

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, November 21, 2016

7:00 p.m.

MEETING #5051

CALL TO ORDER

ROLL CALL

INVOCATION BY Darrell Hendrickson of First Church of God

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

Justin Coffey Day 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).

Progress Report for Boot Hill Museum, Inc., Executive Director, Lara Brehm

CONSENT CALENDAR

1. Approval of City Commission Work Session, November 7, 2016;
2. Approval of City Commission Meeting Minutes, November 7, 2016;
3. Appropriation Ordinance No. 23, November 21, 2016;
4. Cereal Malt Beverage License:
 - a. Circle K Stores, 609 S. 2nd Avenue;
 - b. Circle K Stores, 2615 E. Trail Street.

ORDINANCES & RESOLUTIONS

Ordinance No. 3643: An Ordinance Authorizing and Providing for the Issuance of General Obligation Bonds, Series 2016-B of the City of Dodge City, Kansas, Providing for the Levy and Collection of an Annual Tax for the Purpose of Paying the Principal of and Interest on Said Bonds as They Become Due; Authorizing Certain Other Documents and Actions in Connection

Therewith; and Making Certain Covenants With Respect Thereof. Report by Finance Director/City Clerk, Nannette Pogue.

Resolution No. 2016-28: A Resolution Prescribing the Form and Details of and Authorizing and Directing the Sale and Delivery of General Obligation Bonds. Series 2016-B of the City of Dodge City, Kansas, Previously Authorized by Ordinance No. 3643 of the Issuer, Making Certain Covenants and Agreements to Provide for the Payment and Security Thereof; and Authorizing Certain Other Documents and Actions Connected Therewith. Report by Finance Director/City Clerk, Nannette Pogue.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of the Supplemental Agreement to the Consulting Services Agreement with SMH Consultants, P.A. for Candletree #7. Report by Director of Engineering Services, Ray Slattery.
2. Approval of the Supplemental Agreement with BHC Rhodes for Separating Grading Plans of 6th Avenue Extension Design. Report by Director of Engineering Services, Ray Slattery.

OTHER BUSINESS

ADJOURNMENT

Proclamation

WHEREAS, the Kansas Teacher of the Year program, sponsored by the Kansas State Department of Education, identifies, recognizes and utilizes representatives of excellent teaching in the elementary and secondary classrooms of the state; and

WHEREAS, the mission of the Kansas Teacher of the Year program is to build and utilize a network of exemplary teachers who are leaders in the improvement of schools, student performance and the teaching profession; and

WHEREAS, the Kansas Teacher of the Year and state finalists serve as ambassadors for education in Kansas, making public appearances across the state; and

WHEREAS, a Kansas Teacher of the Year is exceptionally skilled, dedicated and inspires students of all backgrounds and abilities to learn; and

WHEREAS, a Kansas Teacher of the Year has the respect and admiration of students, parents and colleagues and plays an active and useful role in the community as well as in the school.

NOW, THEREFORE, BE IT RESOLVED by the Mayor of the City of Dodge City with the concurrence of the City Commission assembled in regular session at Dodge City, Kansas, this 21st day of November 2016 that a valued citizen has given pride to all citizens of our community and we all express our sincere appreciation, gratitude and congratulations.

BE IT FURTHER RESOLVED that November 22, 2016 shall be set aside for all citizens to honor one of our own and be declared as

JUSTIN COFFEY DAY

to honor him for his outstanding service to the students of Dodge City High School and the patrons of Unified School District #443, and his designation as the 2016 Kansas Teacher of the Year.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the great seal of the City of Dodge City to be affixed, this 21st day of November, 2016.

Rick Sowers, Mayor

ATTEST

Nannette Pogue, City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, November 7, 2016

7:00 p.m.

MEETING #5049

CALL TO ORDER

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

INVOCATION by Larry Roberts, Christian Motorcyclist Association

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

Brad Ralph presented a Proclamation for Dodge City High School Red Demon Soccer Team Day. The Dodge City Red Demon Soccer Team won the 6A State Championship in 2016, with a record of 21 wins and no losses. The Mayor proclaimed November 10, 2016, as Dodge City High School Red Demon Soccer Team Day. The entire soccer team and their coaches were in attendance at the meeting.

Krissy Pulkrabek, Main Street Coordinator, presented information on Small Business Saturday and talked about the activities being held in downtown. Mayor Rick Sowers proclaimed Saturday, November 26, 2016, as Small Business Saturday

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).

John Thomas – Addressed the Commission about Dodge City Community College. He has heard stories that there is approximately 46 acres of DCCC land that they want to sell for a retail development.

Bill Hammond – There has been a developing discussion regarding retail development on land currently owned by DCCC. He has several concerns about the discussions: 1) discussion to date has not included the public; 2) sale of property could potentially limit the growth of the college; 3) not necessarily cost effective for the college; 4) sale price is only \$5,000,000; 5) No site plan has been offered to the public; 6) wants to congratulate the group involved in the Economic Development discussions.

Mike Miller – He is in opposition to selling the DCCC land. He asked the City Commission what their plans are for retail development in that area.

Cherise Tieben, City Manager, commented.

John Thomas asked about a city employee involved in skirting the Open Meetings Act with regard to the DCCC Board of Trustees.

Brad Ralph responded that no city employee was involved with skirting the Open Meetings Act.

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, October 17, 2016;
2. Appropriation Ordinance No. 21, November 7, 2016;
3. Cereal Malt Beverage License:
 - a. Kates, E Trail St.,
 - b. Murphy Oil USA, Inc. 1907 N. 14th Avenue,
4. Approval of Contract with KDOT for Heritage Landscaping.

Commissioner Jan Scoggins moved to approve the consent Calendar as presented. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

ORDINANCES & RESOLUTIONS

Charter Ordinance No. 41: A Charter Ordinance exempting the City of Dodge City, Kansas from the provisions of K.S.A. 13-1024a and providing substitute and additional provisions on the same subject relating to the general improvements and the issuance of bonds for the purpose of paying said improvements was approved on a motion by Commissioner Kent Smoll. Commissioner Brian Delzeit seconded the motion; the motion carried unanimously.

Ordinance No. 3641: An Ordinance authorizing the City of Dodge City, Kansas, to enter into a Lease Purchase Agreement, the proceeds of which will be used to pay the costs to purchase radio and communication equipment for use in the Police, Fire and Public Works Departments; and to approve the execution of certain documents in connection therewith was approved on a motion by Commissioner Brian Delzeit; seconded by Commissioner Jan Scoggins. The motion carried unanimously.

Ordinance No. 3642: An Ordinance designating certain streets within the City of Dodge City, Kansas, as main trafficways was approved on a motion by Commissioner Jan Scoggins. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

Resolution No. 2016-26: A Resolution Approving Year End Bonuses was approved on a motion by Commissioner Brian Delzeit; Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

Resolution No. 2016-27: A Resolution authorizing the offering for sale of General Obligation Refunding and Improvement Bonds, Series 2016-B of the City of Dodge City was approved on a

motion by Commissioner Kent Smoll. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

NEW BUSINESS

1. Commissioner Brian Delzeit moved to approve the agreement with Kansas Department of Transportation for Federal Fund Exchange. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.
2. Commissioner Jan Scoggins moved to approve the 2017 State/Federal Legislative Policy. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.
3. Commissioner Kent Smoll moved to approve the Memorandum of Understanding between the Board of Trustees of Dodge City Public Library and the City of Dodge City, Kansas. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.
4. Commissioner Brian Delzeit moved to approve the Grant Application for Transportation Funds in the amount of \$432,246 with a 50% local match. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.
5. Commissioner Joyce Warshaw moved to approve the Memorandum of Understanding Agreement with the Dodge City YMCA for the use of Metal Buildings that are being constructed on St. Mary of the Plains Complex. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

OTHER BUSINESS

City Manager, Cherise Tieben

- Go Vote
- Groundbreaking for Reflection Living will be at 1:30 p.m. on November 8, 2016;
- Groundbreaking for the Dodge City Brewing will be at 11:00 a.m. on November 10;
- The State of College will be at 11:30 a.m. at the DCCC Activity Center;
- The City offices will be closed on November 11 for Veterans Day;
- No meetings with Commissioners this week;
- On November 17, I will be speaking at WSU's Clerk Conference regarding partnerships;
- On November 14 at 9:30 a.m., there will be a Joint City/County Commission meeting in the City Commission Chambers. Included on the agenda is the Sales Tax Projects Budget, turf project at Legends Field, and organizational funding recommendations;
- Martina McBride will be performing at the United Wireless Arena on November 18;
- On November 21 there will be a regular City Commission meeting;
- On December 5, there will be a regular City Commission meeting and a Joint City/County Commission meeting at 5:30 in the Rose Room. Topics on the agenda will include the Communications Agreement and shared city/county roads.

Commissioner, Kent Smoll

- Black Friday is coming soon, please shop local and shop often. It is so important to the local economy to shop local.

Commissioner, Jan Scoggins

- Congratulations to the Dodge City Red Demon Soccer Team for their victory in the 6A State Championships;
- Thanks to the Park and Recreation Department for the outdoor exercise equipment near Sheridan Activity Center;
- Reported on the public ice skating at United Wireless Arena. Encourage all to stay healthy.

Commissioner Joyce Warshaw

- It is important to go out and vote. It is not only a right, but a duty. If you don't vote, you can't complain.

Commissioner, Brian Delzeit

- Christmas shopping is right around the corner. If you can buy it locally, please do. Local businesses put ads in the newspaper for local school activities. Local business provide a lot of support for activities throughout the community, so please return the support.
- Congratulations to the Dodge City Red Demon Soccer Team. They have consistently shown respect on and off of the field;
- Commented to John who was a visitor and spoke during the visitor's section about admiring his passion for the college. Wanted to reassure him and others that no one is attacking the college.

Mayor, Rick Sowers

- Good luck to all of the people who are running for office and are on the ballot tomorrow.

EXECUTIVE SESSION

At 8:10 p.m. Commissioner Kent Smoll moved to recess into executive session pursuant to the "privileged consultation with the City's attorney" exception found in K.S.A. 75-4319(b)(2) The justification for closing the meeting is to discuss legal advice from counsel regarding biogas contracts for 10 minutes and then a separate matter regarding strategy for potential claims for 30 minutes. The open meeting will resume in the City Commission Chambers in 40 minutes at 9:05 p.m. The Commission will not take action upon returning to open session and prior to adjournment.

The regular session reconvened at 9:05.

ADJOURNMENT

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

Mayor, Rick Sowers

ATTEST:

Nannette Pogue, City Clerk

CITY COMMISSION WORK SESSION MINUTES

City Hall Commission Chambers

Monday, November 7, 2016

6:00 p.m.

CALL TO ORDER

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

WORK SESSION

1. Kevin Israel, Development Services Director, updated the City Commission on previous discussions and challenges regarding Business Licenses. Currently the City has licenses for specific business activities but not a business license for all businesses.

Dean Christiansen talked about the possibility of a limited contractor license.

2. Cherise Tieben discussed with the City Commission permitting chickens within the City Limits. Nathan Littrell, Planning and Zoning Administrator, and Laura Stein, Animal Control Supervisor, were present for questions and additional information.

The majority of the City Commission indicated they were not interested in pursuing permitting chickens in other zones than were already permitted inside the city limits.

ADJOURNMENT

Commissioner Joyce Warshaw moved to adjourn the meeting. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

Mayor

ATTEST:

Nannette Pogue, City Clerk

Joint City/County Commission Meeting Minutes
Monday, November 14, 2016
City Hall
City Commission Chambers
9:30 AM
Meeting #5050

CALL TO ORDER

City of Dodge City: Mayor Rick Sowers, Commissioners Jan Scoggins, Brian Delzeit and Joyce Warshaw. Kent Smoll joined the meeting 5 minutes later.

Ford County: Chairman Shawn Tasset and Commissioner Chris Boys and Danny Gillum.

NEW BUSINESS

1. Paul Lewis, Director of Parks and Recreation presented to the Commissions a request to add turf to the infield of the fields at Legends Park. The approximate total cost of the project is \$500,000. Discussions have been had with DCCC and USD 443 for them to participate in the cost of the turf at \$100,000 each. CFAB voted to approve the addition of the turf to the infields at Legends Park and ask that each DCCC and USD 443 participate at \$100,000 each to be paid back to the Sales Tax Fund within 5 years.

City Action: Commissioner Brian Delzeit moved and Joyce Warshaw seconded the motion to approve the purchase of turf for the infield at Legends park at a cost not to exceed \$500,000 and to direct staff to negotiate with DCCC and USD 443 to participate at an amount of \$100,000 each, with the contracts to be brought back to the City and County Commissions for their approval. The motion carried unanimously.

County Action: Commissioner Shawn Tasset moved and Commissioner Danny Gillum seconded the motion to approve the purchase of turf for the infield at Legends park at a cost not to exceed \$500,000 and to direct staff to negotiate with DCCC and USD 443 to participate at an amount of 100,000 each, with the contracts to be brought back to the City and County Commissions for their approval. The motion also included that the \$100,000 from each the USD 443 and DCCC be paid back to the Sales Tax Fund within 5 years. The motion carried unanimously.

2. Nannette Pogue, Finance Director and City Clerk presented the 2017 Sales Tax Projects Budget. Two additions were made to the budget: the first was an addition recommended by the CFAB to add \$20,000 to the Special Events Center for a longer ice season; the seconded was the addition of \$500,000 to the Depreciation and Replacement Fund for the purchase of turf in the infield of Legends Park.

City Action: Commissioner Kent Smoll moved to approve the 2017 Sales Tax Projects Budget with the additions as presented. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

County Action: Commissioner Chris Boys moved to approve the 2017 Sales Tax Projects Budget with the additions as presented. Commissioner Danny Gillum seconded the motion. The motion carried unanimously.

3. Melissa McCoy, Assistant to the City Manager/Project Coordinator, outlined the recommendations to the Joint Commissions as recommended by the CFAB to grant \$110,000 for organizational funding. The recommendation is:
 - Dodge City Area Arts Council - \$11,375
 - Roundup Rodeo - \$34,640
 - Dodge City Trail of Fame - \$25,800
 - Ford County Historical Society - \$14,260
 - Young Guns – \$13,925
 - Thunder on the Plains Air Show - \$10,000 (to be held until needed for down payment or payment)

City Action: Commissioner Rick Sowers moved to approve the recommended funding for Dodge City Area Arts Council, Roundup Rodeo, Dodge City Trail of Fame, Ford County Historical Society, and Young Guns in the total amount of \$100,000. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

Commissioner Rick Sowers moved to approve funding to Thunder on the Plains in the amount of \$10,000, with payment to be made when down payment or payment needed. Commissioner Kent Smoll seconded the motion. The motion carried 4-0 with Brian Delzeit recusing himself.

County Action: Commissioner Chris Boys moved to approve the organizational funding as presented in the total amount of \$110,000. Commissioner Danny Gillum seconded the motion. The motion carried unanimously.

Ed Elam talked about the Thunder on the Plains Airshow.

UPCOMING MEETINGS:

1. Monday, December 5, 2016, at 5:30 pm a Joint Commission Meeting in the Rose Room at the Ford County Government Center

City Action: Commissioner Jan Scoggins moved and Commissioner Kent Smoll seconded the motion to adjourn the meeting. The motion carried unanimously.

County Action: Commissioner Chris Boys moved and Commissioner Danny Gillum seconded the motion to adjourn the meeting. The motion carried unanimously.

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

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

City or County of _____ Dodge City

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

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): 004-465579045F-01			
Name of Corporation Circle K Stores Inc.		Principal Place of Business 1199 S. Beltline Road, Suite 160	
Corporation Street Address 1199 S. Beltline Road, Suite 160		Corporation City Coppell	State Texas
Date of Incorporation July 2, 1984		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name Corporation Service Company		Phone No. 972-537-5936	
Residence Street Address 2900 SW Wanamaker Dr., Suite 204		City Topeka	State Kansas
			Zip Code 66614

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Circle K		Name Circle K. Stores Inc.	
Business Location Address 609 South 2nd Street		Address 1199 S. Beltline Road, Suite 160	
City Dodge City	State Kansas	City Coppell	State Texas
	Zip 67801		Zip 75019
Business Phone No. 620-227-2692		<input checked="" type="checkbox"/> Applicant owns the proposed business location. <input type="checkbox"/> Applicant does not own the proposed business location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name Geffory C. Haxel		Position President & Secretary	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Spouse Name Lori Glyn Haxel		Position spouse	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Name Kathy Cunnington		Position Vice President & Treasure	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Spouse Name Jeffery David Cunnington		Position spouse	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Age 3-1-1966
Name Melissa Ann McKinley		Position Vice President	
Residence Street Address 1701 Clark Lake Circle		City Keller	State Texas
			Zip Code 76248
Spouse Name William John McKinley		Position spouse	
Residence Street Address 1701 Clark Lake Circle		City Keller	State Texas
			Age 7-25-1963
			Zip Code 85048

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

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

City or County of Dodge City

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

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): 004-465579045F-01			
Name of Corporation Circle K Stores Inc.		Principal Place of Business 1199 S. Beltline Road, Suite 160	
Corporation Street Address 1199 S. Beltline Road, Suite 160		Corporation City Coppell	State Texas
Date of Incorporation July 2, 1984		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name Corporation Service Company		Phone No. 972-537-5936	
Residence Street Address 2900 SW Wanamaker Dr., Suite 204		City Topeka	State Kansas
			Zip Code 66614

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Circle K		Name Circle K. Stores Inc.	
Business Location Address 2615 East Trail Street		Address 1199 S. Beltline Road, Suite 160	
City Dodge City	State Kansas	City Coppell	State Texas
	Zip 67801		Zip 75019
Business Phone No. 620-227-2625		<input checked="" type="checkbox"/> Applicant owns the proposed business location. <input type="checkbox"/> Applicant does not own the proposed business location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name Geffory C. Haxel		Position President & Secretary	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Spouse Name Lori Glyn Haxel		Position spouse	
Residence Street Address 7849 East Vista Bonita Drive		City Scottsdale	State AZ
			Zip Code 85255
Name Kathy Cunnington		Position Vice President & Treasure	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Spouse Name Jeffery David Cunnington		Position spouse	
Residence Street Address 14203 South 12th Place		City Phoenix	State AZ
			Zip Code 85048
Name Melissa Ann McKinley		Position Vice President	
Residence Street Address 1701 Clark Lake Circle		City Keller	State Texas
			Zip Code 76248
Spouse Name William John McKinley		Position spouse	
Residence Street Address 1701 Clark Lake Circle		City Keller	State Texas
			Zip Code 85048

City of Dodge City

City of Dodge City
806 N. Second Ave.
67801

Phone: 620-225-8100
FAX: 620-225-8144
www.dodgecity.org

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: November 18, 2016
Subject: Ordinance No. 3643 and Resolution No. 2016-28
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the City Commission approve Ordinance No. 3596 and Resolution No. 2016-28

Background: Ordinance No. 3643 authorizes and provides for the issuance of General Obligation Bonds, Series 2016-B of the City, provides for the levy and collection of annual tax to pay the principal and interest on the bonds.

The City has previously taken action to fund several street improvements including Park Street Reconstruction – 5th Ave. to Santa Fe Ave, 1st Ave. Reconstruction – Hickory St. to Division St., Asphalt Street Reconstruction – 3000 block of Gary Ave.; intersection of Central Ave. and Frontview St.; and Comanche St. from Fairway Dr. to Ave. P, US 50 & Fairway Drive Intersection, Ave. A Bridge Deck Replacement, 6th Ave. Extension (The Bonds will finance approximately \$245,000 of this project)

By approving Ordinance No. 3643, the City Commission will authorize the issuance of General Obligation Bonds, Series 2016 B, of the City in the principal amount of \$2,000,000 of its general obligation bonds, together with premium thereon, to pay a portion of the costs of the Improvements.

The Bond Purchase Agreement was signed on Thursday, November 17, and Stifel Nicholas sold the bonds. The net interest cost was 3.1751769%. The ordinance authorizes the Mayor, Finance Director/City Clerk and other City officials 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.

Resolution No. 2016-28 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: Necessary to fund street improvement projects.

Financial Considerations: Annual payments to mature the 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. 3643 and Resolution No. 2016-28.

ORDINANCE NO. 3643

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2016-B, OF THE CITY OF DODGE CITY, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

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; and

WHEREAS, pursuant to the laws of the State of Kansas applicable thereto, by proceedings duly had, the City Commission of the City (the “Governing Body”) has authorized the following improvements (the “Improvements”) to be made in the City, to-wit:

<u>Project Description</u>	<u>Ord./Res. No.</u>	<u>Authority (K.S.A.)</u>	<u>Project Cost</u>
Park Street Reconstruction – 5 th Ave. to Santa Fe Ave.	Ord. 3087/ Res. 2016-15	12-685 <i>et seq.</i>	\$ 335,000
1 st Ave. Reconstruction – Hickory St. to Division St.	Ord. 3038/ Res. 2016-15	12-685 <i>et seq.</i>	240,000
Asphalt Street Reconstruction – 3000 block of Gary Ave.; intersection of Central Ave. and Frontview St.; and Comanche St. from Fairway Dr. to Ave. P	Ord. 3038/ Ord. 3642/ Res. 2016-15	12-685 <i>et seq.</i>	225,000
US 50 & Fairway Drive Intersection	Ord. 3569/ Res. 2016-15	12-685 <i>et seq.</i>	600,000
Ave. A Bridge Deck Replacement	Ord. 3038/ Res. 2016-15	12-685 <i>et seq.</i>	350,000
6 th Ave. Extension ¹	Ord. 3087/ Res. 2016-15	12-685 <i>et seq.</i>	<u>1,600,000</u>
Total			<u>\$3,350,000</u>

¹ The Bonds will finance approximately \$245,000 of this project.

WHEREAS, all legal requirements pertaining to the Improvements have been complied with, and the Governing Body now finds and determines that the total cost of the Improvements (including issuance costs of the general obligation bonds) and related expenses are at least \$2,057,228.65, said cost to be paid by the City at large by the issuance of general obligation bonds; and

WHEREAS, the Governing Body is authorized by law to issue general obligation bonds of the City to pay the costs of the Improvements, and the City proposes to issue \$2,000,000 of its general obligation bonds, together with premium thereon, to pay a portion of the costs of the Improvements.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION 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. 10-620 *et seq.*, and K.S.A. 12-685 *et seq.*, all as amended and supplemented from time to time.

“**Bond and Interest Fund**” means the Bond and Interest Fund of the City for its general obligation bonds.

“**Bond Resolution**” means the resolution to be adopted by the Governing Body prescribing the terms and details of the Bonds and making covenants with respect thereto.

“**Bonds**” means the City's General Obligation Bonds, Series 2016-B, dated December 15, 2016, authorized by this Ordinance.

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

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

“**Governing Body**” means the City Commission of the City.

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

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

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

“**Substitute Improvements**” means the substitute or additional improvements of the City authorized in the manner set forth in the Bond Resolution.

Section 2. Authorization of the Bonds. There shall be issued and hereby are authorized and directed to be issued the General Obligation Bonds, Series 2016-B, of the City in the principal amount of \$2,000,000, for the purpose of providing funds to: (a) pay a portion of the costs of the Improvements; and (b) pay costs of issuance of the Bonds.

Section 3. Security for the Bonds. The Bonds shall be general obligations of the City payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 4. Terms, Details and Conditions of the Bonds. The 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 Bond Resolution hereafter adopted by the Governing Body.

Section 5. Levy and Collection of Annual Tax. The Governing Body shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by levying and collecting the necessary taxes upon all of the taxable tangible property within the City in the manner provided by law.

The taxes above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the general ad valorem taxes of the City are levied and collected, shall be used solely for the payment of the principal of and interest on the Bonds as and when the same become due and the fees and expenses of the Paying Agent. The proceeds derived from said taxes shall be deposited in the Bond and Interest Fund.

If at any time said taxes are not collected in time to pay the principal of or interest on the Bonds when due, the Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the City and to reimburse said general funds for money so expended when said taxes are collected.

Section 6. 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, and 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 7. Governing Law. This Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body and publication of the Ordinance or a summary thereof in the official City newspaper.

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PASSED by the City Commission on November 21, 2016 and **SIGNED** by the Mayor.

(SEAL)

Mayor

ATTEST:

Clerk

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RESOLUTION NO. 2016-28

A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF GENERAL OBLIGATION BONDS, SERIES 2016-B, OF THE CITY OF DODGE CITY, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 3643 OF THE ISSUER; 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 passed the Ordinance authorizing the issuance of the Bonds;
and

WHEREAS, the Ordinance authorized the City Commission of the Issuer (the “Governing Body”) to adopt a resolution prescribing certain details and conditions and to make certain covenants with respect to the issuance of the Bonds; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary for the Issuer to authorize the issuance and delivery of the Bonds in the principal amount of \$2,000,000 to pay a portion of the costs of the Improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION 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. 10-620 *et seq.* and K.S.A. 12-685 *et seq.*, as amended and supplemented.

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

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

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

“**Bond and Interest Fund**” means the Bond and Interest Fund of the Issuer for its general obligation 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 Payment Date” means any date on which principal of or interest on any Bond is payable.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated as of November 17, 2016, between the Issuer and the Purchaser.

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

“Bond Registrar” means the State Treasurer and any successors and assigns.

“Bond Resolution” means this resolution relating to the Bonds.

“Bonds” means the General Obligation Bonds, Series 2016-B, authorized and issued by the Issuer pursuant to the Ordinance and this Bond Resolution.

“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.

“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.

“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 facilities, at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Consulting Engineer by this Bond Resolution.

“Costs of Issuance” means all costs of issuing the Bonds, including but not limited to 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 ratings on the Bonds, and any premiums or expenses incurred in obtaining municipal bond insurance on the Bonds.

“Costs of Issuance Account” means the Costs of Issuance Account for General Obligation Bonds, Series 2016-B created pursuant to *Section 501* hereof.

“Dated Date” means December 15, 2016.

“Debt Service Account” means the Debt Service Account for General Obligation Bonds, Series 2016-B created within the Bond and Interest Fund pursuant to *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.

“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) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

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

(6) such obligations are rated in a rating category by Moody's or Standard & Poor's that is no lower than the rating category then assigned by that Rating Agency to United States Government Obligations.

“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.

“Director of Finance” means the duly appointed and acting Director of Finance of the Issuer or, in the Director of Finance's absence, the duly appointed Deputy, Assistant or Acting Director of Finance of the Issuer.

“Disclosure Undertaking” means the Issuer’s Omnibus Continuing Disclosure Undertaking, as may be amended and supplemented, relating to certain obligations contained in the SEC Rule, as revised and affirmed by the Adoption Agreement.

“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.

“DTC Representation Letter” means the Blanket Letter of Representation from the Issuer and the Paying Agent to DTC which provides for a book-entry system, or any agreement between the Issuer and Paying Agent and a successor securities depository duly appointed.

“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; or

(c) 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 (other than the covenants relating to continuing disclosure requirements contained herein and in the Disclosure Undertaking) on the part of the Issuer to be performed, 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.

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

“Financeable Costs” means the amount of expenditure for an Improvement which has been duly authorized by action of the Governing Body to be financed by general obligation bonds, less: (a) the amount of any temporary notes or general obligation bonds of the Issuer which are 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 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.

“Governing Body” means the City Commission of the Issuer.

“Improvement Fund” means the Improvement Fund for General Obligation Bonds, Series 2016-B created pursuant to *Section 501* hereof.

“Improvements” means the improvements referred to in the preamble to the Ordinance and any Substitute Improvements.

“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.

“Interest Payment Date(s)” means the Stated Maturity of an installment of interest on any Bond which shall be March 1 and September 1 of each year, commencing March 1, 2017.

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

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

“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.

“Moody's” means Moody's Investors Service, 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.

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

(a) To the Issuer at:

City Hall
806 2nd Avenue
P.O. Box 880
Dodge City, Kansas 67801
Fax: (620) 225-8144

(b) To the Paying Agent at:

State Treasurer of the State of Kansas
Landon Office Building
900 Southwest Jackson, Suite 201
Topeka, Kansas 66612-1235
Fax: (785) 296-6976

(c) To the Purchaser:

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

(d) To the Rating Agency(ies):

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

S&P Global Ratings, a division of S&P Global Inc.
55 Water Street, 38th Floor
New York, New York 10004

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 Bond Registrar and Paying Agent, the Director of Bond Services.
- (c) With respect to any Purchaser, the manager of its Municipal Bond Department.
- (d) With respect to any Rating Agency, any Vice President thereof.

“Official Statement” means Issuer’s Official Statement relating to the Bonds.

“Ordinance” means Ordinance No. [_____] of the Issuer authorizing the issuance of the Bonds, as amended from time to time.

“Outstanding” means, when used with reference to the 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;
- (b) Bonds deemed to be paid in accordance with the provisions of *Article VII* hereof; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered hereunder.

“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.

“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 the State Treasurer and any successors and assigns.

“Permitted Investments” shall mean the investments hereinafter described, provided, however, no moneys or funds shall be invested in a Derivative: (a) investments authorized by K.S.A. 12-1675 and amendments thereto; (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; (d) the Issuer's temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto; (e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Issuer is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c); (f) obligations of the federal national mortgage association, federal home loan banks, federal home loan mortgage corporation or government national mortgage association; (g) repurchase agreements for securities described in (c) or (f); (h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard & Poor's; (i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in (c) or (f); (j) receipts evidencing ownership interests in securities or portions thereof described in (c) or (f); (k) 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; or (l) bonds of any municipality of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in (c) or (f), all as may be further restricted or modified by amendments to applicable State law.

“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.

“Purchase Price” means the amount set forth in the Bond Purchase Agreement.

“Purchaser” means Stifel, Nicolaus & Company, Incorporated, Wichita, Kansas, the original purchaser of the Bonds, and any successor and assigns.

“Rating Agency” means any company, agency or entity that provides, pursuant to request of the Issuer, financial ratings for the Bonds.

“Rebate Fund” means the Rebate Fund for General Obligation Bonds, Series 2016-B 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” means, when used with respect to any Bond to be redeemed, the date fixed for the redemption of such Bond pursuant to the terms of this Bond Resolution.

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

“Replacement Bonds” means Bonds issued to the Beneficial Owners of the Bonds in accordance with *Section 210* hereof.

“SEC Rule” means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

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

“Special Record Date” means the date fixed by the Paying Agent pursuant to *Article II* hereof for the payment of Defaulted Interest.

“Standard & Poor's” or “S&P” means S&P Global Ratings, a division of S&P Global Inc., 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.

“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.

“Substitute Improvements” means the substitute or additional improvements of the Issuer described in *Article V* hereof.

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

“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.

ARTICLE II

AUTHORIZATION AND DETAILS OF THE BONDS

Section 201. Authorization of the Bonds. The Bonds have been heretofore authorized and directed to be issued pursuant to the Ordinance in the principal amount of \$2,000,000, for the purpose of providing funds to: (a) pay a portion of the costs of the Improvements; and (b) pay Costs of Issuance.

Section 202. Description of the Bonds. The Bonds shall consist of fully registered bonds in an Authorized Denomination, and shall be numbered in such manner as the Bond Registrar shall determine. All of the Bonds shall be dated as of the Dated Date, shall become due in the amounts,

on the Stated Maturities, 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:

<u>Stated Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Annual Rate</u> <u>of Interest</u>	<u>Stated Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Annual Rate</u> <u>of Interest</u>
2017	\$125,000	2.000%	2025	\$135,000	4.000%
2018	115,000	2.000%	2026	135,000	4.000%
2019	115,000	2.000%	2027	140,000	4.000%
2020	120,000	2.000%	2028	145,000	3.250%
2021	120,000	2.000%	2029	150,000	3.375%
2022	120,000	3.000%	2030	160,000	3.375%
2023	120,000	3.000%	2031	170,000	3.500%
2024	130,000	4.000%			

The 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* hereof.

Each of the 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 and Bond Registrar. The State Treasurer is hereby designated as the Paying Agent for the payment of principal of and interest on the Bonds and Bond Registrar with respect to the registration, transfer and exchange of 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 Paying Agent for the Bonds.

The Issuer will at all times maintain a Paying Agent and Bond Registrar meeting the qualifications herein described for the performance of the duties hereunder. The Issuer reserves the right to appoint a successor Paying Agent or Bond Registrar by (a) filing with the Paying Agent or Bond Registrar then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent or Bond Registrar and appointing a successor, and (b) causing notice of appointment of the successor Paying Agent and Bond Registrar to be given by first class mail to each Owner. No resignation or removal of the Paying Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of Paying Agent or Bond Registrar.

Every Paying Agent or Bond Registrar appointed hereunder shall at all times meet the requirements of K.S.A. 10-501 *et seq.* and K.S.A. 10-620 *et seq.*, respectively.

Section 204. Method and Place of Payment of the Bonds. The principal of, or Redemption Price, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the principal office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Owner; or (b) in the case of an interest payment to Cede & Co. or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice given to the Bond Registrar by such 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 Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The Issuer shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefore to be mailed, by first class mail, postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the Issuer.

Section 205. 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.

Section 206. Registration, Transfer and Exchange of Bonds. The Issuer covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Bond Registrar as herein provided. Each Bond when issued shall be registered in the name of the Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange such Bond for a new Bond or Bonds in any Authorized Denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange.

Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Bond Registrar, duly executed by the Owner thereof or by the Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Bond Resolution. The Issuer shall pay the fees and expenses of the Bond Registrar for the registration, transfer and exchange of Bonds provided for by this Bond Resolution and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, are the responsibility of the Owners of the Bonds. In the event any Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Code § 3406, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Owner hereunder or under the Bonds.

The Issuer and the Bond Registrar shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to *Article III* hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the Issuer of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to this *Article II*.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute Owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Owner or upon the Owner's order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register may be inspected and copied by the Owners (or a designated representative thereof) of 10% or more in principal amount of the Bonds then Outstanding or any designated representative of such Owners whose authority is evidenced to the satisfaction of the Bond Registrar.

Section 207. Execution, Registration, Authentication and Delivery of Bonds. Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be executed for and on behalf of the Issuer by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the Clerk, and the seal of the Issuer shall be affixed thereto or imprinted thereon. The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds in the manner herein specified, and to cause the Bonds to be registered in the office of the Clerk, which registration shall be evidenced by the manual or facsimile signature of the Clerk with the seal of the Issuer affixed thereto or imprinted thereon. The Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In case any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds as herein specified, and when duly executed, to deliver the Bonds to the Bond Registrar for authentication.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form attached hereto as *EXHIBIT A* hereof, which shall be manually executed by an authorized officer or employee of the Bond Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Bond shall be entitled to any security or benefit under this Bond Resolution or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Bond Registrar. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Bond Resolution. Upon authentication, the Bond Registrar shall deliver the Bonds to the Purchaser upon instructions of the Issuer or its representative.

Section 208. Mutilated, Lost, Stolen or Destroyed Bonds. If (a) any mutilated Bond is surrendered to the Bond Registrar or the Bond Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Issuer and the Bond Registrar such security or indemnity as may be required by each of them, then, in the absence of notice to the Issuer or the Bond Registrar that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer's request, the Bond Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Issuer, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this Section, the Issuer and the Paying Agent may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer, and shall be entitled to all the benefits of this Bond Resolution equally and ratably with all other Outstanding Bonds.

Section 209. Cancellation and Destruction of Bonds Upon Payment. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

Section 210. Book-Entry Bonds; Securities Depository. The Issuer and Paying Agent have entered into a DTC Representation Letter with DTC. The Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Bonds, except in the event the Bond Registrar issues Replacement Bonds as provided in this Section. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Bond Registrar authenticates and delivers Replacement Bonds to the Beneficial Owners as described in the following paragraph.

The Issuer may decide, subject to the requirements of the Operational Arrangements of DTC (or a successor Securities Depository), and the following provisions of this section to discontinue use of the system of book-entry transfers through DTC (or a successor Securities Depository):

(a) If the Issuer determines (1) that the Securities Depository is unable to properly discharge its responsibilities, or (2) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (3) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds; or

(b) if the Bond Registrar receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Bond Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to Owners requesting the same, and the Bond Registrar shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (a)(1) or (a)(2) of this paragraph, the Issuer, with the consent of the Bond Registrar, may select a successor securities depository in accordance with the following paragraph to effect book-entry transfers.

In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Bond Registrar, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Issuer, the Bond Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with the following paragraph, then the Bond Registrar shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Bond Registrar may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing, registration, authentication, and delivery of Replacement Bonds shall be paid for by the Issuer.

In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Bond Registrar receives written evidence satisfactory to the Bond Registrar with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Bond Registrar upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in an Authorized Denominations and form as provided herein.

Section 211. 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 (4) 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 212. Preliminary and Final Official Statement. The Preliminary Official Statement dated November 7, 2016, is hereby ratified and approved. The 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 and Director of Finance are hereby authorized to execute the Official Statement as so supplemented, amended and completed, and the use and public distribution of the 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 Issue Date.

The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds sufficient copies of the Official Statement to enable the Purchaser to comply with the requirements of the SEC Rule and Rule G-32 of the Municipal Securities Rulemaking Board.

Section 213. Sale of the 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 Bonds to the Purchaser for the Purchase Price, upon the terms and conditions set forth therein.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption by Issuer.

Optional Redemption. At the option of the Issuer, Bonds maturing on September 1 in the years 2027, and thereafter, will be subject to redemption and payment prior to their Stated Maturity on September 1, 2026, and thereafter, as a whole or in part (selection of maturities and the amount of 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 to the Redemption Date.

Section 302. Selection of Bonds to be Redeemed. Bonds shall be redeemed only in an Authorized Denomination. When less than all of the Bonds are to be redeemed and paid prior to their Stated Maturity, such Bonds shall be redeemed in such manner as the Issuer shall determine. Bonds of less than a full Stated Maturity shall be selected by the Bond Registrar in a minimum Authorized Denomination of principal amount in such equitable manner as the Bond Registrar may determine.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption a minimum Authorized Denomination of face value shall be treated as though it were a separate Bond of the denomination of a minimum Authorized Denomination. If it is determined that one or more, but not all, of a minimum Authorized Denomination of face value represented by any Bond is selected for redemption, then upon notice of intention to redeem a minimum Authorized Denomination, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Bond to the Bond Registrar: (1) for payment of the Redemption Price and interest to the Redemption Date of a minimum Authorized Denomination of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of a minimum Authorized Denomination of face value called for redemption (and to that extent only).

Section 303. Notice and Effect of Call for Redemption. In the event the Issuer desires to call the Bonds for redemption prior to maturity, written notice of such intent shall be provided to the Bond Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the Redemption Date. The Bond Registrar shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Bond Registrar at least 45 days prior to the Redemption Date of written instructions of the Issuer specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption.

Unless waived by any Owner of Bonds to be redeemed, if the Issuer shall call any Bonds for redemption and payment prior to the Stated Maturity thereof, the Issuer shall give written notice of its intention to call and pay said Bonds to the Bond Registrar and the Purchaser. In addition, the Issuer shall cause the Bond Registrar to give written notice of redemption to the Owners of said Bonds. Each of said written notices shall be deposited in the United States first class mail not less than 30 days prior to the Redemption Date.

All official notices of redemption shall be dated and shall contain the following information:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;
- (d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and
- (e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the principal office of the Paying Agent.

The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on such Redemption Date.

For so long as the Securities Depository is effecting book-entry transfers of the Bonds, the Bond Registrar shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Bond Registrar, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

In addition to the foregoing notice, the Issuer shall provide such notices of redemption as are required by the Disclosure Undertaking. Further notice may be given by the Issuer or the Bond Registrar on behalf of the Issuer as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if official notice thereof is given as above prescribed:

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (1) the CUSIP numbers of all Bonds being redeemed; (2) the date of issue of the Bonds as originally issued; (3) the rate of interest borne by each Bond being redeemed; (4) the maturity date of each Bond being redeemed; and (5) any other descriptive information needed to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least one day before the mailing of notice to Owners by first class, registered or certified mail or overnight delivery, as determined by the Bond Registrar, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Each check or other transfer of funds issued for the payment of the Redemption Price of Bonds being redeemed shall bear or have enclosed the CUSIP number of the Bonds being redeemed with the proceeds of such check or other transfer.

The Paying Agent is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the State or the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

ARTICLE IV

SECURITY FOR BONDS

Section 401. Security for the Bonds. The Bonds shall be general obligations of the Issuer payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 402. Levy and Collection of Annual Tax; Transfer to Debt Service Account. The Governing Body shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by, to the extent necessary, levying and collecting the necessary taxes upon all of the taxable tangible property within the Issuer in the manner provided by law.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Issuer are levied and collected. The proceeds derived from said taxes shall be deposited in the Bond and Interest Fund, shall be kept separate and apart from all other funds of the Issuer shall thereafter be transferred to the Debt Service Account and shall be used solely for the payment of the principal of and interest on the Bonds as and when the same become due, taking into account any scheduled mandatory redemptions, and the fees and expenses of the Paying Agent.

If at any time said taxes are not collected in time to pay the principal of or interest on the Bonds when due, the Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the Issuer and to reimburse said general funds for money so expended when said taxes are collected.

ARTICLE V

ESTABLISHMENT OF FUNDS AND ACCOUNTS DEPOSIT AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Funds and Accounts. Simultaneously with the issuance of the Bonds, there shall be created within the Treasury of the Issuer the following Funds and Accounts:

- (a) Improvement Fund for General Obligation Bonds, Series 2016-B.
- (b) Debt Service Account for General Obligation Bonds, Series 2016-B (within the Bond and Interest Fund).
- (c) Rebate Fund for General Obligation Bonds, Series 2016-B.
- (d) Compliance Account.
- (e) Costs of Issuance Account for General Obligation Bonds, Series 2016-B.

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

Section 502. Deposit of Bond Proceeds. The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds as follows:

(a) All accrued interest and excess proceeds, if any, received from the sale of the Bonds shall be deposited in the Debt Service Account.

(b) An amount to pay the Costs of Issuance shall be deposited into the Costs of Issuance Account.

(c) The remaining balance of the proceeds derived from the sale of the Bonds shall be deposited in the Improvement Fund.

Section 503. Application of Moneys in the Improvement Fund. Moneys in the Improvement Fund shall be used for the sole purpose of: (a) paying the costs of the Improvements, in accordance with the plans and specifications therefor prepared by the Consulting Engineer heretofore approved by the Governing Body and on file in the office of the Director of Finance, including any alterations in or amendments to said plans and specifications deemed advisable by the Consulting Engineer and approved by the Governing Body; (b) paying interest on the Bonds during construction of the Improvements; (c) paying Costs of Issuance; and (d) transferring any amounts to the Rebate Fund required by this *Article V*.

Withdrawals from the Improvement Fund shall be made only when authorized by the Governing Body. Each authorization for costs of the Improvements shall be supported by a certificate executed by the Consulting Engineer stating that such payment is being made for a purpose within the scope of this Bond Resolution and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof. Authorizations for withdrawals for other authorized purposes shall be supported by a certificate executed by the Director of Finance (or designate) stating that such payment is being made for a purpose within the scope of this Bond Resolution. Upon completion of the Improvements, any surplus remaining in the Improvement Fund shall be deposited in the Debt Service Account.

Section 504. Substitution of Improvements; Reallocation of Proceeds.

(a) The Issuer may elect for any reason to substitute or add other public improvements to be financed with proceeds of the Bonds provided the following conditions are met: (1) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been duly authorized by the Governing Body in accordance with the laws of the State; (2) a resolution authorizing the use of the proceeds of the Bonds to pay the Financeable Costs of the Substitute Improvement has been duly adopted by the Governing Body pursuant to this Section, (3) the Attorney General of the State has approved the amendment made by such resolution to the transcript of proceedings for the Bonds to include the Substitute Improvements; and (4) the use of the proceeds of the Bonds to pay the Financeable Cost of the Substitute Improvement will not adversely affect the tax-exempt status of the Bonds under State or federal law.

(b) The Issuer may reallocate expenditure of Bond proceeds among all Improvements financed by the Bonds; provided the following conditions are met: (1) the reallocation is approved by the Governing Body; (2) the reallocation shall not cause the proceeds of the Bonds allocated to any Improvement to exceed

the Financeable Costs of the Improvement; and (3) the reallocation will not adversely affect the tax-exempt status of the Bonds under State or federal law.

Section 505. Application of Moneys in Debt Service Account. All amounts paid and credited to the Debt Service Account shall be expended and used by the Issuer for the sole purpose of paying the principal or Redemption Price of and interest on the Bonds as and when the same become due and the usual and customary fees and expenses of the Bond Registrar and Paying Agent. The Treasurer is authorized and directed to withdraw from the Debt Service Account sums sufficient to pay both principal or Redemption Price of and interest on the Bonds and the fees and expenses of the Bond Registrar and Paying Agent as and when the same become due, and to forward such sums to the Paying Agent in a manner which ensures that the Paying Agent will receive immediately available funds in such amounts on or before the Business Day immediately preceding the dates when such principal, interest and fees of the Bond Registrar and Paying Agent will become due. If, through the lapse of time or otherwise, the Owners of Bonds are no longer entitled to enforce payment of the Bonds or the interest thereon, the Paying Agent shall 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 and shall be held in trust by the Paying Agent for the benefit of the Owners of the Bonds entitled to payment from such moneys.

Any moneys or investments remaining in the Debt Service Account after the retirement of the Bonds shall be transferred and paid into the Bond and Interest Fund.

Section 506. Application of Moneys in the Rebate Fund.

(a) There shall be deposited in the Rebate Fund 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 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 Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and the Federal Tax Certificate.

(b) The Issuer shall periodically determine the arbitrage rebate, 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 after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be deposited into the Bond and Interest Fund.

(c) Notwithstanding any other provision of this Bond Resolution, including in particular *Article VII* hereof, the obligation to pay arbitrage rebate 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 Bonds.

Section 507. Deposits and Investment of Moneys. Moneys in each of the Funds and Accounts shall be deposited in accordance with laws of the State, in a bank, savings and loan association or savings bank organized under the laws of the State, any other state or the United States: (a) which has a main or branch office located in the Issuer; or (b) if no such entity has a main or branch office located in the Issuer, with such an entity that has a main or branch office located in the county or counties in which the Issuer is located. All such depositaries shall be members of the Federal Deposit Insurance Corporation, or otherwise as permitted by State law. All such deposits shall be invested in Permitted Investments as set forth in this Article or shall be adequately secured as

provided by the laws of the State. All moneys held in the Funds and Accounts shall be kept separate and apart from all other funds of the Issuer so that there shall be no commingling with any other funds of the Issuer.

Moneys held in any Fund or Account may be invested in accordance with this Bond Resolution and the Federal Tax Certificate in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such fund was created. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account; provided that, during the period of construction of the Improvements, earnings on the investment of such funds may, at the discretion of the Issuer, be credited to the Debt Service Account.

Section 508. Application of Moneys in the Costs of Issuance Account. Moneys in the Costs of Issuance Account shall be used by the Issuer 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 date of issuance of the Bonds, shall be transferred to the Improvement Fund until completion of the Improvements and thereafter to the Compliance Account or Debt Service Account.

Section 509. Application of Moneys in the Compliance Account. Moneys in the Compliance Account shall be used to pay fees and expenses relating to compliance with federal arbitrage law and state or federal securities laws. Any funds remaining in the Compliance Account on the sixth anniversary of the Issue Date shall be transferred to the Debt Service Account.

ARTICLE VI

DEFAULT AND REMEDIES

Section 601. Remedies. The provisions of the Bond Resolution, including the covenants and agreements herein contained, shall constitute a contract between the Issuer and the Owners of the Bonds. If an Event of Default occurs and shall be continuing, the Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Owner or Owners against the Issuer and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of the Bond Resolution or by the Constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the Issuer, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Bonds.

Section 602. Limitation on Rights of Owners. The covenants and agreements of the Issuer contained herein and in the Bonds shall be for the equal benefit, protection, and security of the Owners of any or all of the Bonds, all of which 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 Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Bond Resolution. No one or more Owners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Outstanding Bonds.

Section 603. Remedies Cumulative. No remedy conferred herein upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Owners of the Bonds by this Bond Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. If action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or shall have been determined adversely to such Owner, then, and in every such case, the Issuer and the Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

ARTICLE VII

DEFEASANCE

Section 701. Defeasance. When any or all of the Bonds, redemption premium, if any, or scheduled interest payments thereon have been paid and discharged, then the requirements contained in this Bond Resolution and the pledge of the Issuer's faith and credit hereunder and all other rights granted hereby shall terminate with respect to the Bonds or scheduled interest payments thereon so paid and discharged. Bonds, redemption premium, if any, or scheduled interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Bond Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Bonds or the interest payments thereon, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal of or Redemption Price of said Bonds and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments. If the amount to be so deposited is based on the Redemption Price of any Bonds, no such satisfaction shall occur until (a) the Issuer has elected to redeem such Bonds, and (b) either notice of such redemption has been given, or the Issuer has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Bond Registrar to give such notice of redemption in compliance with *Article III* hereof. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Issuer, for the purpose of paying and discharging any of the Bonds, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Owners of the Bonds, and such moneys shall be and are

hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or such bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of this Bond Resolution.

ARTICLE VIII

TAX COVENANTS

Section 801. 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 Bonds; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor and the Director of Finance 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 Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

Section 802. 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 Bonds pursuant to *Article VII* hereof or any other provision of this Bond Resolution until such time as is set forth in the Federal Tax Certificate.

ARTICLE IX

CONTINUING DISCLOSURE REQUIREMENTS

Section 901. Disclosure Requirements. 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, the provisions of which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

Section 902. 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. Notwithstanding any other provision of this Bond Resolution, failure of the Issuer to comply with its covenants contained in the preceding section shall not be considered an Event of Default under this Bond Resolution.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 1001. Annual Audit. Annually, promptly after the end of the Fiscal Year, the Issuer will cause an audit to be made of the financial statements of the Issuer for the preceding Fiscal Year by an Independent Accountant. The audit report shall contain a statement regarding the Issuer's compliance with the arbitrage rebate covenants contained in the Federal Tax Certificate and covenants regarding continuing disclosure contained herein and the Disclosure Undertaking. Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the Clerk. Such audit shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, any Owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer or Owner. Upon payment of the reasonable cost of preparing and mailing the same, a copy of any annual audit will, upon request, be sent to any Owner or prospective Owner. As soon as possible after the completion of the annual audit, the Governing Body shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Bond Resolution, the Issuer shall promptly cure such deficiency.

Section 1002. Amendments. The rights and duties of the Issuer and the Owners, and the terms and provisions of the Bonds or of this Bond Resolution, may be amended or modified at any time in any respect by resolution of the Issuer with the written consent of the Owners of not less than a majority in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the Issuer is required to pay as principal of or interest on any Bond;
- (c) permit preference or priority of any Bond over any other Bond; or
- (d) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Bond Resolution.

Any provision of the Bonds or of this Bond Resolution may, however, be amended or modified by resolution duly adopted by the Governing Body at any time in any legal respect with the written consent of the Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Owners, the Issuer may amend or supplement this Bond Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity herein, to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners, to more precisely identify the Improvements, to reallocate proceeds of the Bonds among Improvements, to provide for Substitute Improvements, to conform this Bond Resolution to the Code or future applicable federal law concerning tax-exempt obligations, or in connection with any other change therein which is not materially adverse to the interests of the Owners.

Every amendment or modification of the provisions of the Bonds or of this Bond Resolution, to which the written consent of the Owners is given, as above provided, shall be expressed in a resolution

adopted by the Governing Body amending or supplementing the provisions of this Bond Resolution and shall be deemed to be a part of this Bond Resolution. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Bond Resolution shall always be kept on file in the office of the Clerk, and shall be made available for inspection by the Owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Bond Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Bond Resolution will be sent by the Clerk to any such Owner or prospective Owner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the resolution of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The Issuer shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Bond Resolution which affects the duties or obligations of the Paying Agent under this Bond Resolution.

Section 1003. Notices, Consents and Other Instruments by Owners. Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Bond Resolution, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Bond Resolution, Bonds owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Bond Resolution, except that, in determining whether the Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Owners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer.

Section 1004. Notices. Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Bond Resolution shall be in writing, given to the Notice Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. Copies of such notices shall also be given to the Paying Agent. The Issuer, the Paying Agent and the Purchaser may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Paying Agent shall constitute a sufficient notice.

Section 1005. Electronic Transactions. The issuance of the Bonds and the transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

Section 1006. Further Authority. The officers and officials of the Issuer, including the Mayor, Director of Finance, 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 Bond 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 1007. Severability. If any section or other part of this Bond 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 Bond Resolution.

Section 1008. Governing Law. This Bond Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1009. Effective Date. This Bond Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

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ADOPTED by the City Commission on November 21, 2016.

(SEAL)

Mayor

ATTEST:

Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Bond Resolution of the Issuer adopted by the Governing Body on November 21, 2016, as the same appears of record in my office.

DATED: November 21, 2016.

Clerk

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**EXHIBIT A
(FORM OF 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
GENERAL OBLIGATION BOND
SERIES 2016-B**

**Interest
Rate:**

**Maturity
Date:**

**Dated
Date: December 15, 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 March 1 and September 1 of each year, commencing March 1, 2017 (the “Interest Payment Dates”), until the Principal Amount has been paid.

Method and Place of Payment. The principal or redemption price of this Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Bond at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the “Paying Agent” and “Bond Registrar”). The interest payable on this Bond on any Interest Payment Date shall be paid to the person in whose name this 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. or any Owner of \$500,000 or more in aggregate principal amount of Bonds

by electronic transfer to such 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 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 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 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 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, and that the total indebtedness of the Issuer, including this series of bonds, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Issuer has caused this 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)

By: _____ (facsimile)
Mayor

ATTEST:

By: _____ (facsimile)
Clerk

Memorandum

*To: City Manager
City Commissioners*
From: Ray Slattery, P.E. 
Director of Engineering Services
Date: November 10, 2016
*Subject: Supplemental Agreement to the Consulting
Agreement for Candletree #7, PL 1603.*
Agenda Item: New Business

Recommendation: Approve Supplemental Agreement to the Consulting Services Agreement with SMH consultants, P.A. for the revisions to the proposed Candletree #7 Subdivision.

Background: At the July 18, 2016 Commission Meeting the Commission approved a Consulting Service Agreement with SMH to provide engineering services necessary to develop preliminary platting information, develop final plat based on comments from Developer and City Staff, and develop construction plans and documents necessary to construct streets, water, sewer, and storm sewer infrastructure. SMH completed this task and the developer received quotes from a contractor for the necessary work. Unfortunately, the RHID in place will not cover the cost of the improvements. Staff, the Developer, and SMH reviewed and worked together to revise the subdivision layout, number of lots, and infrastructure configuration. Based on this preliminary layout, unit costs from the original quote, estimated build out, and valuation of the houses; the RHID should be able to cover the costs of the development. By approving this Supplemental Agreement, SMH will be able to move the revised development layout to final plat and construction plans.

Justification: The City has a need for additional housing and this subdivision will help in addressing the need. SMH will provide the necessary services to insure that the subdivision meets all City requirements while meeting the developer's time schedule.

Financial Considerations: The Supplemental Agreement is for \$44,432.50. The original contract with SMH Consultants was for \$63,999.00. Funding of this Supplemental Agreement and the Original Agreement are reimburseable expenses through the RHID Program. With the revised plat layout, the RHID will be able to cover the Original and Supplemental Agreement costs.

Purpose/Mission: The completion of this project will enable the City and the developer to meet the City's Core Values of Ongoing Improvements.

Legal Considerations: The Supplemental Agreement will become part of the contract with SMH Consultants and is bound by the provisions of this contract.

Attachments: The Supplemental Agreement with SMH Consultants.

CONSULTING SERVICES AGREEMENT

Client: <u>City of Dodge City</u>	Project: <u>Candletree #7 Unit 2</u>
Address: <u>806 N. Second Avenue</u> <u>Dodge City, KS 67801</u>	<u>Revision to Original Plans</u>
Telephone: <u>620-225-8106</u>	Project Location: <u>Dodge City</u>
Contact: <u>Ray Slattery, Dir. Eng. Ser.</u>	SMH Project Manager: <u>Jennifer Hancock, PE</u>
Client Job No.: <u>PL 1603</u>	SMH Job No.: <u>1603DG4011</u>

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:

Candletree #7 Unit 2 Addition Final Plat, Sanitary Sewer Design, Water Main Design, and Residential Street Design

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

- GENERAL CONDITIONS
- Attachment A: Scope of Services
- Attachment B: Hourly Not-To-Exceed Fee Estimate
- Attachment C:
- Other:

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 SERIALY NUMBERED WORK AUTHORIZATION
 - THE HOURLY NOT-TO-EXCEED ESTIMATED TOTAL COST OF CONSULTANT'S SERVICES IS \$44,432.50
-
-

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

CLIENT

By: _____
AUTHORIZED REPRESENTATIVE

TITLE: _____

DATE: _____

CONSULTANT

By: _____
AUTHORIZED REPRESENTATIVE

TITLE: _____

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.

***Candletree #7 Addition Unit 2
Residential Subdivision
Scope of Professional Services
Prepared: September 30, 2016***

SMH Consultants (SMH) will perform the following tasks for the City of Dodge City:

CONCURRENT PRELIMINARY AND FINAL PLAT

1. Preparation of final plat.
2. Electronic and paper copy of the plat to be provided to the City of Dodge City as required.
3. All necessary fees with Ford County for filing the plat.
4. Obtainment of plat Signatures as required by the City of Dodge City.
5. Setting of all property pins as required by the laws of the State of Kansas.
6. Legal descriptions, easement documents and coordination of signatures for the sanitary sewer easement that will cut across the property north of Candletree 7 to the sanitary sewer trunk main.

SANITARY SEWER DESIGN

Phase I (Preliminary Construction Documents)

1. Preliminary gravity sanitary sewer plan and profile internal to the development. The proposed sanitary sewer plan and profile will also depict the location of service lines both vertically and horizontally. The sanitary sewer plan and profile shall conform to City of Dodge City Standards. This work will involve, as much as possible, utilizing existing sheets and designs from the original design.
2. Sanitary sewer standard details as provided by the City of Dodge City.
3. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
4. Preparation of the sanitary sewer extension permit for City of Dodge City signature and submittal to the Kansas Department of Health and Environment.

5. Submittal of preliminary construction documents (electronic and 2 full size sets) for review by the City of Dodge City.

Phase II (Final Construction Documents)

1. Final gravity sanitary sewer plan and profile internal to the development. The proposed sanitary sewer plan and profile will also depict the location of service lines both vertically and horizontally. The sanitary sewer plan and profile shall conform to City of Dodge City Standards.
2. Sanitary sewer standard details as provided by the City of Dodge City.

WATER MAIN DESIGN

Phase I (Preliminary Construction Documents)

1. Preliminary water main plan and profile for the extension of water service to and within the platted subdivision. The water main plan and profile shall conform to City of Dodge City standards. This work will involve, as much as possible, utilizing existing sheets and designs from the original design.
2. Water main standard details as provided by the City of Dodge City.
3. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
4. Submittal of preliminary construction documents (electronically and 2 full size sets) for review by the City of Dodge City.

Phase II (Final Construction Documents)

1. Final water main plan and profile for the extension of water service to and within the platted subdivision based on review comments from the City of Dodge City. The water main plan and profile shall conform to City of Dodge City standards.
2. Water main standard details as provided by the City of Dodge City.

RESIDENTIAL STREET DESIGN

Phase I (Preliminary Construction Documents)

1. Preliminary roadway plan and profiles for each of the public streets within the final platted subdivision and coordination of the profiles with the proposed 6th Avenue project. This work will involve, as much as possible, utilizing existing sheets and designs from the original design.
2. Paving details as required by the pavement design.
3. Preliminary roadway cross sections for each of the public streets within the final platted subdivision. Roadway cross sections will depict proposed and existing known and discoverable ground conditions, characteristics and improvements, as well as water and sanitary sewer crossings and crown elevations.
4. Preliminary intersection details detailing horizontal and vertical design information at each of the proposed intersections.
5. Stormwater runoff calculations to verify the required stormwater needs of the subdivision including the proper sizing of conduits and inlets. This task includes coordination with the 6th Avenue project and calculations for a temporary storm water detention northwest of the project site.
6. Preliminary storm sewer layout and design to conform to City of Dodge City Standards.
7. Storm sewer standard details as provided by the City of Dodge City.
8. Preliminary mass grading plan for the entire platted area to depict areas of cut and fill. This task includes coordination with the 6th Avenue Project and the incorporation of a temporary storm water detention basin on the northwest end of the project.
9. Preliminary stormwater erosion and sediment control plan.
10. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
11. Revision and resubmittal of a stormwater pollution prevention plan to the Kansas Department of Health and Environment and all necessary NPDES permitting applications.
12. Submittal of preliminary construction documents (electronically and 2 full size sets) for review by the City of Dodge City.

Phase II (Final Construction Documents)

1. Final roadway plan and profiles for each of the public streets within the final platted subdivision.
2. Paving details as required by the pavement design.
3. Final storm sewer layout and design.
4. Storm sewer standard details as provided by the City of Dodge City.
5. Final roadway cross sections for each of the public streets within the final platted subdivision. Roadway cross sections will depict proposed and existing known and discoverable ground conditions, characteristics and improvements, as well as water and sanitary sewer crossings and crown elevations.
6. Final intersection details detailing horizontal and vertical design information at each of the proposed intersections.
7. Final mass grading plan for the entire platted area to depict areas of cut and fill.
8. Final erosion and sediment control plan based on review comments from the City of Dodge City.

Additional Services

Any services not identified in the fore mentioned scope of services requested by the City of Dodge City will be provided or negotiated at 2016 hourly rates included herein.

RESIDENTIAL STREET DESIGN

Phase I - Preliminary Construction Documents										
Item	38	14	2	70	8	8	14	2	70	8
1. Preliminary Roadway Plans, Profiles										
2. Parking Details										
3. Final Storm Sewer, Stormwater, Cross Sections										
4. Stormwater Roadway Calculations										
5. Preliminary Storm Sewer Layout and Design										
6. Storm Sewer Details										
7. Preliminary Mass Grading										
8. Stormwater Treatment Details										
9. Utility Coordination										
10. NPDES Permitting										
11. Review Submittal										
Phase I Total =										
Phase II - Final Construction Documents										
1. Final Roadway Plans, Profiles & Landscaping										
2. Parking Details										
3. Final Storm Sewer Layout and Design										
4. Stormwater Roadway Calculations										
5. Final Mass Grading										
6. Final Stormwater Erosion and Sediment Controls										
7. Final Stormwater Erosion and Sediment Controls										
Phase II Total =										
Total =										

Non-VO Exceed Fee Estimate = \$44,432.50

Memorandum

*To: City Manager
City Commissioners*
*From: Ray Slattery, P.E. 
Director of Engineering Services*
Date: November 16, 2016
*Subject: Supplemental Agreement for
Separating Grading Plans of 6th Ave.
Extension Design, ST 1611.*
Agenda Item: New Business

Recommendation: Approve Supplemental Agreement with BHC Rhodes.

Background: BHC Rhodes completed the original plans for this project in 2005. Once the plans were complete the decision was made not to move on to the construction phase. Since that time much development has taken place in the area adjacent to 6th Ave. with more planned in the very near future. At the June 20th Commission Meeting, the Commission approved an agreement with BHC Rhodes to revise the plans. The revised plans will include details for a new intersection that is being planned with the future development. Also some rules and regulations have changed and the plans and all permits need to be made current. The housing development immediately east of the proposed 6th Ave. Extension has changed to become more cost effective. One of the outcomes is the need to perform the grading of the 6th Ave. roadbed at the same time the development is being constructed. This will limit the need for the development to construct access on site storm water detention as required by KDHE. The proposed regional detention facility constructed with the 6th Ave. Extension will limit the detention required in the development. The grading portion of the 6th Ave. Extension Project will provide the necessary plans and specifications to bid or get a quote for this work.

Justification: The separation of the project will allow the development to be constructed more cost effectively.

Financial Considerations: The supplemental agreement contract with BHC Rhodes is for a not to exceed amount of \$16,500.00. Funding of this project will be from GOB which were approved earlier this year.

Purpose/Mission: The completion of this phase of the project will enable the City to have the documents necessary to bid the grading portion of the extension of 6th Ave. This will provide better access for the residents and emergency services to this growing neighborhood.

Legal Considerations: The City is entering into a contract with BHC Rhodes and is bound by the provisions of this contract.

Attachments: The Consulting Services Agreement with BHC Rhodes.

September 28, 2016

Ray Slattery
Dir. of Engineering Services
City of Dodge City
806 2nd Ave
P.O. Box 880
Dodge City, KS 67801

Re: **Amendment of Professional Services Agreement - Additional Design Services
Providing separate bid packages for grading and street construction
Revised Design of 6th Avenue Improvements (Ross Blvd to City Limits) [BHCR #023480]**

Dear Mr. Slattery,

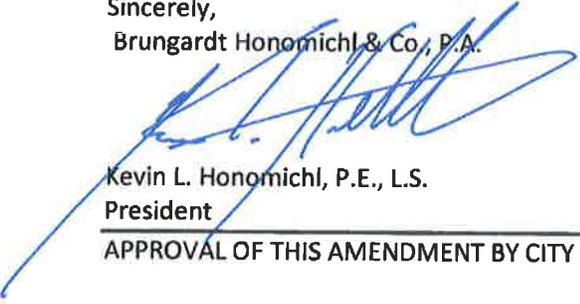
This amendment to the current contract between Brungardt Honomichl & Co., P.A. and the City of Dodge City to provide professional services related to the revised design of 6th Avenue is intended to allow for additional services in order to:

- Separate the proposed improvements into two separate bid packages for mass grading and for roadway improvements
- Incorporate a new connection to a future street to the east to connect to the residential development currently under design modification
- Removal of references to Dillon and Vail intersections from the 6th Avenue plans.

The anticipated schedule for completion of work is expected to be delayed by 4-6 weeks. The increase in the amount of compensation to Brungardt Honomichl & Co., P.A. is \$16,500.00 to allow for an amended total amount of \$37,600.00.

All other terms and conditions of our agreement remain in effect and unchanged by this amendment. Execution of this amendment by the City's authorized representative below signifies the City's acceptance and approval of this amendment.

Sincerely,
Brungardt Honomichl & Co., P.A.


Kevin L. Honomichl, P.E., L.S.
President

APPROVAL OF THIS AMENDMENT BY CITY

Authorized Signature
City of Dodge City, KS

Date