Outstanding any bonds or other obligations payable from the revenues derived by the Issuer from the Sales Tax other than the Series 2009 Bonds and the Series 2015 Bonds; and

**WHEREAS**, the City hereby finds and determines that it is necessary to authorize the issuance of the Series 2016 Bonds in the principal amount of \$32,435,000 for the purpose of paying all or a portion of the costs to refund the Refunded Bonds and related financing costs and reserves.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, AS FOLLOWS:**

**Section 1. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, the following words and terms in this Ordinance shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**"Act"** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-116a, K.S.A. 10-620 *et seq.* and K.S.A. 12-187 *et seq.*, all as amended and supplemented from time to time.

**"Additional Bonds"** means any bonds secured by the Revenues hereafter issued pursuant to the Bond Resolution.

**"Additional Obligations"** means any leases or other obligations of the Issuer payable from the Revenues, other than the Bonds.

**“Bond Resolution”** means collectively the 2009 Bond Resolution, the 2015 Supplemental Resolution, the 2016 Supplemental Resolution and any supplemental resolution authorizing any Additional Bonds.

**“Bonds”** means collectively the Series 2009 Bonds, Series 2015 Bonds, Series 2016 Bonds, and any Additional Bonds.

**“City”** means the City of Dodge City, Kansas.

**“City Sales Tax”** means the one-half percent (0.5%) retailers’ sales tax collected within the boundaries of the City, authorized under the Act by the special election held on June 10, 1997, and implemented by Resolution No. 97-16 of the City.

**“Clerk”** means the duly appointed and acting Clerk of the Issuer or, in the Clerk's absence, the duly appointed Deputy Clerk or Acting Clerk.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

**“Cooperation Agreement”** means the Dodge City-Ford County Interlocal Cooperation Agreement, dated as of July 21, 1997.

**“County”** means Ford County, Kansas.

**“County Sales Tax”** means the one-half percent (0.5%) retailers’ sales tax collected within the boundaries of the County, authorized under the Act by the special election held on June 10, 1997, and implemented by Resolution No. 97-28 of the County.

**“Debt Service Reserve Account”** means the Debt Service Reserve Account for Parity Bonds created by the Bond Resolution.

**“Fiscal Year”** means the twelve month period ending on December 31.

**“Mayor”** means the duly elected and acting Mayor or, in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

**“1991 Sales Tax”** means the one-quarter percent (1/4%) retailers' sales tax imposed within the boundaries of the County, which was authorized by an election held on April 2, 1991.

**“1994 Sales Tax”** means the one-quarter percent (1/4%) retailers' sales tax imposed within the boundaries of the City, which was authorized by an election held on August 24, 1993.

**“Net Revenues”** means, for the period of determination, all Revenues less all Expenses.

**“Ordinance”** means this Ordinance authorizing the issuance of the Bonds.

**“Parity Bonds”** means the Outstanding Series 2009 Bonds, Series 2015 Bonds, Series 2016 Bonds and any Additional Bonds hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Series 2009 Bonds, Series 2015 Bonds and Series 2016 Bonds with respect to the Revenues.

**“Parity Obligations”** means any Additional Obligations hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Net Revenues.

**“Parity Resolution”** means the Bond Resolution and the ordinances and/or resolutions under which any Additional Bonds which constitute Parity Bonds are hereafter issued.

**“Project”** means the construction, equipping and operation of the operation of certain public projects, including installing air conditioning in the Issuer’s Civic Center, constructing an outdoor motor sports complex, constructing field sports facilities, constructing and equipping a special events center, constructing and equipping a new regional outdoor aquatic facility, and other public projects.

**“Project Committee”** means the Project Review and Advisory Committee established by the Cooperation Agreement.

**“Refunded Bonds”** means the Series 2009 Bonds maturing in the years 2020 to 2034, inclusive, in the aggregate principal amount of \$31,940,000.

**“Refunded Bonds Resolution”** means the ordinance and resolution which authorized the Refunded Bonds.

**“Revenues”** means all revenues received by the City pursuant to the Cooperation Agreement from the implementation and collection of the Sales Tax.

**“Sales Tax”** means collectively the City Sales Tax and the County Sales Tax.

**“Series 2009 Bonds”** means the City's Sales Tax Revenue Bonds, Series 2009, authorized and issued by the Issuer pursuant to the 2009 Bond Resolution.

**“Series 2015 Bonds”** means the City's Sales Tax Revenue Bonds, Series 2015, authorized and issued by the Issuer pursuant to the 2015 Supplemental Resolution.

**“Series 2016 Bonds”** means the City's Sales Tax Refunding Revenue Bonds, Series 2016, authorized and issued by the Issuer pursuant to the Ordinance and the 2016 Supplemental Resolution.

**“State”** means the State of Kansas.

**“2009 Bond Resolution”** means Resolution No. 2009-09 of the City, which authorized the issuance of the Series 2009 Bonds and Additional Bonds.

**“2015 Supplemental Resolution”** means Resolution No. 2015-03 of the City, which amends and supplements the 2009 Bond Resolution and authorized the issuance of the Series 2015 Bonds.

**“2016 Supplemental Resolution”** means Resolution No. 2016-[\_\_] of the City, which amends and supplements the 2009 Bond Resolution and authorizes the issuance of the Series 2016 Bonds.

**Section 2. Authorization of the Series 2016 Bonds.** There shall be issued and are hereby authorized and directed to be issued the Sales Tax Refunding Revenue Bonds, Series 2016, of the City in the aggregate principal amount of \$32,435,000 for the purpose of providing a portion of the funds to: (a) refund the Refunded Bonds and (b) pay costs of issuance of the Series 2016 Bonds.

**Section 3. Security for the Bonds.** The Bonds shall be special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Revenues, and the City hereby pledges said Revenues to the payment of the principal of and interest on the Bonds. The general taxing power of the City is not pledged to the payment of the Bonds either as to principal or interest. The Bonds shall not be or constitute a general obligation of the State, the County or the City nor shall they constitute an indebtedness of the State or the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

The covenants and agreements of the City contained herein and in the Series 2016 Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2016 Bonds, all of which Series 2016 Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2016 Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2016 Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Revenues with any Parity Bonds or Parity Obligations. The Series 2016 Bonds shall not have any priority with respect to the payment of principal or interest from said Revenues or otherwise over the Parity Bonds or Parity Obligations; and the Parity Bonds and Parity Obligations shall not have any priority with respect to the payment of principal or interest from said Revenues or otherwise over the Series 2016 Bonds.

**Section 4. Terms, Details and Conditions of the Series 2016 Bonds.** The Series 2016 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the 2016 Supplemental Resolution.

**Section 5. Further Authority.** The Mayor, Director of Finance/Clerk, and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 6. Governing Law.** This Ordinance and the Series 2016 Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 7. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**PASSED** by the governing body of the City on March 7, 2016 and signed by the Mayor.

(SEAL)

---

Mayor

ATTEST:

---

Clerk

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]



**SUPPLEMENTAL RESOLUTION NO. 2016-05**

**OF**

**THE CITY OF DODGE CITY, KANSAS**

**ADOPTED**

**MARCH 7, 2016**

**SALES TAX REFUNDING REVENUE BONDS  
SERIES 2016**

---

**TABLE OF CONTENTS**

Page

**ARTICLE I**

**DEFINITIONS**

Section 101. Definitions of Words and Terms..... 1

**ARTICLE II**

**AUTHORIZATION AND DETAILS OF THE BONDS**

Section 201. Authorization of the Series 2016 Bonds. .... 17  
Section 202. Description of the Series 2016 Bonds. .... 17  
Section 203. Designation of Paying Agent, Bond Registrar and Fiscal Agent. .... 18  
Section 204. Preliminary and Final Official Statement. .... 18  
Section 205. Sale of the Series 2016 Bonds – Bond Purchase Agreement. .... 19  
Section 206. Other Provisions..... 19

**ARTICLE III**

**REDEMPTION OF BONDS**

Section 301. Redemption by Issuer..... 19  
Section 302. Other Redemption Provisions. .... 19

**ARTICLE IV**

**SECURITY FOR BONDS**

Section 401. Security for the Bonds..... 19

**ARTICLE V**

**ESTABLISHMENT OF FUNDS AND ACCOUNTS DEPOSIT AND  
APPLICATION OF BOND PROCEEDS AND OTHER MONEYS**

Section 501. Creation of Funds and Accounts. .... 20  
Section 502. Deposit of Series 2016 Bond Proceeds and Other Moneys..... 20  
Section 503. Application of Moneys in the Rebate Fund. .... 21  
Section 504. Nonpresentment of Bonds..... 21  
Section 505. Application of Moneys in the Costs of Issuance Account. .... 22  
Section 506. Application of Moneys in the Escrow Fund. .... 22  
Section 507. Verification of Certified Public Accountant. .... 22  
Section 508. Application of Moneys in the Compliance Account..... 22

**ARTICLE VI**

**COLLECTION AND APPLICATION OF REVENUES**

Section 601. Revenue Fund. .... 22  
Section 602. Application of Moneys in Funds and Accounts. .... 22  
Section 603. Transfer of Funds to Paying Agent. .... 24  
Section 604. Payments Due on Saturdays, Sundays and Holidays. .... 25

**ARTICLE VII**

**DEPOSIT AND INVESTMENT OF MONEYS**

Section 701. Deposits and Investment of Moneys. .... 25

**ARTICLE VIII**

**ADDITIONAL PROVISIONS**

Section 801. Incorporation by Reference. .... 25

**ARTICLE IX**

**TAX COVENANTS**

Section 901. General Covenants. .... 25  
Section 902. Survival of Covenants. .... 26

**ARTICLE X**

**CONTINUING DISCLOSURE REQUIREMENTS**

Section 1001. Disclosure Requirements. .... 26  
Section 1002. Failure to Comply with Continuing Disclosure Requirements. .... 26

**ARTICLE XI**

**PROVISIONS RELATING TO THE BOND INSURANCE POLICY**

Section 1101. Series 2016 Bond Acceleration. .... 26  
Section 1102. Notice and Opportunity to Cure Certain Defaults. .... 26  
Section 1103. Application of Moneys Realized Upon Default. .... 27  
Section 1104. Control of Remedies By Bond Insurer Upon an Event of Default. .... 27  
Section 1105. Effect of Supplemental Resolutions. .... 27  
Section 1106. Payment Procedure Pursuant to Bond Insurance Policy. .... 27  
Section 1107. Consent of the Bond Insurer. .... 29  
Section 1108. Notices to the Bond Insurer. .... 29  
Section 1109. Third Party Beneficiary. .... 31  
Section 1110. Parties Interested Herein. .... 31  
Section 1111. Suspension of Bond Insurer's Rights. .... 31  
Section 1112. Extraordinary Redemption. .... 31  
Section 1113. Exercise of Rights by Bond Insurer. .... 31

Section 1114. Debt Service Reserve Account Provisions.....	31
Section 1115. Bond Insurer Deemed Holder of Bonds.....	32
Section 1116. Payments by Bond Insurer to Remain Outstanding. ....	32

**ARTICLE XII**

**MISCELLANEOUS PROVISIONS**

Section 1201. Inconsistent Provisions. ....	32
Section 1202. Electronic Transactions.....	32
Section 1203. Further Authority. ....	32
Section 1204. Severability. ....	33
Section 1205. Governing Law. ....	33
Section 1206. Effective Date. ....	33

<i>EXHIBIT A</i> – FORM OF SERIES 2016 BONDS.....	A-1
---	-----

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**SUPPLEMENTAL RESOLUTION NO. 2016-05**

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF SALES TAX REFUNDING REVENUE BONDS, SERIES 2016, OF THE CITY OF DODGE CITY, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 3625 OF THE CITY; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

---

**WHEREAS**, the Issuer has heretofore adopted the Ordinance authorizing the issuance of the Series 2016 Bonds; and

**WHEREAS**, the Ordinance authorized the governing body of the Issuer to adopt a resolution prescribing certain details and conditions and to make certain covenants with respect to the issuance of the Series 2016 Bonds; and

**WHEREAS**, in order to provide for the payment of the Refunded Bonds it is desirable to enter into an Escrow Trust Agreement, by and between the Issuer and the Escrow Agent; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary for the Issuer to authorize the issuance and delivery of the Series 2016 Bonds in the principal amount of \$32,435,000 for the purpose of paying all or a portion of the costs to refund the Refunded Bonds and related financing costs and reserves.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, AS FOLLOWS:**

**ARTICLE I**

**DEFINITIONS**

**Section 101. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, the following words and terms as used in this Bond Resolution shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**“Act”** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-116a, K.S.A. 10-620 *et seq.* and K.S.A. 12-187 *et seq.*, all as amended and supplemented from time to time.

**“Additional Bonds”** means any bonds secured by the Revenues hereafter issued pursuant to *Article IX* of the 2009 Bond Resolution.

**“Additional Obligations”** means any leases or other obligations of the Issuer payable from the Revenues, other than the Bonds.

**“Adoption Agreement”** means the Adoption Agreement, dated as of the Dated Date, of the Issuer.

**“AGM”** means Assured Guaranty Municipal Corp., a New York stock insurance company, or any successor thereto or assignee thereof.

**“Assured Guaranty”** means Assured Guaranty Corp., a Maryland corporation, or any successor thereto.

**“Authorized Denomination”** means \$5,000 or any integral multiples thereof.

**“Balloon Indebtedness”** means Long-Term Indebtedness, 25% or more of the original principal amount of which becomes due (either by maturity or mandatory redemption) during any consecutive twelve-month period, if such principal amount becoming due is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve-month period.

**“Beneficial Owner”** of Bonds includes any Owner of Bonds and any other Person who, directly or indirectly has the investment power with respect to any such Bonds.

**“Bond Counsel”** means the firm of Gilmore & Bell, P.C., or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Issuer.

**“Bond Insurance Policy”** means: (a) with respect to the Series 2009 Bonds, the municipal bond insurance policy, financial guaranty bond or financial guaranty insurance policy issued by the Bond Insurer concurrently with the delivery of the Series 2009 Bonds guaranteeing the scheduled payment when due of the principal of and interest on the Series 2009 Bonds; (b) with respect to the Series 2016 Bonds, the insurance policy issued by the Bond Insurer concurrently with the delivery of the Series 2016 Bonds guaranteeing the scheduled payment of principal of and interest on the Series 2016 Bonds when due; and (c) with respect to Additional Bonds, the municipal bond insurance policy, financial guaranty bond or financial guaranty insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on such Additional Bonds, as set forth in the supplemental resolution.

**“Bond Insurer”** means: (a) with respect to the Series 2009 Bonds, Assured Guaranty; (b) with respect to the Series 2016 Bonds, AGM; and (c) with respect to Additional Bonds, the entity set forth in the supplemental resolution authorizing the Additional Bonds.

**“Bond Payment Date”** means any date on which principal of or interest on any Bond is payable.

**“Bond Purchase Agreement”** means: (a) with respect to the Series 2016 Bonds, the Bond Purchase Agreement dated as of March 3, 2016, between the Issuer and the Purchaser; and (b) with respect to Additional Bonds, the Bond Purchase Agreement between the Issuer and the Purchaser of such Additional Bonds.

**“Bond Register”** means the books for the registration, transfer and exchange of Bonds kept at the office of the Bond Registrar.

**“Bond Registrar”** means: (a) with respect to the Series 2016 Bonds, The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, and its successors and assigns; and (b) with respect to Additional Bonds, the entity designated as Bond Registrar in the supplemental resolution authorizing such Additional Bonds.

**“Bond Resolution”** means collectively the 2009 Bond Resolution, the 2015 Supplemental Resolution, the 2016 Supplemental Resolution, and any supplemental resolution authorizing any Additional Bonds.

**“Bonds”** means collectively the Series 2009 Bonds, Series 2015 Bonds, Series 2016 Bonds, and any Additional Bonds.

**“Business Day”** means a day other than a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the Legislature of the State and on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**“Cede & Co.”** means Cede & Co., as nominee of DTC and any successor nominee of DTC.

**“City”** means the City of Dodge City, Kansas.

**“City Sales Tax”** means the one-half percent (0.5%) retailers’ sales tax collected within the boundaries of the City, authorized under the Act by the special election held on June 10, 1997, and implemented by Resolution No. 97-16 of the City.

**“Clerk”** means the duly appointed and/or elected Clerk or, in the Clerk's absence, the duly appointed Deputy Clerk or Acting Clerk of the Issuer.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder by the United States Department of the Treasury.

**“Compliance Account”** means the Compliance Account created pursuant to *Section 501* hereof.

**“Consultant”** means the Independent Accountant, or an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs selected by the Issuer and acceptable to the Bond Insurer for the purpose of carrying out the duties imposed on the Consultant by this Bond Resolution.

**“Consulting Engineer”** means an independent engineer or engineering firm or architect or architectural firm, having a favorable reputation for skill and experience in the construction, financing and operation of public utilities, at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Consulting Engineer by this Bond Resolution.

**“Cooperation Agreement”** means the Dodge City-Ford County Interlocal Cooperation Agreement, dated as of July 21, 1997.

**“Costs of Issuance”** means all costs of issuing any series of Bonds, including all publication, printing, signing and mailing expenses in connection therewith, registration fees, financial advisory fees, all legal fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with compliance with the Code, all expenses incurred in connection with receiving financial ratings on any series of Bonds, and any premiums or expenses incurred in obtaining any credit enhancement.

**“Costs of Issuance Account”** means the Costs of Issuance Account for Sales Tax Refunding Revenue Bonds, Series 2016, created pursuant to *Section 501* hereof.

**“County”** means Ford County, Kansas.

**“County Sales Tax”** means the one-half percent (0.5%) retailers’ sales tax collected within the boundaries of the County, authorized under the Act by the special election held on June 10, 1997, and implemented by Resolution No. 97-28 of the County.

**“Dated Date”** means: (a) with respect to the Series 2016 Bonds, March 22, 2016; and (b) with respect to any other Additional Bonds, the date set forth in the supplemental resolution authorizing such Additional Bonds.

**“Debt Service Account-2009”** means the Debt Service Account for Sales Tax Revenue Bonds, Series 2009 referred to in *Section 501* hereof.

**“Debt Service Account-2015”** means the Debt Service Account for Sales Tax Revenue Bonds, Series 2015 referred to in *Section 501* hereof.

**“Debt Service Account-2016”** means the Debt Service Account for Sales Tax Refunding Revenue Bonds, Series 2016 created by *Section 501* hereof.

**“Debt Service Fund”** means the fund by that name referred to in *Section 501* hereof.

**“Debt Service Requirements”** means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on the Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

**“Debt Service Reserve Account”** means the Debt Service Reserve Account for Parity Bonds referred to in *Section 501* hereof.

**“Debt Service Reserve Requirement”** means the amount on the date of original issuance and delivery of any Series of Bonds equal to the least of (a) 10% of the stated principal amount of all Parity Bonds, (b) the Maximum Annual Debt Service for all Parity Bonds during any Fiscal Year, or (c) 125% of the average annual Debt Service Requirements for all Parity Bonds over the term of all Parity Bonds. If the aggregate initial offering price of any series of Bonds to the public is less than 98% or more than 102% of par, such offering price shall be used in clause (a) in lieu of the stated principal amount. When calculating the Debt Service Reserve Requirement in conjunction with the issuance of Refunding Bonds, the principal amount of Bonds to be refunded shall be deducted from said calculations.

**“Defaulted Interest”** means interest on any Bond which is payable but not paid on any Interest Payment Date.

**“Defeasance Obligations”** means any of the following obligations:

- (a) Cash; or
- (b) United States Government Obligations that are not subject to redemption in advance of their maturity dates.

**“Derivative”** means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

**“Disclosure Undertaking”** means, with respect to the Series 2016 Bonds, the Issuer’s Omnibus Continuing Disclosure Undertaking relating to certain obligations contained in the SEC Rule, as revised and affirmed by the Adoption Agreement.

**“Discount Indebtedness”** means Long-Term Indebtedness that is originally sold at a price (excluding accrued interest, but without deduction of any underwriters' discount) of less than 75% of the maturity amount including the amount of principal and interest to accrete at maturity of such Long-Term Indebtedness.

**“DTC”** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns, including any successor securities depository duly appointed.

**“Escrow Agent”** means Security Bank of Kansas City, Wichita, Kansas, and its successors and assigns.

**“Escrow Agreement”** means the Escrow Trust Agreement, dated as of the Dated Date, between the Issuer and the Escrow Agent.

**“Escrow Fund”** means the Escrow Fund for Refunded Bonds referred to in *Section 501* hereof.

**“Escrowed Securities”** means the direct, noncallable obligations of the United States of America, as described in the Escrow Agreement.

**“Event of Default”** means each of the following occurrences or events:

(a) Payment of the principal and of the redemption premium, if any, of any of the Bonds shall not be made when the same shall become due and payable, either at Stated Maturity or by proceedings for redemption or otherwise;

(b) Payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable;

(c) The Issuer shall for any reason be rendered incapable of fulfilling its obligations hereunder;

(d) Any proceeding shall be instituted, with the consent or acquiescence of the Issuer, for the purpose of effecting a composition between the Issuer and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Revenues; or

(e) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Bond Resolution on the part of the Issuer to be performed (other than relating to the SEC Rule), and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Issuer by the Owner of any of the Bonds then Outstanding, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Issuer by the Owner of any of the Bonds then Outstanding; or

(f) A monetary default shall have occurred on any Indebtedness.

**“Federal Tax Certificate”** means the Issuer's Federal Tax Certificate dated as of the Issue Date for the Series 2016 Bonds, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Financeable Costs”** means the amount of expenditure for a Project which has been duly authorized by action of the governing body of the Issuer to be financed by Indebtedness, less: (a) the amount of any Indebtedness of the Issuer which is currently Outstanding and available to pay such Financeable Costs; and (b) any amount of Financeable Costs which has been previously paid by the Issuer or by any eligible source of funds unless such amounts are entitled to be reimbursed to the Issuer under State or federal law.

**“Fiscal Agent”** means, with respect to the Series 2016 Bonds, collectively The Bank of New York Mellon Trust Company, N.A., having an office in St. Louis, Missouri, and its successors and assigns and INTRUST Bank, N.A., Wichita, Kansas, its successors and assigns, in their capacities as co-fiscal agents.

**“Fiscal Year”** means the twelve month period ending on December 31.

**“Funds and Accounts”** means funds and accounts created pursuant to or referred to in *Section 501* hereof.

**“Indebtedness”** means collectively the Bonds and any Additional Obligations which are payable out of, or secured by an interest in, the Revenues.

**“Independent Accountant”** means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Independent Accountant by this Bond Resolution.

**“Index Rate”** means the rate of interest set forth in *The Bond Buyer* Revenue Bond Index (or, in the event that *The Bond Buyer* does not compile such index or ceases publication, another comparable publication recognized in the municipal bond market) published for the week immediately preceding the date of determination.

**“Insurance Consultant”** means an individual or firm selected by the Issuer and acceptable to the Bond Insurer qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to those of the System and having a favorable reputation for skill and experience in making such surveys and recommendations.

**“Insured Bonds”** means any Series of Bonds insured by a Bond Insurer, which includes the Series 2009 Bonds and Series 2016 Bonds but which does not include the Series 2015 Bonds.

**“Insurer's Fiscal Agent”** means: (a) with respect to the Series 2009 Bonds, the agent designated by the Bond Insurer pursuant to the Bond Insurance Policy; (b) with respect to the Series 2016 Bonds, the agent designated by the Bond Insurer pursuant to the Bond Insurance Policy; and (c) with respect to Additional Bonds, the entity set forth in the supplemental resolution authorizing such Additional Bonds.

**“Interest Payment Date(s)”** means: (a) with respect to the Series 2016 Bonds, the Stated Maturity of an installment of interest on the Series 2016 Bonds which shall be June 1 and December 1 of each year, commencing June 1, 2016; and (b) with respect to Additional Bonds, the Stated Maturity of an installment

of interest on such Additional Bonds, as set forth in the supplemental resolution authorizing such Additional Bonds.

**“Interim Indebtedness”** means Indebtedness having a term not less than one year, and not in excess of five years, incurred or assumed in anticipation of being refinanced or refunded with Long-Term Indebtedness.

**“Issue Date”** means the date when the Issuer delivers any series of Bonds to the Purchaser in exchange for the Purchase Price.

**“Issuer”** means the City and any successors or assigns.

**“Junior Lien Obligations”** means any Additional Bonds or Additional Obligations payable from, and secured by a lien on the Revenues, which lien is junior to that of any Parity Bonds, but senior to that of the Subordinate Lien Bonds.

**“Long-Term Indebtedness”** means Indebtedness having an original stated maturity or term greater than five years, or renewable or extendible at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof.

**“Maturity”** when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

**“Mayor”** means the duly elected and acting Mayor, or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the Issuer.

**“Maximum Annual Debt Service”** means the maximum amount of Debt Service Requirements as computed for the then current or any future Fiscal Year; provided that the Debt Service Requirements in the final Stated Maturity of any series of Parity Bonds shall be reduced by the value of cash and Permitted Investments on deposit in the Debt Service Reserve Account, so long as the Debt Service Reserve Account is maintained at the Debt Service Reserve Requirement.

**“Moody's”** means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody's” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with notice to the Bond Insurer.

**“Net Revenues”** means, for the period of determination, all Revenues less all Operating Expenses.

**“Notice Address”** means with respect to the following entities:

(a) To the Issuer at:

City Hall  
806 2nd Avenue  
Dodge City, Kansas 67801  
Fax: (620) 225-8144

(b) To the State Treasurer at:

State Treasurer of the State of Kansas  
Landon Office Building  
900 Southwest Jackson, Suite 201  
Topeka, Kansas 66612-1235

- (c) To the Bond Registrar, Paying Agent and Fiscal Agent at:

**Series 2016 Bonds:**

The Bank of New York Mellon Trust Company, N.A.  
911 Washington Avenue  
St. Louis, Missouri 63101  
Fax: (314) 613-8227

- (d) To the Purchaser:

**Series 2016 Bonds:**

Stifel, Nicolaus & Company, Incorporated  
301 N. Main, Suite 800  
Wichita, Kansas 67202  
Fax: (316) 337-8492

- (e) To the Rating Agency(ies):

Moody's Municipal Rating Desk  
7 World Trade Center, 23rd Floor  
250 Greenwich Street  
New York, New York 10007

Standard & Poor's Ratings Services, a division of McGraw Hill Financial Inc.  
55 Water Street, 38th Floor  
New York, New York 10004

- (f) To the Escrow Agent at:

**Series 2016 Bonds:**

Security Bank of Kansas City  
Corporate Trust Department  
200 W. Douglas, Suite 612  
Wichita, Kansas 67202

Security Bank of Kansas City  
9803 W. Jamesburg  
Wichita, Kansas 67212

with a copy to:

Security Bank of Kansas City  
Corporate Trust Department  
701 Minnesota Avenue  
Suite 206, P.O. Box 171297  
Kansas City, Kansas 66117

Fax: (913) 279-7960

(g) To the Bond Insurer:

**Series 2016 Bonds:**

Assured Guaranty Municipal Corp.  
31 West 52nd Street  
New York, New York 10019  
Telephone: (212) 826-0100; Fax: (212) 339-3529

or such other address as is furnished in writing to the other parties referenced herein.

**“Notice Representative”** means:

- (a) With respect to the Issuer, the Clerk.
- (b) With respect to the State Treasurer, the Director of Bond Services.
- (c) With respect to the Bond Registrar, Paying Agent and Fiscal Agent, the Manager of the Corporate Trust Department.
- (d) With respect to any Purchaser, the manager of its Municipal Bond Department.
- (e) With respect to any Rating Agency, any Vice President thereof.
- (f) With respect to the Escrow Agent, the Manager of the Corporate Trust Department.
- (g) With respect to the Bond Insurer, Attn: Managing Director – Surveillance – Re: Policy No. [\_\_\_\_\_].

**“Operating Fund”** means the Operating Fund for Sales Tax Facilities referred to in this Bond Resolution.

**“Operation Expenses”** means all expenses of operating the facilities that comprise the Project.

**“Ordinance”** means Ordinance No. 3625 of the Issuer authorizing the issuance of the Series 2016 Bonds, as amended from time to time.

**“Outstanding”** means, when used with reference to Bonds, as of a particular date of determination, all Bonds theretofore, authenticated and delivered, except the following Bonds:

- (a) Bonds theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to the Bond Resolution; and
- (b) Bonds deemed to be paid in accordance with the provisions of *Section 1101* of the Bond Resolution; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under the Bond Resolution; and

(d) Insured Bonds, the principal or interest of which has been paid by the Bond Insurer.

**“Owner”** when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register. Whenever consent of the Owners is required pursuant to the terms of this Bond Resolution, and the Owner of the Bonds, as set forth on the Bond Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Bonds.

**“Parity Bonds”** means the Outstanding Series 2009 Bonds, Series 2015 Bonds, Series 2016 Bonds, and any Additional Bonds hereafter issued pursuant to *Section 902* or *Section 905* of the Bond Resolution and standing on a parity and equality with the Series 2015 Bonds and the Series 2016 Bonds with respect to the lien on the Revenues.

**“Parity Obligations”** means any Additional Obligations hereafter issued or incurred pursuant to *Section 902* or *Section 905* of the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Revenues.

**“Parity Resolution”** means collectively the 2009 Bond Resolution, the 2015 Supplemental Resolution, the 2016 Supplemental Resolution, and the ordinances and/or resolutions under which any Additional Bonds which constitute Parity Bonds are hereafter issued.

**“Participants”** means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**“Paying Agent”** means: (a) with respect to the Series 2016 Bonds, the Fiscal Agent; and (b) with respect to Additional Bonds, the entity designated as Paying Agent in the supplemental resolution authorizing such Additional Bonds.

**“Permitted Investments”** shall mean the investments hereinafter described, provided, however, no moneys or funds shall be invested in a Derivative:

- (a) Cash (fully insured by the Federal Deposit Insurance Corporation);
- (b) The municipal investment pool established pursuant to K.S.A. 12-1677a, and amendments thereto;
- (c) Direct obligations of the United States Government or any agency thereof (other than an obligation subject to variation in principal repayment);
- (d) Evidences of ownership of proportionate interests in future interest and principal payments on obligations described in (c) held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated;
- (e) Federal Housing Administration debentures;
- (f) The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America;

- (1) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts);
- (2) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes;
- (3) Federal Home Loan Banks (FHL Banks) consolidated debt obligations; and
- (4) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts);
- (g) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Issuer is located, which have capital and surplus of at least \$15,000,000, and which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c);
- (h) Money market funds rated "Aam" or "AAm-G" by S&P, or better and if rated by Moody's rated "Aa2" or better, the portfolio of which is comprised entirely of securities described in (c), (e) or (f);
- (i) Municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general obligations of the municipality issuing the same and which is rated at least "A3" by Moody's and at least "A-" by S&P, or any obligation fully and unconditionally guaranteed by the State or any subdivision or agency thereof whose unsecured general obligation debt is so rated;
- (j) Direct general short-term obligations of the State or any subdivision or agency thereof described in (i) and rated "A-1+" by S&P and "MIG-1" by Moody's;
- (k) Bonds of any municipality of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity, are rated "AAA" by S&P and "Aaa" by Moody's, are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of Defeasance Obligations, and which meet the following requirements:
  - (1) the bonds are (A) not subject to redemption prior to maturity or (B) the Paying Agent for the bonds has been given irrevocable instructions concerning their call and redemption and the Issuer of the bonds has covenanted not to redeem such bonds other than as set forth in such instructions;
  - (2) the bonds are secured by cash or United States Government Obligations which may be applied only to payment of the principal of, interest and premium on such bonds;
  - (3) the principal of and interest on the United States Government Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the bonds;
  - (4) the cash or United States Government Obligations serving as security for the bonds are held by an escrow agent or trustee in trust for owners of the bonds;

(5) no substitution of a United States Government Obligation shall be permitted except with another United States Government Obligation and upon delivery of a new report as described in (3); and

(6) the cash or United States Government Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent;

(l) Repurchase agreements with (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least "A-" by S&P and "A3" Moody's; (2) any broker-dealer with "retail customers" or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least "A-" by S&P and "A3" by Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated at least "A-" by S&P and "A3" Moody's and acceptable to the Bond Insurer (each an "Eligible Provider"), provided that:

(4) permitted collateral shall include (A) direct obligations of the United States Government or any agency thereof, or (B) senior debt obligations of FNMA, FHLB or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and (ii) collateral levels must be at least 102% of the total principal when the collateral type is U.S. Government Obligations, and 104% of the total principal when the collateral type is FNMA, FHLB and FHLMC ("Eligible Collateral");

(5) the trustee or a third party acting solely as agent therefor or for the Issuer (the "Custodian") has possession of the collateral or the collateral has been transferred to the Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor's books) and such collateral shall be marked to market;

(6) the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the trustee, the Issuer and the Bond Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

(7) the repurchase agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Bond Insurer;

(8) the repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof; and

(9) the repurchase agreement shall provide that if during its term the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below "A-" by S&P or "A3" by Moody's, as appropriate, the provider must, notify the Issuer, the Paying Agent and the Bond Insurer within five (5) days of receipt of such notice. Within ten (10) days of receipt of such notice, the provider shall either: (i) provide a written guarantee acceptable to the Bond Insurer, (ii) post Eligible Collateral, or (iii) assign the agreement to an Eligible Provider. If the provider does not perform a remedy within ten (10) business days, the provider shall, at the direction of the trustee (who shall give such direction if so directed by the Bond Insurer) repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the Issuer or the Paying Agent;

(m) Investment agreements: with a domestic or foreign bank or corporation the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline

financial guaranty insurance company, claims paying ability, of the guarantor is rated at least “AA-” by S&P and “Aa3” by Moody's, and acceptable to the Bond Insurer (each an “Eligible Provider”); provided that:

(1) interest payments are to be made to the Paying Agent at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;

(2) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven (7) days' prior notice; the Issuer and the Paying Agent hereby agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(3) the provider shall send monthly reports to the Paying Agent, the Issuer and the Bond Insurer setting forth the balance the Issuer or Paying Agent has invested with the provider and the amounts and dates of interest accrued and paid by the provider;

(4) the investment agreement shall state that is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

(5) the investment agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Bond Insurer;

(6) the Issuer, the Paying Agent and the Bond Insurer shall receive an opinion of domestic counsel to the provider that such investment agreement is legal, valid, binding and enforceable against the provider in accordance with its terms;

(7) the Issuer, the Paying Agent and the Bond Insurer shall receive an opinion of foreign counsel to the provider (if applicable) that (i) the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, (b) the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and (c) any judgment rendered by a court in the United States would be recognized and enforceable in such country;

(8) the investment agreement shall provide that if during its term:

(A) the provider's rating by either S&P or Moody's falls below “AA-” or “Aa3”, the provider shall, at its option, within ten (10) days of receipt of publication of such downgrade, either (i) provide a written guarantee acceptable to the Bond Insurer, (ii) post Eligible Collateral with the Issuer, the Paying Agent or a third party acting solely as agent therefore (the “Custodian”) free and clear of any third party liens or claims, or (iii) assign the agreement to an Eligible Provider, or (iv) repay the principal of and accrued but unpaid interest on the investment;

(B) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below “A-” or “A3”, the provider must, at the direction of the Issuer or the Paying Agent (who shall give such direction if so directed by the Insurer), within ten (10) days of

receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Issuer or Paying Agent;

(9) in the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). In addition, the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Paying Agent, the Issuer and the Bond Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

(10) the investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof; and

(11) the investment agreement must provide that if during its term: (i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Issuer or the Paying Agent (who shall give such direction if so directed by the Bond Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate, and (ii) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc., the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate.

**"Person"** means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**"Project(s)"** means the construction, equipping and operation of the operation of certain public projects, including installing air conditioning in the Issuer's Civic Center, constructing an outdoor motor sports complex, constructing field sports facilities, constructing and equipping a special events center, constructing and equipping a new regional outdoor aquatic facility, and other public projects, including any Substitute Project.

**"Project Committee"** means the Project Review and Advisory Committee established by the Cooperation Agreement.

**"Project Fund"** means the Project Fund for Sales Tax Revenue Bonds, Series 2015 referred to in *Section 501* hereof.

**"Purchase Price"** means: (a) with respect to the Series 2016 Bonds, the amount set forth in the Bond Purchase Agreement; and (b) with respect to Additional Bonds, the amount set forth in the supplemental resolution authorizing such Additional Bonds.

**"Purchaser"** means: (a) with respect to the Series 2016 Bonds, Stifel, Nicolaus & Company, Incorporated, the original purchaser of the Series 2016 Bonds, and any successor and assigns; and (b) with

respect to Additional Bonds, the original purchaser of such Additional Bonds, as set forth in the supplemental resolution authorizing such Additional Bonds.

**“Put Indebtedness”** means Long-Term Indebtedness which is (a) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, at the option of the holder thereof, prior to its stated maturity date, or (b) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, other than at the option of the holder, prior to its stated maturity date, other than pursuant to any mandatory sinking fund or other similar fund, or other than by reason of acceleration upon the occurrence of an Event of Default under this Bond Resolution.

**“Rating Agency”** means any company, agency or entity that provides financial ratings for the Bonds.

**“Rebate Fund”** means the Rebate Fund for Sales Tax Revenue Bonds, Series 2009, referred to in *Section 501* hereof.

**“Rebate Fund”** means the Rebate Fund for Sales Tax Revenue Bonds, Series 2015, referred to in *Section 501* hereof.

**“Rebate Fund”** means the Rebate Fund for Sales Tax Refunding Revenue Bonds, Series 2016, created pursuant to *Section 501* hereof.

**“Record Dates”** for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

**“Redemption Date”** when used with respect to any Bond to be redeemed means the date fixed for the redemption of such Bond pursuant to the terms of this Bond Resolution.

**“Redemption Price”** when used with respect to any Bond to be redeemed means the price at which such Bond is to be redeemed pursuant to the terms of the Bond Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

**“Refunded Bonds”** means the Series 2009 Bonds maturing in the years 2020 to 2034, inclusive, in the aggregate principal amount of \$31,940,000.

**“Refunded Bonds Paying Agent”** means the Fiscal Agent.

**“Refunded Bonds Redemption Date”** means June 1, 2019.

**“Refunded Bonds Resolution”** means the 2009 Bond Resolution.

**“Refunding Bonds”** means Indebtedness issued pursuant to *Section 905* of the Bond Resolution for the purpose of refunding any Outstanding Indebtedness.

**“Replacement Bonds”** means Bonds issued to the Beneficial Owners of the Bonds in accordance with *Section 209* hereof.

**“Revenue Fund”** means the Sales Tax Revenue Fund referred to in *Section 501* hereof.

**“Revenues”** means all revenues received by the City pursuant to the Cooperation Agreement from the implementation and collection of the Sales Tax.

**“Sales Tax”** means collectively the City Sales Tax and the County Sales Tax.

**“SEC Rule”** means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time.

**“Securities Depository”** means, initially, DTC, and its successors and assigns.

**“Series 2009 Bonds”** means the Issuer's Sales Tax Revenue Bonds, Series 2009, authorized and issued by the Issuer pursuant to the 2009 Bond Resolution.

**“Series 2015 Bonds”** means the Issuer's Sales Tax Revenue Bonds, Series 2015, authorized and issued by the Issuer pursuant to the 2015 Supplemental Resolution.

**“Series 2016 Bonds”** means the Issuer's Sales Tax Refunding Revenue Bonds, Series 2016, authorized and issued by the Issuer pursuant to the Ordinance and the 2016 Supplemental Resolution.

**“Short-Term Indebtedness”** means Indebtedness having an original maturity less than or equal to one year from the date of original incurrence thereof, and not renewable or extendible at the option of the obligor thereon for a term greater than one year beyond the date of original issuance.

**“Special Record Date”** means the date fixed by the Paying Agent pursuant to *Section 204* of the Bond Resolution for the payment of Defaulted Interest.

**“Standard & Poor’s”** means Standard & Poor’s Ratings Services, a division of McGraw Hill Financial Inc., New York, New York, a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor's” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with notice to the Bond Insurer.

**“State”** means the state of Kansas.

**“State Treasurer”** means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.

**“Stated Maturity”** when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond and this Bond Resolution as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

**“Subordinate Lien Bonds”** means any Additional Bonds or Additional Obligations payable from the Revenues on a subordinate lien basis to any Parity Bonds and Junior Lien Obligations, and which constitute general obligations of the Issuer.

**“Substitute Project”** means a substitute or additional project authorized in the manner set forth in *Section 504(a)* of the Bond Resolution.

**“Surplus Fund”** means the Surplus Fund for Sales Tax Revenue Bonds referred to in *Section 501* hereof.

**“Term Bonds”** means any Bonds designated as Term Bonds in the Bond Resolution or in any supplemental resolution authorizing the issuance of Additional Bonds.

**“Treasurer”** means the duly appointed and/or elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the Issuer.

**“2009 Bond Resolution”** means Resolution No. 2009-09 of the Issuer, which authorized the issuance of the Series 2009 Bonds and Additional Bonds.

**“2015 Supplemental Resolution”** means Resolution No. 2015-03 of the Issuer, which amends and supplements the 2009 Bond Resolution and authorizes the issuance of the Series 2015 Bonds.

**“2016 Supplemental Resolution”** means Resolution No. 2016-05 of the Issuer, which amends and supplements the 2009 Bond Resolution and authorizes the issuance of the Series 2016 Bonds.

**“United States Government Obligations”** means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Issuer.

**“Value”** as of any particular time of determination, means, (a) with respect to cash, the face value thereof, and (b) with respect to any Permitted Investments, the lower of the cost of the investment or the market price of the investment on the date of valuation.

**“Variable Rate Indebtedness”** means any Indebtedness which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with procedures provided in the instrument creating such Indebtedness.

**“Verification Report”** means the verification report referenced in *Section 507* hereof relating to the sufficiency of money and obligations deposited in the Escrow Fund to be applied in accordance with the Escrow Agreement.

## ARTICLE II

### AUTHORIZATION AND DETAILS OF THE BONDS

**Section 201. Authorization of the Series 2016 Bonds.** The Series 2016 Bonds have been heretofore authorized and directed to be issued pursuant to the Ordinance in the principal amount of \$32,435,000, for the purpose of providing a portion of the funds to: (a) refund the Refunded Bonds and (b) pay costs of issuance of the Series 2016 Bonds.

**Section 202. Description of the Series 2016 Bonds.** The Series 2016 Bonds shall consist of fully registered bonds in Authorized Denominations, and shall be numbered in such manner as the Purchaser shall determine. All of the Series 2016 Bonds shall be dated as of the Dated Date, shall become

due in the amounts, on the Stated Maturities, and subject to redemption and payment, prior to their Stated Maturities as provided in *Article III* hereof and shall bear interest at the rates per annum as follows:

<b>Stated Maturity June 1</b>	<b>Principal Amount</b>	<b>Annual Rate of Interest</b>	<b>Stated Maturity June 1</b>	<b>Principal Amount</b>	<b>Annual Rate of Interest</b>
2017	\$ 70,000	2.000%	2026	\$1,920,000	5.000%
2018	75,000	2.000%	2027	2,060,000	5.000%
2019	75,000	2.000%	2028	2,210,000	5.000%
2020	1,345,000	2.000%	2029	2,380,000	5.000%
2021	1,415,000	1.750%	2030	2,545,000	5.000%
2022	1,480,000	4.000%	2031	2,720,000	5.000%
2023	1,580,000	5.000%	2032	2,885,000	3.000%
2024	1,705,000	2.250%	2033	3,025,000	3.000%
2025	1,785,000	5.000%	2034	3,160,000	3.125%

The Series 2016 Bonds shall bear interest at the above specified rates (computed on the basis of a 360-day year of twelve 30-day months) from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid on the Interest Payment Dates in the manner set forth in *Section 204* of the 2009 Bond Resolution. The Series 2016 Bonds shall be issued as Book-Entry-Only Bonds and administered in accordance with the provisions of *Section 209* of the 2009 Bond Resolution.

Each of the Series 2016 Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be printed in accordance with the format required by the Attorney General of the State and shall be substantially in the form attached hereto as *Exhibit A* or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 *et seq.*

**Section 203. Designation of Paying Agent, Bond Registrar and Fiscal Agent.** INTRUST Bank, N.A., Wichita, Kansas and The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, are hereby designated as co-Fiscal Agents and Paying Agents for the Series 2016 Bonds, and each and every power, right, duty or obligation to be exercised by, vested in or conveyed to the Fiscal Agent or Paying Agent by this Bond Resolution shall be exercisable by, vest in and be conveyed to each co-Fiscal Agent and Paying Agent, but only to the extent necessary for it to be so vested and conveyed and to enable that co-Fiscal Agent to exercise it. The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, is hereby designated as Bond Registrar with respect to the registration, transfer and exchange of the Series 2016 Bonds. The Mayor of the Issuer is hereby authorized and empowered to execute on behalf of the Issuer an agreement with the Bond Registrar and with the Fiscal Agent and Paying Agent for the Series 2016 Bonds.

**Section 204. Preliminary and Final Official Statement.** The Preliminary Official Statement dated February 23, 2016, is hereby ratified and approved. The final Official Statement is hereby authorized to be prepared by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor or chief financial officer are hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the final Official Statement by the Purchaser in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds sufficient copies of the final Official Statement to enable the Purchaser to comply with the

requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 205. Sale of the Series 2016 Bonds – Bond Purchase Agreement.** The execution of the Bond Purchase Agreement by the Mayor is hereby ratified and confirmed. Pursuant to the Bond Purchase Agreement, the Issuer agrees to sell the Series 2016 Bonds to the Purchaser for the Purchase Price, upon the terms and conditions set forth therein.

**Section 206. Other Provisions.** The provisions of *Article II* of the 2009 Bond Resolution, to the extent not inconsistent with the provisions of this *Article II*, are hereby incorporated herein by reference.

### ARTICLE III

#### REDEMPTION OF BONDS

**Section 301. Redemption by Issuer.** The Series 2016 Bonds shall be subject to redemption and payment prior to their Stated Maturity, as follows:

(a) **Optional Redemption.** At the option of the Issuer, Series 2016 Bonds or portions thereof maturing in the years 2028 and thereafter may be called for redemption and payment prior to their Stated Maturity on June 1, 2027, and thereafter as a whole or in part (selection of maturities and the amount of Series 2016 Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.

(b) **Mandatory Redemption.** There are no Term Bonds for the Series 2016 Bonds.

**Section 302. Other Redemption Provisions.** The provisions of *Article III* of the 2009 Bond Resolution, to the extent not inconsistent with the provisions of this *Article III*, are hereby incorporated herein by reference.

### ARTICLE IV

#### SECURITY FOR BONDS

**Section 401. Security for the Bonds.** The Bonds shall be special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Revenues, and the Issuer has pledged said Revenues to the payment of the principal of and interest on the Bonds. The general taxing power of the Issuer is not pledged to the payment of the Bonds either as to principal or interest. The Bonds shall not be or constitute a general obligation of the State, the County or the Issuer nor shall they constitute an indebtedness of the State or the Issuer within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

The covenants and agreements of the Issuer contained herein, in the Ordinance and in the Series 2016 Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2016 Bonds, all of which Series 2016 Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2016 Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2016 Bonds shall stand

on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Revenues with any Parity Bonds or Parity Obligations. The Series 2016 Bonds shall not have any priority with respect to the payment of principal or interest from said Revenues or otherwise over the Parity Bonds or Parity Obligations; and the Parity Bonds and Parity Obligations shall not have any priority with respect to the payment of principal or interest from said Revenues or otherwise over the Series 2016 Bonds.

## ARTICLE V

### ESTABLISHMENT OF FUNDS AND ACCOUNTS DEPOSIT AND APPLICATION OF BOND PROCEEDS AND OTHER MONEYS

**Section 501. Creation of Funds and Accounts.** (a) This 2016 Supplemental Resolution establishes or ratifies within the treasury of the City the following separate Funds and Accounts:

- (1) Revenue Fund for Sales Tax.
- (2) Project Fund for Series 2015 Bonds.
- (3) Operating Fund for Sales Tax Facilities.
- (4) Surplus Fund for Sales Tax.
- (5) Compliance Account.

(b) This 2016 Supplemental Resolution establishes or ratifies with the Fiscal Agent the following separate Funds and Accounts:

- (1) Debt Service Fund for Sales Tax Revenue Bonds.
  - (A) Debt Service Account for Series 2009 Bonds.
  - (B) Debt Service Account for Series 2015 Bonds.
  - (C) Debt Service Account for Series 2016 Bonds.
- (2) Debt Service Reserve Account for Parity Bonds.
- (3) Rebate Fund for Series 2009 Bonds.
- (4) Rebate Fund for Series 2015 Bonds.
- (5) Rebate Fund for Series 2016 Bonds.

(c) In addition to the Funds and Accounts described above, the Escrow Agreement establishes the following Funds and Accounts to be held and administered by the Escrow Agent in accordance with the provisions of the Escrow Agreement:

- (1) Escrow Fund for Refunded Bonds.
- (2) Costs of Issuance Account for Series 2016 Bonds.

The Funds and Accounts established herein shall be administered in accordance with the provisions of the Bond Resolution so long as the Bonds are Outstanding.

**Section 502. Deposit of Series 2016 Bond Proceeds and Other Moneys.** The net proceeds received from the sale of the Series 2016 Bonds and certain other moneys shall be deposited simultaneously with the delivery of the Series 2016 Bonds as follows:

(a) All excess proceeds, if any, received from the sale of the Series 2016 Bonds shall be deposited in the Debt Service Account-2016.

(b) An amount necessary to pay Costs of Issuance shall be transferred to the Escrow Agent for deposit in the Costs of Issuance Account and applied in accordance with the Escrow Agreement.

(c) An amount necessary, if any, to fund the Debt Service Reserve Requirement shall be deposited in the Debt Service Reserve Account.

(d) The remaining balance of the proceeds derived from the sale of the Series 2016 Bonds, together with moneys provided by the Issuer, shall be transferred to the Escrow Agent and deposited in the Escrow Fund.

(e) Simultaneously with the issuance and delivery of the Series 2016 Bonds, the Issuer shall transfer from the Debt Service Account-2009 to the Escrow Fund amounts necessary, together with funds therein, to refund the Refunded Bonds.

**Section 503. Application of Moneys in the Rebate Fund.**

(a) There shall be deposited in the Rebate Fund-2016 such amounts as are required to be deposited therein pursuant to the Federal Tax Certificate. All money at any time deposited in the Rebate Fund-2016 shall be held in trust, to the extent required to satisfy the Rebate Amount (as defined in the Federal Tax Certificate), for payment to the United States of America, and neither the Issuer nor the Owner of any Series 2016 Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund-2016 shall be governed by this Section and the Federal Tax Certificate (it being understood that the Fiscal Agent shall not be deemed to have any knowledge of the terms of the Federal Tax Certificate and shall have no responsibility for adhering to the provisions therein or monitoring the compliance thereof).

(b) The Issuer shall periodically determine the rebatable arbitrage, if any, under Code § 148(f) in accordance with the Federal Tax Certificate, and the Issuer shall make payments to the United States of America at the times and in the amounts determined under the Federal Tax Certificate. Any moneys remaining in the Rebate Fund-2016 after redemption and payment of all of the Series 2016 Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be deposited into the Revenue Fund.

(c) Notwithstanding any other provision of the Bond Resolution, including in particular *Article XI* thereof, the obligation to pay rebatable arbitrage to the United States of America and to comply with all other requirements of this Section and the Federal Tax Certificate shall survive the defeasance or payment in full of the Series 2016 Bonds.

**Section 504. Nonpresentment of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Resolution or on, or with respect to, said Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay, without liability for interest thereon, to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

**Section 505. Application of Moneys in the Costs of Issuance Account.** Moneys in the Costs of Issuance Account shall be used by the Escrow Agent to pay the Costs of Issuance. Any funds remaining in the Costs of Issuance Account, after payment of all Costs of Issuance, but not later than the later of 30 days prior to the first Stated Maturity of principal or one year after the Issue Date of the Series 2016 Bonds, shall be transferred to the Issuer for deposit into the Compliance Account or Debt Service Account-2016.

**Section 506. Application of Moneys in the Escrow Fund.** Under the Escrow Agreement, the Escrow Agent will apply moneys in the Escrow Fund to purchase the Escrowed Securities and to establish an initial cash balance in accordance with the Escrow Agreement. The cash and Escrowed Securities held in the Escrow Fund will be applied by the Escrow Agent solely in the manner authorized by the Escrow Agreement. All money deposited with the Escrow Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in the Refunded Bond Resolution and the Escrow Agreement.

**Section 507. Verification of Certified Public Accountant.** Prior to or concurrently with the issuance and delivery of the Series 2016 Bonds and the creation of the Escrow Fund, the Issuer shall obtain a Verification Report from an Independent Accountant that such Independent Accountant has verified the accuracy of the calculations that demonstrate that the money and obligations required to be deposited in the Escrow Fund pursuant to **Section 502** of this 2016 Supplemental Resolution and the Escrow Agreement, together with the earnings to accrue thereon, will be sufficient for the timely payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds in accordance with the Escrow Agreement.

**Section 508. Application of Moneys in the Compliance Account.** Moneys in the Compliance Account shall be used by the Issuer to pay fees and expenses relating to compliance with federal arbitrage law, state or federal securities laws, and other costs or expenses of carrying or repaying the Series 2016 Bonds as set forth in the Federal Tax Certificate. Any funds remaining in the Compliance Account on the sixth anniversary of the Issue Date of the Series 2016 Bonds shall be transferred to the Debt Service Account-2016.

## ARTICLE VI

### COLLECTION AND APPLICATION OF REVENUES

**Section 601. Revenue Fund.** The Issuer covenants and agrees that as long as any of the Bonds remain Outstanding hereunder, all of the Revenues derived and received by the Issuer pursuant to the Cooperation Agreement shall be segregated and kept separate and apart from all other moneys, revenues, Funds and Accounts of the Issuer and shall not be mingled with any other moneys, revenues, Funds and Accounts. Upon receipt, Revenues will be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Bond Resolution, except as may be modified by the provisions of the Parity Resolution.

**Section 602. Application of Moneys in Funds and Accounts.** The Issuer covenants and agrees that so long as any of the Bonds shall remain Outstanding, it will on the first day of each month administer and allocate all of the moneys then held in the Revenue Fund as follows:

- (a) ***Debt Service Fund.***

(1) *Debt Service Account-2009.* Beginning as of the first day of the month next ensuing after the issuance of the Series 2009 Bonds, the Issuer shall transfer to the Fiscal Agent an amount (less accrued credits to such Debt Service Account-2009) equal to: (i) an equal proportionate amount of the next maturing interest on the Series 2009 Bonds; and (ii) an equal proportionate amount of the next maturing principal on the Series 2009 Bonds; to the end that at all times one (1) month prior to maturity of interest or principal, on the Series 2009 Bonds, there shall be sufficient moneys in the Debt Service Account-2009 for the payment of the maturing interest and principal on the Series 2009 Bonds.

(2) *Debt Service Account-2015.* Beginning as of the first day of the month next ensuing after the issuance of the Series 2015 Bonds, the Issuer shall transfer to the Fiscal Agent an amount (less accrued credits to such Debt Service Account-2015) equal to: (i) an equal proportionate amount of the next maturing interest on the Series 2015 Bonds; and (ii) an equal proportionate amount of the next maturing principal on the Series 2015 Bonds; to the end that at all times one (1) month prior to maturity of interest or principal, on the Series 2015 Bonds, there shall be sufficient moneys in the Debt Service Account-2015 for the payment of the maturing interest and principal on the Series 2015 Bonds.

(3) *Debt Service Account-2016.* Beginning as of the first day of the month next ensuing after the issuance of the Series 2016 Bonds, the Issuer shall transfer to the Fiscal Agent an amount (less accrued credits to such Debt Service Account-2016) equal to: (i) an equal proportionate amount of the next maturing interest on the Series 2016 Bonds; and (ii) an equal proportionate amount of the next maturing principal on the Series 2016 Bonds; to the end that at all times one (1) month prior to maturity of interest or principal, on the Series 2016 Bonds, there shall be sufficient moneys in the Debt Service Account-2016 for the payment of the maturing interest and principal on the Series 2016 Bonds.

(4) *Parity Bond Accounts.* Each series of other Parity Bonds shall have established a separate Debt Service Account. Beginning as of the first day of the month next ensuing after the issuance of such other Parity Bonds, the Issuer shall transfer to the Fiscal Agent an amount (less accrued credits to such Debt Service Account) equal to: (i) a pro-rata amount of the next the next maturing interest on such Parity Bonds; and (ii) a pro-rata amount of the next maturing principal on such Parity Bonds; to the end that at all times one (1) month prior to maturity of interest or principal, on such Parity Bonds, there shall be sufficient moneys in such Debt Service Account for the payment of the maturing interest and principal on the such Parity Bonds.

All such transfers shall be made on a parity basis among all debt service accounts within the Debt Service Fund for Parity Bonds. The amounts transferred and credited to the various accounts within the Debt Service Fund shall be used solely and exclusively for the payment of principal of and interest on the respective Parity Bonds when the same shall become due and payable. In addition thereto, there shall be transferred to the various accounts within the Debt Service Fund sufficient sums to pay any fees and expenses of the Bond Registrar, Fiscal Agent and Paying Agent for such Parity Bonds.

(b) *Debt Service Reserve Account.* Simultaneously with the issuance of each series of Parity Bonds, the Issuer shall provide that the Debt Service Reserve Account shall attain the Debt Service Reserve Requirement. If the Issuer shall ever be required to expend and use a part of the moneys in the Debt Service Reserve Account for the purpose herein authorized and such expenditure shall reduce the amount of the Debt Service Reserve Account below the Debt Service Reserve Requirement, the Issuer shall, after all payments and credits required at the time to be made by the Issuer under the provisions of paragraph (a) of this Section have been made, transfer all available funds in the Revenue Fund into the Debt Service Reserve Account until it shall again aggregate to the Debt Service Reserve Requirement.

Except as hereinafter provided in this Section, all amounts paid and credited to the Debt Service Reserve Account shall be expended and used solely to prevent any default in the payment of interest on or principal of the Parity Bonds if the moneys in the Debt Service Fund are insufficient to pay the interest on or principal of said Parity Bonds as they become due. Moneys in the Debt Service Reserve Account may be used to call any series of Parity Bonds for redemption and payment prior to their maturity provided all of such series of Parity Bonds at the time Outstanding are called for payment and that after such redemption there shall remain in the Debt Service Reserve Account an amount equal to the Debt Service Reserve Requirement. Moneys in the Debt Service Reserve Account shall be used to pay and retire the last Outstanding Parity Bonds unless such Parity Bonds and all interest thereon are otherwise paid.

(c) ***Operating Fund.*** After the transfers required in the previous subsections have been made, the Issuer shall transfer to the Operating Fund sufficient amounts, as determined by the governing body of the Issuer, to provide for payment of Operating Expenses during the next ensuing month. Amounts in the Operating Fund shall be used to pay such Operating Expenses upon proper voucher approved by the Issuer's City Manager.

(d) ***Debt Service Accounts-Junior Lien Obligations.*** There shall next be paid and credited monthly to the debt service account(s) for any Junior Lien Obligations, to the extent necessary to meet on each Bond Payment Date an amount equal to the payment of all interest on and principal of any Junior Lien Obligations. The amounts required to be paid and credited to the debt service account(s) for any Junior Lien Obligations shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to other debt service accounts established for the payment of the Debt Service Requirements on any Junior Lien Obligations.

(e) ***Debt Service Accounts-Subordinate Lien Bonds.*** There shall next be paid and credited monthly to the debt service account(s) for any Subordinate Lien Bonds, to the extent necessary to meet on each Bond Payment Date an amount equal to the payment of all interest on and principal of any Subordinate Lien Bonds. The amounts required to be paid and credited to the debt service account(s) for any Subordinate Lien Bonds shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to other debt service accounts established for the payment of the Debt Service Requirements on any Subordinate Lien Bonds.

(f) ***Surplus Fund.*** After the transfers required in the previous sections have been made, any remaining funds in the Revenue Fund shall be deposited in the Surplus Fund. Amounts in the Surplus Fund may be used to: (1) make payments into, increase the amounts in, or prevent a deficiency in any other Fund or Account; (2) pay the costs to construct, equip and furnish the Project not paid from the Project Fund; or (3) to call, redeem and pay any Bonds prior to maturity, if then callable by their terms. If at any time the moneys in the Debt Service Fund and in the Debt Service Reserve Account are not sufficient to pay the principal of and interest on any Bonds as and when the same become due, then moneys in the Surplus Fund shall be used to prevent any default in the payment of the principal of and interest on such Bonds.

(g) ***Deficiency of Payments into Funds and Accounts.*** If at any time the Revenues derived from Sales Tax are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available Revenues thereafter received from the Sales Tax, such payments and credits being made and applied in the order hereinbefore specified in this Section.

**Section 603. Transfer of Funds to Paying Agent.** All Funds and Accounts held by the Fiscal Agent shall be held in trust for the benefit of the Owners of the Bonds at the time Outstanding. The Fiscal Agent is hereby authorized and directed to withdraw from the Funds and Accounts held by such Fiscal

Agent, and transfer the same to the Paying Agent or other parties as may be required and set forth in this Bond Resolution. The Treasurer of the Issuer, to the extent necessary to prevent a default in the payment of either principal or interest on the Bonds, is authorized and directed to transfer from the Revenue Fund or Surplus Fund as provided herein, sums sufficient to prevent a default in the punctual payment of the principal and interest on the Bonds and the fees of the Bond Registrar and Paying Agent when the same become due. If, through lapse of time, or otherwise, the Owners of Bonds shall no longer be entitled to enforce payment of their obligations, it shall be the duty of the Paying Agent forthwith to return said funds to the Issuer. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Bond Resolution.

**Section 604. Payments Due on Saturdays, Sundays and Holidays.** In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

## ARTICLE VII

### DEPOSIT AND INVESTMENT OF MONEYS

**Section 701. Deposits and Investment of Moneys.** Moneys in each of the Funds and Accounts shall be deposited and may be invested in accordance with the provisions of *Article VII* of the 2009 Bond Resolution as supplemented.

## ARTICLE VIII

### ADDITIONAL PROVISIONS

**Section 801. Incorporation by Reference.** The provisions of *Articles VIII* through *XI*, inclusive, and *Article XV* of the 2009 Bond Resolution, to the extent not inconsistent with the provisions of this Supplemental Bond Resolution, are hereby incorporated herein by reference.

## ARTICLE IX

### TAX COVENANTS

**Section 901. General Covenants.** The Issuer covenants and agrees that it will comply with: (a) all applicable provisions of the Code necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2016 Bonds; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor and Director of Finance/Clerk are hereby authorized and directed to execute the Federal Tax Certificate in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the Issuer. The Issuer will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Series 2016 Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

**Section 902. Survival of Covenants.** The covenants contained in this Article and in the Federal Tax Certificate shall remain in full force and effect notwithstanding the defeasance of the Series 2016 Bonds pursuant to *Article XI* of the Bond Resolution or any other provision of this 2016 Supplemental Resolution until such time as is set forth in the Federal Tax Certificate.

## ARTICLE X

### CONTINUING DISCLOSURE REQUIREMENTS

**Section 1001. Disclosure Requirements.** With respect to the Series 2016 Bonds, the Issuer hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Disclosure Undertaking, which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

**Section 1002. Failure to Comply with Continuing Disclosure Requirements.** In the event the Issuer fails to comply in a timely manner with its covenants contained in the preceding section, the Purchaser and/or any Beneficial Owner may make demand for such compliance by written notice to the Issuer. In the event the Issuer does not remedy such noncompliance within 10 days of receipt of such written notice, the Purchaser or any Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy, as the Purchaser and/or any Beneficial Owner shall deem effectual to protect and enforce any of the duties of the Issuer under such preceding section. The Purchaser or Beneficial Owner shall provide a copy of any such demand or notice to the Bond Insurer.

## ARTICLE XI

### PROVISIONS RELATING TO THE BOND INSURANCE POLICY

The provisions of this Article shall only apply to the Series 2016 Bonds. Notwithstanding anything to the contrary set forth in this 2016 Supplemental Resolution, , as long as the Bond Insurance Policy shall be in full force and effect, the Issuer and the Paying Agent agree to comply with the following provisions:

**Section 1101. Series 2016 Bond Acceleration.** The maturity of Series 2016 Bonds insured by the Bond Insurer shall not be accelerated without the consent of the Bond Insurer and, in the event the maturity of the Series 2016 Bonds is accelerated, the Bond Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Trustee shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Bond Insurer's obligations under the Bond Insurance Policy with respect to such accelerated Series 2016 Bonds shall be fully discharged.

**Section 1102. Notice and Opportunity to Cure Certain Defaults.** No default described under paragraph (e) of the definition of "Event of Default" (a "covenant default") shall constitute an Event of Default until written notice of such covenant default shall have been given to the Issuer by the holders of at least 25% in aggregate principal amount of the Series 2016 Bonds Outstanding, with a copy to the Bond Insurer, and the Issuer shall have had thirty (30) days after receipt of such notice to correct such covenant default or cause such default to be corrected, and shall have failed to do so. In the event, however, that the

covenant default be such that it cannot be corrected within such thirty (30) day period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer within such period and diligently pursued until the covenant default is corrected, provided that such period for corrective action may not exceed sixty (60) days without prior written consent of the Bond Insurer. No grace period shall be permitted for payment defaults described under paragraphs (a) and (b) of the definition of “Event of Default”.

**Section 1103. Application of Moneys Realized Upon Default.** After payment of reasonable expenses of the Paying Agent, the application of funds realized upon default shall be applied to payment of expenses of the Issuer or rebate only after the payment of principal and interest due and past due on the Series 2016 Bonds, together with replenishment of the Debt Service Reserve Account.

**Section 1104. Control of Remedies By Bond Insurer Upon an Event of Default.** Upon the occurrence and continuance of an Event of Default, with respect to the Series 2016 Bonds, the Bond Insurer, acting alone, shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners of Series 2016 Bonds under this 2016 Supplemental Resolution.

For Series 2016 Bonds which it insures, the Bond Insurer shall have the right to institute any suit, action, or proceedings at law or in equity under the same action, or proceedings at law or in equity under the same terms as an Owner in accordance with the applicable provisions of this 2016 Supplemental Resolution.

Any reorganization or liquidation plan with respect to the Issuer must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of all Owners who hold the Series 2016 Bonds insured by the Bond Insurer absent a default by the Bond Insurer under the applicable Bond Insurance Policy insuring such Series 2016 Bonds.

**Section 1105. Effect of Supplemental Resolutions.** Any amendment, supplement, modification to, or waiver of, the Bond Resolution or any other transaction document, including any underlying security agreement, that requires the consent of Owners or adversely affects the rights and interests of the Bond Insurer shall be subject to the prior written consent of the Bond Insurer.

**Section 1106. Payment Procedure Pursuant to Bond Insurance Policy.** As long as the Bond Insurance Policy shall be in full force and effect, the Issuer and the Paying Agent agree to comply with the following provisions:

(a) If, on the third Business Day prior to the related scheduled Stated Maturity there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Bond Resolution, moneys sufficient to pay the principal of and interest on the Series 2016 Bonds due on such Stated Maturity, the Paying Agent shall give notice to the Bond Insurer and to the Insurer's Fiscal Agent by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Stated Maturity, there continues to be a deficiency in the amount available to pay the principal of and interest on the Series 2016 Bonds due on such Stated Maturity, the Trustee shall make a claim under the Bond Insurance Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Series 2016 Bonds and the amount required to pay principal on the Series 2016 Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Bond Insurance Policy.

(b) The Paying Agent shall designate any portion of payment of principal on Series 2016 Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other

advancement of maturity, on its books as a reduction in the principal amount of Series 2016 Bonds registered to the then current Owner, whether DTC or its nominee or otherwise, and shall issue a replacement Series 2016 Bond to the Bond Insurer, registered in the name of the Bond Insurer, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Series 2016 Bond shall have no effect on the amount of principal or interest payable by the Issuer on any Series 2016 Bond or the subrogation rights of the Bond Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account (as hereinafter defined) and the allocation of such funds to payment of interest on and principal paid in respect of any Series 2016 Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Bond Insurance Policy the Paying Agent shall establish a separate special purpose trust account for the benefit of Owners referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Bond Insurance Policy in trust on behalf of Owners and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Owners in the same manner as principal and interest payments are to be made with respect to the Series 2016 Bonds under *Section 204* of the 2009 Bond Resolution.. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything herein to the contrary, the Issuer agrees to pay to the Bond Insurer for the Series 2016 Bonds (i) a sum equal to the total of all amounts paid by the Bond Insurer under the Bond Insurance Policy (the "Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Bond Insurer until payment thereof in full, payable to the Bond Insurer at the Late Payment Rate per annum (collectively, the "Insurer Reimbursement Amounts"). "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Series 2016 Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Issuer hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Revenues and payable from such Revenues on a parity with debt service due on the Bonds.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent. Any funds remaining in the Policy Payments Account following a Stated Maturity shall promptly be remitted to the Bond Insurer.

(c) The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Series 2016 Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy. Each obligation of the Issuer to the Bond Insurer under this 2016 Supplemental Resolution shall survive discharge or termination of such 2016 Supplemental Resolution.

(d) The Issuer agrees to pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur in connection with (1) the administration, enforcement, defense or preservation of any rights or security in respect of this 2016 Supplemental Resolution, (2) the pursuit of any remedies under this 2016 Supplemental Resolution or otherwise afforded

by law or equity, (3) any amendment, waiver or other action with respect to, or related to, this 2016 Supplemental Resolution whether or not executed or completed, (4) the violation by the Issuer of any law, rule or regulation, or any judgment, order or decree applicable to it or (5) any litigation or other dispute in connection with this 2016 Supplemental Resolution or the transactions contemplated thereby, other than amounts resulting from the failure of the Bond Insurer to honor its obligations under the Bond Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this 2016 Supplemental Resolution.

(e) The Bond Insurer shall be entitled to pay principal or interest on the Series 2016 Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Bond Insurance Policy) and any amounts due on the Series 2016 Bonds as a result of acceleration of the maturity thereof in accordance with this 2016 Supplemental Resolution, whether or not the Bond Insurer has received a Notice of Nonpayment (as defined in the Bond Insurance Policy) or a claim upon the Bond Insurance Policy.

#### **Section 1107. Consent of the Bond Insurer.**

(a) Any provision of this Bond Resolution expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer. No contract shall be entered into or any action taken by which the rights of the Bond Insurer or security for or sources of payment of the Series 2016 Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Bond Insurer.

(b) The Bond Insurer's consent shall be required in addition to Owner consent, when required, for the execution and delivery of any supplemental resolution, or any amendment, supplement or change to or modification of other documents relating to the security for the Series 2016 Bonds; removal or substitution of the Paying Agent; or approval of any action or document requiring approval of the Owners.

(c) The Bond Insurer shall be deemed to be the sole Owner of the Insured Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of the Insured Bonds insured by it are entitled to take pursuant to this Bond Resolution.

(d) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Bond Resolution would adversely affect the security for the Series 2016 Bonds or the rights of the Owners, the Paying Agent shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Series 2016 Insurance Policy.

(e) Notwithstanding satisfaction of other conditions to the issuance of Additional Bonds contained in this 2016 Supplemental Resolution, no such issuance may occur (1) should any Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) have occurred and be continuing unless such default shall be cured upon such issuance and (2) unless the Debt Service Reserve Account is fully funded at its requirement (including the new issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Bond Insurer.

#### **Section 1108. Notices to the Bond Insurer.**

(a) While the Bond Insurance Policy is in effect, the Issuer shall, in addition to the other notice requirements contained in this 2016 Supplemental Resolution, furnish to the Bond Insurer:

(1) Within 240 days after the end of the Issuer's fiscal year, a copy of any financial statement, audit and/or annual report of the Issuer, and the Issuer's annual budget within 30 days after the approval thereof, together with such other information, data or reports as the Bond Insurer shall reasonably request from time to time;

(2) A copy of any notice to be given to the Owners, including, without limitation, notice of any redemption of or defeasance of Series 2016 Bonds, and any certificate rendered pursuant to this 2016 Supplemental Resolution relating to the security for the Series 2016 Bonds;

(3) Notice of an Event of Default within five business days after the occurrence of such event;

(4) Notice of any draw upon the Debt Service Reserve Account within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Debt Service Reserve Requirement and (ii) withdrawals in connection with a refunding of Bonds;

(5) Prior notice of the advance refunding or redemption of any of the Series 2016 Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(6) Notice of the commencement of any proceeding by or against the Issuer commenced under the Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(7) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Series 2016 Bonds;

(8) A full original transcript of all proceedings relating to the execution of any amendment or supplement to this 2016 Supplemental Resolution;

(9) All reports, notices and correspondence to be delivered to Bondholders under the terms of this 2016 Supplemental Resolution; and

(10) Such additional information as the Bond Insurer may reasonably request.

(b) The Paying Agent shall notify the Bond Insurer of any failure of the Issuer to provide relevant notices, certificates, etc. under this 2016 Supplemental Resolution.

(c) The Issuer will permit the Bond Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Bond Insurer may reasonably request regarding the security for the Series 2016 Bonds with appropriate officers of the Issuer. The Issuer will permit the Bond Insurer to have access to and to make copies of all books and records relating to the Series 2016 Bonds at any reasonable time.

(d) The Bond Insurer shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Bond Insurer shall be deemed an Event of Default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any Owner.

(e) Notwithstanding any other provision of this 2016 Supplemental Resolution, the Issuer shall immediately notify the Bond Insurer if at any time there are insufficient moneys to make any payments of principal and/or interest as required and immediately upon the occurrence of any Event of Default under this 2016 Supplemental Resolution.

(f) In each case in which notice or other communication to the Bond Insurer refers to an Event of Default or with respect to which failure on the part of the Bond Insurer to respond shall be deemed to constitute consent or acceptance, then a copy of such notice or other communication sent to the Notice Representative shall also be sent to the attention of the Bond Insurer's General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

**Section 1109. Third Party Beneficiary.** To the extent that this 2016 Supplemental Resolution confers upon or gives or grants to the Bond Insurer any right, remedy, or claim under or by reason of this 2016 Supplemental Resolution, the Bond Insurer is hereby explicitly recognized as being a thirty-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

**Section 1110. Parties Interested Herein.** Nothing in this 2016 Supplemental Resolution, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Issuer, the Bond Insurer, the Paying Agent and the Owners, any right, remedy or claim under or by reason of this 2016 Supplemental Resolution, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this 2016 Supplemental Resolution contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Paying Agent, the Bond Insurer and the Owners of the Series 2016 Bonds.

**Section 1111. Suspension of Bond Insurer's Rights.** Notwithstanding any other provision in this 2016 Supplemental Resolution, rights of the Bond Insurer to direct or consent to actions granted under this 2016 Supplemental Resolution shall be suspended during any period in which the Bond Insurer is in default in its payment obligations under the Bond Insurance Policy (except to the extent of amounts previously paid by the Bond Insurer and due and owing to the Bond Insurer) and shall be of no force or effect in the event the Bond Insurance Policy is no longer in effect or the Bond Insurer asserts that the Bond Insurance Policy is not in effect or the Bond Insurer shall have provided written notice that it waives such rights.

**Section 1112. Extraordinary Redemption.** Notwithstanding any other provision in this 2016 Supplemental Resolution, upon the occurrence of an extraordinary optional, special or extraordinary mandatory redemption in part, the selection of Series 2016 Bonds to be redeemed shall be subject to the approval of the Bond Insurer, and the exercise of any provision of this 2016 Supplemental Resolution which permits the purchase of Series 2016 Bonds in lieu of redemption shall require approval of the Bond Insurer wherein any Series 2016 Bond so purchased is not extinguished.

**Section 1113. Exercise of Rights by Bond Insurer.** The rights granted to the Bond Insurer under this 2016 Supplemental Resolution to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Bond Insurance Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit or on behalf of the Bondholders nor does such action evidence any position of the Bond Insurer, positive or negative, as to whether Bondholder consent is required in addition to consent of the Bond Insurer.

**Section 1114. Debt Service Reserve Account Provisions.** Notwithstanding any other provision in this 2016 Supplemental Resolution, the prior written consent of the Bond Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service

Reserve Account, and amounts on deposit in the Debt Service Reserve Account shall be applied solely to the payment of debt service on the Bonds.

**Section 1115. Bond Insurer Deemed Holder of Bonds.** The Bond Insurer shall be deemed to be the sole Owner of the Series 2016 Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of the Series 2016 Bonds insured by it are entitled to take pursuant to this 2016 Supplemental Resolution pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Paying Agent. In furtherance thereof and as a term of this 2016 Supplemental Resolution and each Series 2016 Bond, the Paying Agent and each Series 2016 Bondholder appoint the Bond Insurer as their agent and attorney-in-fact and agree that the Bond Insurer may at any time during the continuation of any proceeding by or against the Issuer under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an “Insolvency Proceeding”) direct all matters relating to such Insolvency Proceeding, including without limitation, (A) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a “Claim”), (B) the direction of any appeal of any order relating to any Claim, (C) the posting of any surety, supersedeas or performance bond pending any such appeal, and (D) the right to vote to accept or reject any plan of adjustment. In addition, the Paying Agent and each Series 2016 Bondholder delegate and assign to the Bond Insurer, to the fullest extent permitted by law, the rights of the Paying Agent and each Series 2016 Bondholder in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding. Remedies granted to the Series 2016 Bondholders shall expressly include mandamus.

**Section 1116. Payments by Bond Insurer to Remain Outstanding.** Notwithstanding any other provision in this 2016 Supplemental Resolution, Amounts paid by the Series 2016 Bond Insurer under the Series 2016 Insurance Policy shall not be deemed paid for purposes of the Bond Resolution and the Series 2016 Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Bond Resolution. The Bond Resolution shall not be discharged unless all amounts due or to become due to the Series 2016 Bond Insurer have been paid in full or duly provided for.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

**Section 1201. Inconsistent Provisions.** In case any one or more of the provisions of this 2016 Supplemental Resolution or of the Series 2016 Bonds issued hereunder shall for any reason be inconsistent with the provisions of the 2009 Bond Resolution, any Parity Resolution or any previously issued Bonds, the provisions of the 2009 Bond Resolution and any Supplemental Bond Resolution adopted prior to this 2016 Supplemental Resolution shall prevail with respect to such previously issued Bonds, so long as such previously issued Bonds are Outstanding.

**Section 1202. Electronic Transactions.** The issuance of the Series 2016 Bonds and the transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

**Section 1203. Further Authority.** The officers and officials of the Issuer, including the Mayor and Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this 2016 Supplemental Resolution and to make ministerial alterations, changes or additions in the foregoing agreements,

statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 1204. Severability.** If any section or other part of this 2016 Supplemental Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this 2016 Supplemental Resolution.

**Section 1205. Governing Law.** This 2016 Supplemental Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1206. Effective Date.** This 2016 Supplemental Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**ADOPTED** by the governing body of the Issuer on March 7, 2016.

(SEAL)

---

Mayor

ATTEST:

---

Clerk

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of this 2016 Supplemental Resolution of the Issuer adopted by the governing body on March 7, 2016, as the same appears of record in my office.

DATED: March 7, 2016.

---

Clerk

**EXHIBIT A**  
**(FORM OF SERIES 2016 BONDS)**

**REGISTERED  
NUMBER \_\_\_**

**REGISTERED  
\$ \_\_\_\_\_**

**Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation (“DTC”), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.**

**UNITED STATES OF AMERICA  
STATE OF KANSAS  
COUNTY OF FORD  
CITY OF DODGE CITY  
SALES TAX REFUNDING REVENUE BOND  
SERIES 2016**

**Interest  
Rate:**

**Maturity  
Date:**

**Dated  
Date: March 22, 2016**

**CUSIP:**

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**KNOW ALL PERSONS BY THESE PRESENTS:** That the City of Dodge City, in the County of Ford, State of Kansas (the “Issuer”), for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner shown above, or registered assigns, but solely from the source and in the manner herein specified, the Principal Amount shown above on the Maturity Date shown above, unless called for redemption prior to said Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months), from the Dated Date shown above, or from the most recent date to which interest has been paid or duly provided for, payable semiannually on June 1 and December 1 of each year, commencing June 1, 2016 (the “Interest Payment Dates”), until the Principal Amount has been paid.

**Method and Place of Payment.** The principal or redemption price of this Series 2016 Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Series 2016 Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Series 2016 Bond at the designated corporate trust office of The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri (the “Bond Registrar”), serving as co-fiscal agent with INTRUST Bank, N.A., Wichita, Kansas (collectively, the “Paying Agent” and “Fiscal Agent”). The interest payable on this Series 2016 Bond on any Interest Payment Date shall be paid to the person in whose name this Series 2016 Bond is registered on the registration books maintained by the Bond Registrar at the close of business on the Record Date(s) for such interest, which shall be the 15th day (whether or not a business day) of the calendar month

next preceding the Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner or, (b) in the case of an interest payment to Cede & Co., Inc. or any Registered Owner of \$500,000 or more in aggregate principal amount of Series 2016 Bonds, by electronic transfer to such Registered Owner upon written notice given to the Bond Registrar by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Series 2016 Bonds shall be payable in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Interest not punctually paid will be paid in the manner established in the within defined Bond Resolution.

**Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Bond Resolution.

**ADDITIONAL PROVISIONS OF THIS SERIES 2016 BOND ARE CONTINUED ON THE REVERSE HEREOF AND SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.**

**Authentication.** This Series 2016 Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the hereinafter defined Bond Resolution until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Series 2016 Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, that the total indebtedness of the Issuer, including this series of bonds, does not exceed any constitutional or statutory limitation, and that provision has been duly made for the collection and segregation of the Revenues and for the application of the same as provided in the hereinafter defined Bond Resolution.

**IN WITNESS WHEREOF**, the Issuer has caused this Series 2016 Bond to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk, and its seal to be affixed hereto or imprinted hereon.

**CITY OF DODGE CITY, KANSAS**

(Facsimile Seal)

\_\_\_\_\_  
(facsimile)  
Mayor

ATTEST:

By \_\_\_\_\_ (facsimile)  
Clerk

---

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Series 2016 Bond is one of a series of Sales Tax Refunding Revenue Bonds, Series 2016, of the City of Dodge City, Kansas, described in the within-mentioned Bond Resolution.

Registration Date: \_\_\_\_\_

The Bank of New York Mellon Trust Company, N.A.,  
as Bond Registrar

By \_\_\_\_\_

Registration Number: 0130-029-032216-\_\_\_\_

---

**(FORM OF REVERSE SIDE OF BOND)**

**ADDITIONAL PROVISIONS**

**Authorization of Series 2016 Bonds.** This Series 2016 Bond is one of an authorized series of bonds of the Issuer designated "Sales Tax Refunding Revenue Bonds, Series 2016," aggregating the principal amount of \$32,435,000 (the "Series 2016 Bonds") issued for the purposes set forth in the Ordinance of the Issuer authorizing the issuance of the Series 2016 Bonds and the Resolution of the Issuer prescribing the form and details of the Series 2016 Bonds (collectively the "Bond Resolution"). The Series 2016 Bonds are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 10-116a and K.S.A. 12-187 *et seq.*, as amended, and all other provisions of the laws of the State of Kansas applicable thereto.

**Special Obligations.** The Series 2016 Bonds are special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the revenues (the "Revenues") derived by the Issuer from the collection of a special one-half percent (1/2%) retailer's sales tax imposed within the boundaries of the Issuer pursuant to an election held on June 10, 1997, the Issuer's portion of a special one-half percent (1/2%) retailer's sales tax imposed within the boundaries of Ford County, Kansas (the "County") pursuant to an election held on June 10, 1997, and, pursuant to an interlocal cooperation agreement, the County's portion of such special one-half percent (1/2%) retailer's sales tax imposed within the boundaries of the County pursuant to an election held on June 10, 1997 (collectively the "Sales Tax") and are to be paid solely and only from a separate and special fund, known and identified as the Sales Tax Revenue Fund, into which there are to be paid the Revenues received by the Issuer from the Sales Tax in accordance with Bond Resolution. This Series 2016 Bond is a special obligation of the Issuer and does not constitute a general obligation of the State, the County or the Issuer, is not payable in any manner from funds raised by ad valorem taxation, nor does it constitute an indebtedness of the State, the County or the Issuer within the meaning of any constitutional or statutory provision, limitation or restriction. *Under the conditions set forth in the Bond Resolution, the Issuer has the right to issue additional Indebtedness payable from the same source and secured by the Revenues on a parity with said Revenues; provided, however, that such additional Indebtedness may be so issued only in accordance with and subject to the covenants, conditions and restrictions relating thereto set forth in the Bond Resolution.*

The Issuer hereby covenants with the Owner of this Series 2016 Bond to keep and perform all covenants and agreements contained in the Bond Resolution, and the Issuer will not cancel the collection of the Sales Tax so long as the Series 2016 Bonds remain Outstanding. Reference is made to the Bond Resolution for a description of the covenants and agreements made with respect to the collection, segregation and application of the Revenues, the nature and extent of the security of the Series 2016 Bonds, the rights, duties and obligations of the Issuer with respect thereto, and the rights of the Owners thereof.

**Redemption Prior to Maturity.** The Series 2016 Bonds are subject to redemption prior to maturity as set forth in the Bond Resolution.

**Book-Entry System.** The Series 2016 Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Bond Resolution. One certificate with respect to each date on which the Series 2016 Bonds are stated to mature or with respect to each form of Series 2016 Bonds, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Series 2016 Bonds by the Securities Depository's participants, beneficial ownership of the Series 2016 Bonds in authorized denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Issuer and the Bond Registrar will recognize the Securities Depository nominee, while the Registered Owner of this Series 2016 Bond, as the owner of this Series 2016 Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Series 2016 Bond, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities Depository, and transfer of principal, interest and any redemption premium payments to Beneficial Owners of the Series 2016 Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such Beneficial Owners. The Issuer and the Bond Registrar will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the Owner of this Series 2016 Bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Series 2016 Bond shall be made in accordance with existing arrangements among the Issuer, the Bond Registrar and the Securities Depository.

**Transfer and Exchange. EXCEPT AS OTHERWISE PROVIDED IN THE BOND RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.** This Series 2016 Bond may be transferred or exchanged, as provided in the Bond Resolution, only on the Bond Register kept for that purpose at the principal corporate trust office of the Bond Registrar, upon surrender of this Series 2016 Bond together with a written instrument of transfer or authorization for exchange satisfactory to the Bond Registrar duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Series 2016 Bond or Series 2016 Bonds in any authorized denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Bond Resolution and upon payment of the charges therein prescribed. The Issuer shall pay all costs incurred in connection with the issuance, payment and initial registration of the Series 2016 Bonds and the cost of a reasonable supply of bond blanks. The Issuer and the Paying Agent may deem and treat the person in whose name this Series 2016 Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or

on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. The Series 2016 Bonds are issued in fully registered form in Authorized Denominations.

---

**LEGAL OPINION**

The following is a true and correct copy of the approving legal opinion of Gilmore & Bell, P.C., Bond Counsel, which was dated and issued as of the date of original issuance and delivery of such Series 2016 Bonds:

**GILMORE & BELL, P.C.**  
Attorneys at Law  
100 N. Main Suite 800  
Wichita, Kansas 67202

(PRINTED LEGAL OPINION)

---

**STATEMENT OF INSURANCE**

Assured Guaranty Municipal Corp. (“AGM”), New York, New York, has delivered its municipal bond insurance policy (the “Policy”) with respect to the scheduled payments due of principal of and interest on this Bond to The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, or its successor, as paying agent for the Bonds (the "Paying Agent"). Said Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from AGM or the Paying Agent. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this Bond acknowledges and consents to the subrogation rights of AGM as more fully set forth in the Policy.

---

**BOND ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer to

\_\_\_\_\_  
(Name and Address)

\_\_\_\_\_  
(Social Security or Taxpayer Identification No.)

the Series 2016 Bond to which this assignment is affixed in the outstanding principal amount of \$\_\_\_\_\_, standing in the name of the undersigned on the books of the Bond Registrar. The undersigned do(es) hereby irrevocably constitute and appoint \_\_\_\_\_ as agent to transfer said Series 2016 Bond on the books of said Bond Registrar with full power of substitution in the premises.

\_\_\_\_\_  
Name

Dated \_\_\_\_\_

\_\_\_\_\_  
Social Security or  
Taxpayer Identification No.

\_\_\_\_\_  
Signature (Sign here exactly as name(s)  
appear on the face of Certificate)

Signature guarantee:

By \_\_\_\_\_

---

**CERTIFICATE OF CLERK**

STATE OF KANSAS                    )  
  ) SS.  
COUNTY OF FORD                 )

The undersigned, Clerk of the City of Dodge City, Kansas, does hereby certify that the within Series 2016 Bond has been duly registered in my office according to law as of March 22, 2016.

WITNESS my hand and official seal.

(Facsimile Seal)

\_\_\_\_\_  
(facsimile)  
Clerk

---

**CERTIFICATE OF STATE TREASURER**

OFFICE OF THE TREASURER, STATE OF KANSAS

RON ESTES, Treasurer of the State of Kansas, does hereby certify that a transcript of the proceedings leading up to the issuance of this Series 2016 Bond has been filed in the office of the State Treasurer, and that this Series 2016 Bond was registered in such office according to law on \_\_\_\_\_.

WITNESS my hand and official seal.

(Facsimile Seal)

By: \_\_\_\_\_  
Treasurer of the State of Kansas

## Memorandum

*To: City Manager  
City Commissioners*  
*From: Ray Slattery, P.E.   
Director of Engineering Services*  
*Date: March 1, 2016*  
*Subject: Reallocation of Funds for Street Work –  
Comanche St. Ext. & 6<sup>th</sup> Ave. Ext., ST 0501*  
*Agenda Item: New Business*

---

**Recommendation:** Approve the reallocation of previously bonded funds from the Comanche Street Extension project to the 6<sup>th</sup> Avenue Extension project, pending necessary bond revisions by the Finance Director/City Clerk.

**Background:** In 2005 the extension of 6<sup>th</sup> Avenue from Ross Blvd. to near the future intersection with Iron Rd. was proposed as a project because of planned residential development in the area. At that time the Commission approved funds for the design of this extension. As plans were being finalized, the decision was made not to move forward with the construction of the extension. Residential development not only took place immediately adjacent to the proposed 6<sup>th</sup> Avenue but in another area between the proposed 6<sup>th</sup> Avenue and Avenue A. This meant that the added traffic from these developments ended up using planned residential streets as the main access to the developments.

In 2013 the purchase of the additional Right-of-Way (ROW) for Comanche Street Reconstruction and Extension was funded. To date these funds have not been used due to the fact that development didn't follow the Casino Construction as anticipated and the need for the direct connection has been put on hold. In recent discussions between the City Attorney and the Casino owner(s), it was conveyed that the owners do not see a benefit in the direct connection. At a recent work session, there seemed to be a consensus among Commissioners to reallocate these funds to the extension of 6<sup>th</sup> Avenue.

There will be a formal resolution in the future needed to move the funds from the purchase of Comanche Street ROW to the 6<sup>th</sup> Avenue Extension.

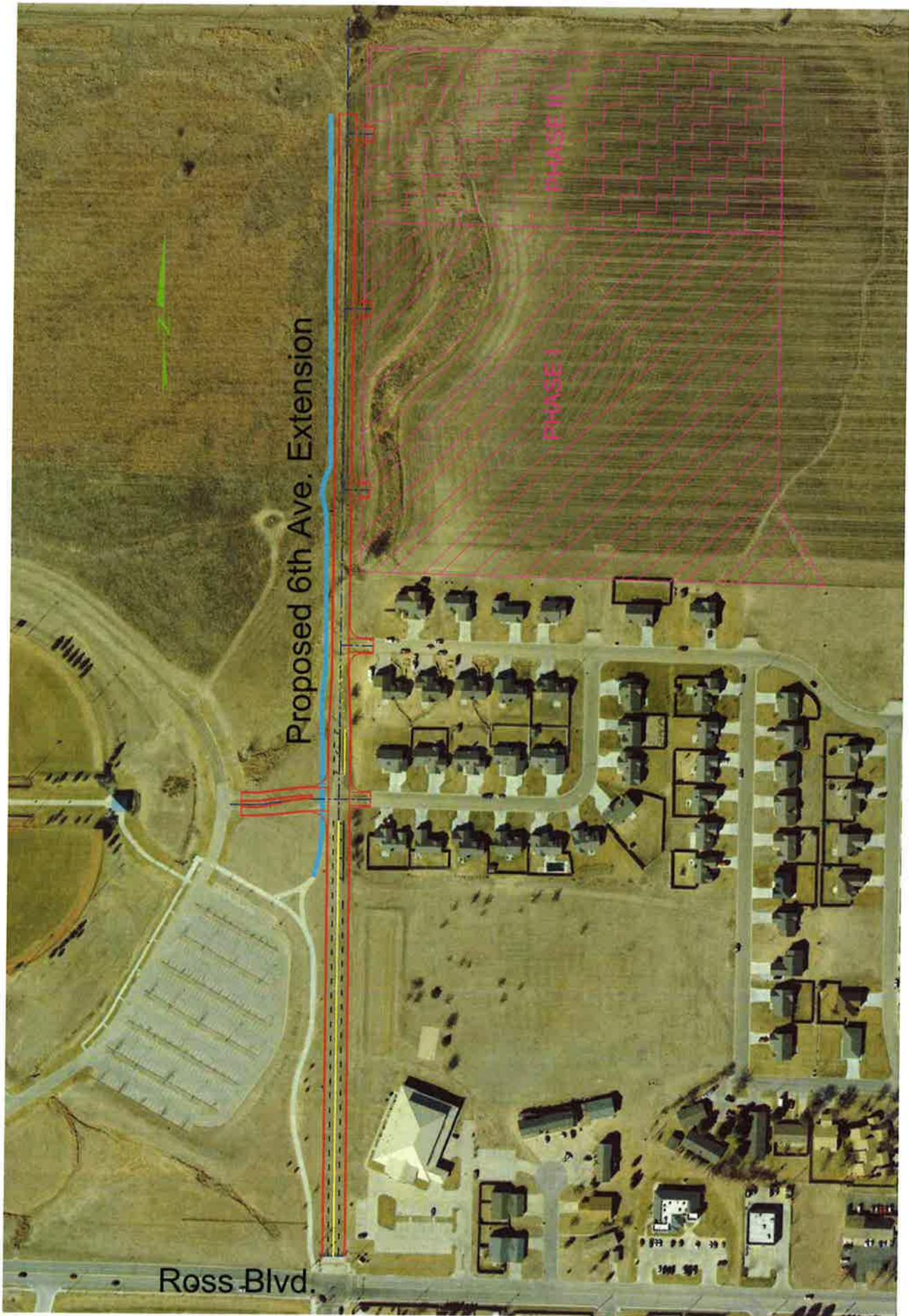
**Justification:** This will reallocate money from a project that seems to be on hold permanently, to construction of a road in an area that continues to see growth.

**Financial Considerations:** The funds to be reallocated are \$1 million, this along with some additional funding will provide access to a growing neighborhood. It is estimated that an additional \$600,000 will need to be budgeted to complete the 6<sup>th</sup> Avenue Extension.

**Purpose/Mission:** In a growing neighborhood we can fulfill our mission of Safety and Ongoing Improvements by the construction of the 6<sup>th</sup> Avenue Extension.

**Legal Considerations:** There will be a formal resolution presented to the Commission in the future to meet the necessary bonding requirements.

**Attachments:** A drawing of the 6<sup>th</sup> Avenue Extension, showing the configuration and proposed intersections with the existing and proposed development. Also included is a "rough" Opinion of Costs based on the drawing.



Proposed 6th Ave. Extension

PHASE I

PHASE II

Ross Blvd.

OPINION OF

PROJECT: 6th Ave. Extension

PROJECT #: ST 0501

ESTIMATE BY: BHC & RAS

DATE OF EST: 2/29/2016

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
1	Mobilization	L.S.	1	\$30,000.00	\$ 30,000.00
2	Clearing & Grubbing	L.S.	1	\$5,000.00	\$ 5,000.00
3	8" PCC Pavement (NRDJ)	S.Y.	12,942	\$46.00	\$ 595,332.00
4	Fly Ash Sub-Grade Modification	S.Y.	14,950	\$8.00	\$ 119,600.00
5	Standard Curb & Gutter (30")	L.F.	5,712	\$20.00	\$ 114,240.00
6	Stone Riprap (Light 18")(24" Depth)	S.Y.	81	\$60.00	\$ 4,860.00
7	Unclassified Excavation	C.Y.	24,500	\$7.50	\$ 183,750.00
8	Compaction (All Types)	C.Y.	13,480	\$15.00	\$ 202,200.00
9	Colored & Stamped Concrete	S.Y.	60	\$100.00	\$ 6,000.00
10	Concrete Sidewalk	S.Y.	1,800	\$40.00	\$ 72,000.00
11	15" RCP Storm Sewer	L.F.	903	\$50.00	\$ 45,150.00
12	15" RCP Flared End Section	Each	6	\$500.00	\$ 3,000.00
13	21" RCP Storm Sewer	L.F.	86	\$70.00	\$ 6,020.00
14	21" RCP Flared End Section	Each	1	\$700.00	\$ 700.00
15	36" CMP Storm Sewer	L.F.	298	\$50.00	\$ 14,900.00
16	36" CMP Flared End Section	Each	4	\$200.00	\$ 800.00
17	4' x 6' Curb Inlet (Type 22-Modified)	Each	14	\$5,000.00	\$ 70,000.00
18	Concrete Weir	L.S.	1	\$25,000.00	\$ 25,000.00
19	Seeding	Ac.	14	\$1,500.00	\$ 21,000.00
20	Pavement Marking (Epoxy)(6")(White)	L.F.	929	\$3.00	\$ 2,787.00
21	Pavement Marking (Epoxy)(4")(White)	L.F.	420	\$2.00	\$ 840.00
22	Pavement Marking (Epoxy)(8")(White)	L.F.	500	\$4.00	\$ 2,000.00
23	Pavement Marking (Epoxy)(4")(Yellow)	L.F.	5,195	\$2.00	\$ 10,390.00
24	Pavement Marking (Epoxy)(18")(Yellow)	L.F.	45	\$10.00	\$ 450.00
25	Pavement Marking (Epoxy)(12")(White)	L.F.	59	\$13.00	\$ 767.00
26	Pavement Marking (Epoxy)(Left Arrow)	Each	12	\$150.00	\$ 1,800.00
27	Pavement Marking (Epoxy)(Right Arrow)	Each	1	\$150.00	\$ 150.00
28	Permanent Signing	L.S.	1	\$10,000.00	\$ 10,000.00
29	Traffic Control	L.S.	1	\$5,000.00	\$ 5,000.00
30	Erosion Control	L.S.	1	\$25,000.00	\$ 25,000.00
31	Contractor Construction Staking	L.S.	1	\$10,000.00	\$ 10,000.00

TOTAL CONSTRUCTION

\$ 1,588,736.00

## Memorandum

*To: City Manager  
City Commissioners*

*From: Ray Slattery, P.E.  
Director of Engineering Services*

*Date: February 24, 2015*

*Subject: 4<sup>th</sup> Ave. Table Top (Water Park  
Entrance), ST 1507*

*Agenda Item: New Business*

---

**Recommendation:** Approve Change Order # OCO025: 4<sup>th</sup> Ave. Table Top Intersection and addition to the Water Park Project Contract with McCown Gordon Construction.

**Background:** As part of the overall development of the Water Park and the Hotel, an improved entrance from 4<sup>th</sup> Ave. was proposed. Earlier this year the reconstruction of 4<sup>th</sup> Ave. was bid, but the bids came in considerably higher than the Engineer's Estimate and were rejected. The entrance into the park and hotel still needed to be constructed. So staff and the design consultant put together plans just for the entrance. Staff then asked McCown Gordon about adding this to the water park contract as so the project would be completed when the water park was to open. McCown Gordon solicited bids for the project from a number of contractors. The Change Order attached is a GMP for the work required to complete the Table Top/Water Park Entrance. Staff and McCown Gordon will continue to work to find a cost effective way to complete this project and reduce the cost.

**Justification:** As stated above this project consists of the entrance into the Water Park and hotel. The intersection will also have aesthetic features like street brick and cross-walk pavers. The table top will also slow down vehicles in an area that is anticipated to see a lot of pedestrian traffic. It could also be considered Phase I of the reconstruction of 4<sup>th</sup> Ave.

**Financial Considerations:** Change Order # OCO025 is a GMP increase of \$108,279.12. Funding will come from Special Streets, Drainage Fund, and possibly GOB funds.

**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:** This will be an addition to McCown Gordon's contract.

**Attachments:** Change Order # OCO025 and a copy of the Table Top Plan sheet.



McCownGordon  
 227 Blue Earth Place Suite 205  
 Manhattan, Kansas 66502  
 Phone: (785) 789-3100

**Project:** 1-07-0557 - DodgeCity Regional Aquatic  
 111 S. 4th Street  
 Dodge City, Kansas 67801  
 Phone: 785-789-3100  
 Fax: 785-789-3096

**Prime Contract Potential Change Order #OCO025: OCO025 4th Avenue Tabletop Intersection**

<b>TO:</b>	City of Dodge City & Ford County 806 N 2nd Ave Dodge City Kansas, 67801	<b>FROM:</b>	McCownGordon Construction, LLC - KS Office 227 Blue Earth Place, Suite 205 Manhattan Kansas, 66502
<b>PCO NUMBER/REVISION:</b>	OCO025 / 0	<b>CONTRACT:</b>	1 - DodgeCity Regional Aquatic Prime Contract
<b>REQUEST RECEIVED FROM:</b>		<b>CREATED BY:</b>	Barry Schmidt (McCownGordon Construction, LLC - KS Off)
<b>STATUS:</b>	Pending - In Review	<b>CREATED DATE:</b>	3/1 /2016
<b>REFERENCE:</b>		<b>PRIME CONTRACT CHANGE ORDER:</b>	None
<b>FIELD CHANGE:</b>	No	<b>CHANGE ORDER REQUEST:</b>	#OCO025 - OCO025 4th Avenue Tabletop Intersection
<b>LOCATION:</b>		<b>ACCOUNTING METHOD:</b>	Amount Based (G702/G703)
<b>SCHEDULE IMPACT:</b>		<b>PAID IN FULL:</b>	No
		<b>TOTAL AMOUNT:</b>	\$108,279.12

**POTENTIAL CHANGE ORDER TITLE:** OCO025 4th Avenue Tabletop Intersection

**CHANGE REASON:**

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*

OCO 025 4th Avenue Table Top Intersection includes demo and removals, storm sewer extension, earthwork, concrete paving and sidewalks, pavers, joint sealants, backfill of curbs, and seeding.

See attached clarifications and qualifications statement.

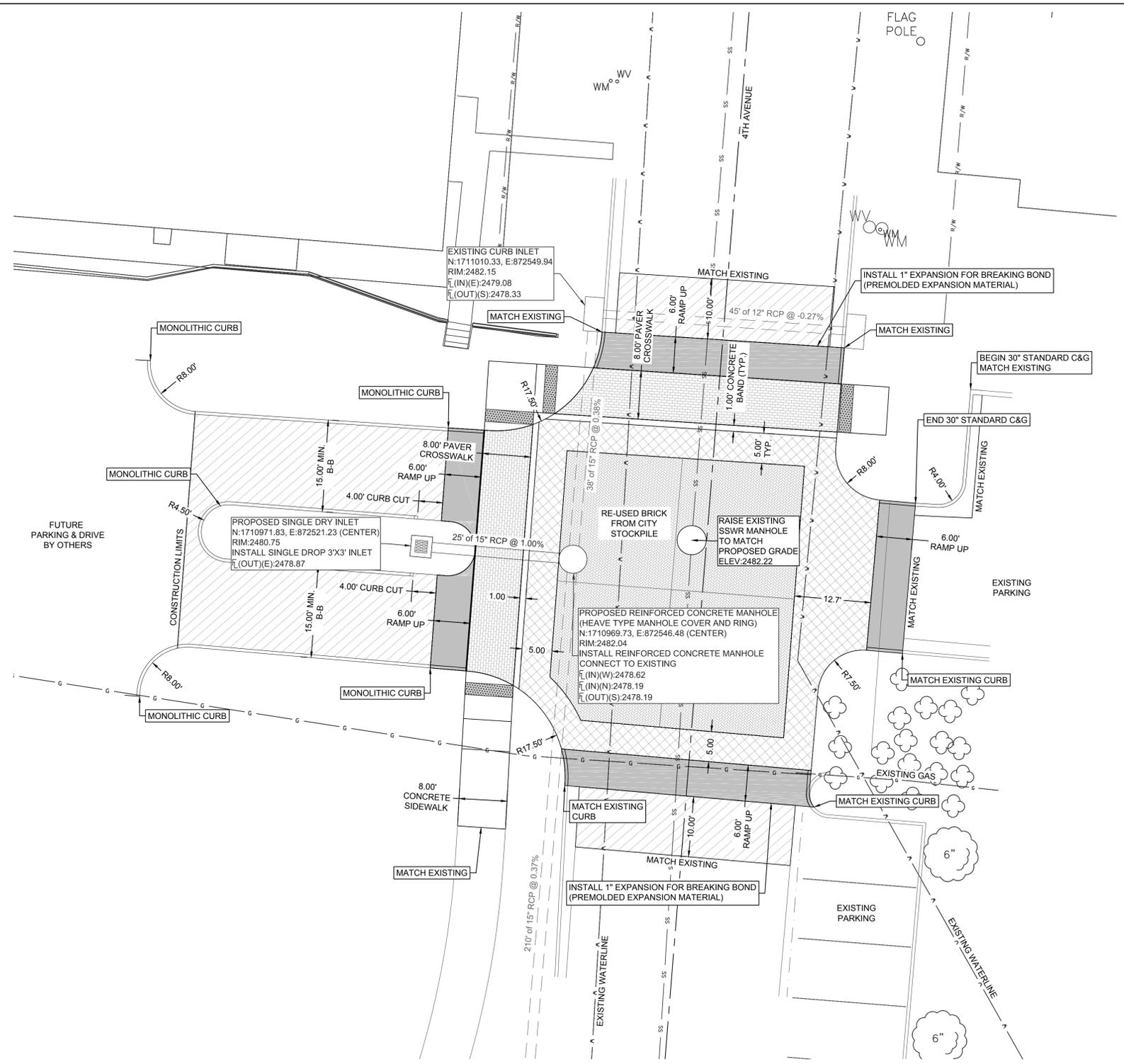
General Conditions (staff) is not included. Assumed project to finish with Aquatics project. No contingency has been applied. Deviations from drawings, clarifications and qualifications would require a change order.

**ATTACHMENTS:**

#	Cost Code	Description	Type	Amount
1	2-10001 - Subcontractor - Earthwork	Demo, Earthwork, Staking and Disposal	Material	\$17,264.00
2	2-66001 - Site Utility Contractor Sub	Storm Sewer Extension and Modifications	Subcontractor	\$15,230.00
3	2-52001 - Site Conc Paving & Sidewalks	Concrete Paving, Curbs and Walks	Subcontractor	\$46,049.00
4	2-52001 - Site Conc Paving & Sidewalks	Pavers including additional pavers reqd for walks, import of salvaged street pavers off-site	Subcontractor	\$15,970.00
5	2-90001 - Landscaping & Irrigation	Fine Grading and Seeding	Subcontractor	\$1,333.00
6	1-30001 - General Clean Up	General Cleanup	Labor	\$1,120.00
7	1-30009 - Street Sweeper	Street Cleaning and Maintenance	Material	\$500.00
8	1-20001 - Barricades	6 ea traffic barricades/road closed signage	Material	\$3,000.00
9	2-27001 - Erosion Control	Storm Water Control and Maintenance	Material	\$625.00

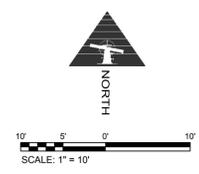
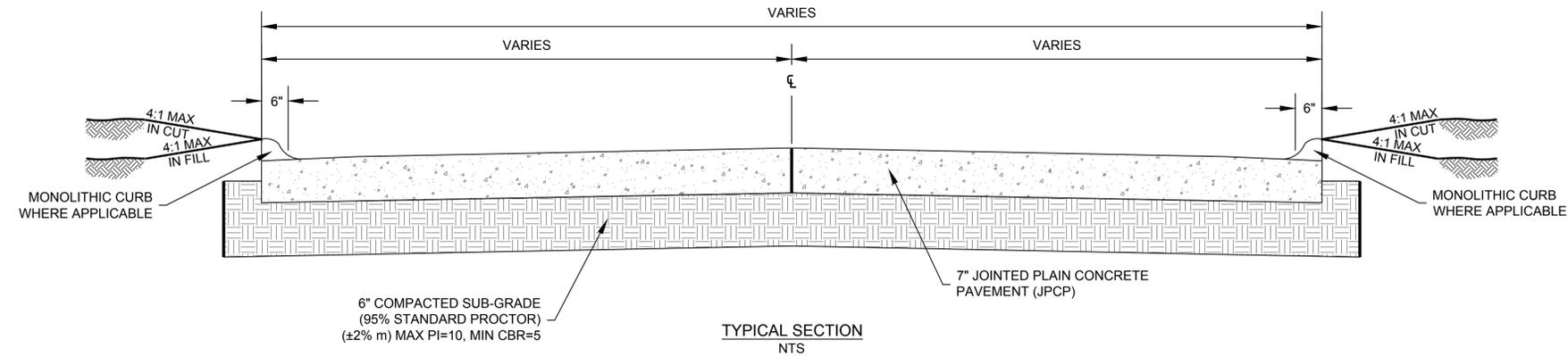


	<b>Subtotal:</b>	\$101,091.00
<b>General Liability Insurance: 1.30% on Fee, Contingency, Labor, Equipment, Subcontractor, and Material</b>		\$1,314.19
<b>Subguard: 1.50% on Fee, Contingency, Labor, Equipment, Subcontractor, and Material</b>		\$1,516.37
<b>Payment and Performance Bond: 0.90% on Fee, Contingency, Labor, Equipment, Subcontractor, and Material</b>		\$935.29
<b>Warranty: 0.50% on Fee, Contingency, Labor, Equipment, Subcontractor, and Material</b>		\$524.29
<b>Contractor Fee: 2.75% on Fee, Contingency, Labor, Equipment, Subcontractor, and Material</b>		\$2,897.98
	<b>Grand Total:</b>	<b>\$108,279.12</b>



**LEGEND**

	TREE		SANITARY SEWER LINE
	SANITARY SEWER MANHOLE		WATER LINE
	ELECTRIC POWER POLE		UNDERGROUND TELEPHONE
	UNDERGROUND TELEPHONE PEDESTAL		UNDERGROUND ELECTRIC LINE
	CABLE PEDESTAL		PROPOSED STORM SEWER LINE
	FIRE HYDRANT ASSEMBLY		PROPOSED JPCP (6')
	WATER VALVE		PROPOSED JPCP (7')
			PROPOSED JPCP (7') WITH BRICK INLAY (EXISTING BRICK)
			PROPOSED JPCP (7') WITH PAVER INLAY (CROSSWALKS)
			PROPOSED RAISED INTERSECTION RAMP (7' TYP.)(JPCP)



**SITE PLAN**

REVISION DESCRIPTION (DESCRIPTION)	
REVISION DATE	000000
PROJECT #:	1503DG6000
CHECKED BY:	JDH
DRAWN BY:	MRK
DATE:	2/10/2016
SHEET #	<b>5</b>
TOTAL SHEETS	14