

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, July 21, 2014

7:00 p.m.

MEETING #4966

CALL TO ORDER

ROLL CALL

INVOCATION by Pastor Kurk Larson, Grace Community Church

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

PETITIONS & PROCLAMATIONS

National Day of the Cowboy

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).

Dodge City Family YMCA Mid-Year Report - Randi Clifford, Branch Executive Director.

Main Street - Quarterly update, Chelsey Dawson Main Street Director

CONSENT CALENDAR

1. Approval of Work Session Minutes, July 7, 2014;
2. Approval of City Commission Meeting Minutes, July 7, 2014;
3. Approval of Joint City/County Commission Meeting Minutes, July 14, 2014;
4. Approval of Special City Commission Meeting Minutes, July 14, 2014;
5. Appropriation Ordinance No. 14, July 21, 2014;
6. Cancellation of Prior 29 TE-0374-01 ATSF Railway Depot Agreement/New Project Agreement for 29 TE 0374-01 ATFS Railway Depot

ORDINANCES & RESOLUTIONS

UNFINISHED BUSINESS

NEW BUSINESS

OTHER BUSINESS

ADJOURNMENT

**City of Dodge City
City Commission Meeting
July 21, 2014**

TO: City Manager and City Commission

SUBJECT: National Day of the Cowboy Proclamation

INITIATED BY: Convention & Visitors Bureau

AGENDA: Proclamations

Recommendation: approval of proclamation

Background: This is the 10th annual National Day of the Cowboy approved by the US Senate and in 7 states to date.

Justification: to recognize the American cowboy and the contribution to Dodge City's heritage as well as modern day culture and economy. This Proclamation has been presented and passed by both houses of the Kansas Legislature. Governor Sam Brownback will be in Dodge City to sign the bill on Saturday, July 26, making Kansas the 8th state to recognize the 4th Saturday in July as National Day of the Cowboy in perpetuity.

The National Day of the Cowboy Organization has also recognized Dodge City's work on preserving the Western way of life by awarding our community one of only 4 national awards, "The Cowboy Keeper Award". We are the only community named, the other 3 recipients are individuals.

Financial Considerations: N/A

Purpose/Mission: the cowboy code of ethics embodies honesty, integrity, courage, compassion, respect, a strong work ethic, and patriotism which are the basis of the City's Core Values.

Legal Considerations: N/A

Attachment: Proclamation

PROCLAMATION

Whereas pioneering men and women, recognized as cowboys, helped establish the American West;

Whereas that cowboy spirit continues to infuse this country with its solid character, sound family values, and good common sense;

Whereas the cowboy embodies honesty, integrity, courage, compassion, respect, a strong work ethic, and patriotism;

Whereas approximately 800,000 ranchers are conducting business in all 50 States and are contributing to the economic well being of nearly every county in the Nation;

Whereas rodeo is the sixth most-watched sport in the United States;

Whereas the cowboy is an American icon;

Whereas to recognize the American cowboy is to acknowledge the ongoing commitment of the United States to an esteemed and enduring code of conduct; and

Whereas the ongoing contributions made by cowboys to their communities should be recognized and encouraged:

Now, therefore, be it Resolved, that Dodge City and Ford County supports the Senate of the United States in their quest to designate the 4th Saturday in July each year, and this year designates July 26, 2014, as

National Day of the Cowboy

and encourages the people of Dodge City, Ford County and the United States to observe the day with appropriate ceremonies and activities.

IN WITNESS THEREOF, I have hereunto set my hand this 21st day of July, 2014.

Brian Delzeit, Mayor

Attest:

Nannette Pogue, City Clerk

NATIONAL DAY OF THE COWBOY

“Celebrate National Day of the Cowboy in Historic Dodge City”

- ❖ *Final Friday Events on Eve of National Day of the Cowboy-Friday, July 26, 5:00-9:00 pm-Carnegie Center for the Arts, 702 2nd Ave. (5:00-7:00 pm), 2nd Avenue Art Guild, 608 N.2nd Avenue, (6:00-8:00 pm) Depot Theater Company, 101 E. Wyatt Earp Blvd. (7:00-9:00 pm).*
- ❖ *Boot Hill Museum Bull Fry Bash -Friday, July 26, 6:30 pm to 9:00 pm
Boot Hill Museum-500 W. Wyatt Earp Blvd:*
- ❖ *Dodge City Days Western Parade-Saturday, July 26 9:30 am-Civic Center to Roundup Arena*
- ❖ **Signing of the National Day of the Cowboy Bill by Governor Sam Brownback and other Representatives and Public Officials-Saturday, July 26, High Noon-Wright Park behind Band Shell: 71 N. 2nd Ave.**
- ❖ *Dodge City Days, Kick Off Concert-Saturday, July 26, 7:30 pm-Roundup Rodeo Arena: 608 S. 14th Ave.*
- ❖ *Q97 Country Concert-Sunday, July 27, 5:00 pm-United Wireless Arena-4100 W. Comanche*
- ❖ *Dodge City-The Movie-Carnegie Center for the Arts and Main Street Movies in the Park-Monday, July 28, Dusk-Eisenhower Park*
- ❖ *Western Inspired Display in Front Display Case and Book Display for Dodge City Days and National Day of Cowboy-Dodge City Public Library-1001 N 2nd Ave.*
- ❖ *Read 'EM Cowboy-Wednesday, July 30, 2:00-3:00 pm-Dodge City Public Library-1001 N 2nd Ave.*
- ❖ *Dodge City Roundup PRCA Rodeo-July 31-August 3-Roundup Rodeo Arena-608 S. 14th Ave.*

Kansas Humanities Council Presentations



- ❖ ***BRONCO BUSTIN SHOWMEN AND THEIR SPECTACULAR WILD WEST SHOWS-*** Monday, July 28, 2-3:30pm Dodge City Public Library, Lois Flanagan Room
1001 N 2nd Ave.

- ❖ ***Singing the Cattle North-***Wednesday, July 30, 2-3:30pm Boot Hill Museum, Long Branch Saloon-500 W. Wyatt Earp Blvd.

- ❖ ***HEAD EM UP & MOVE EM OUT -***Thursday, July 31, 2-3:30pm --Dodge City Public Library, Lois Flanagan Room, 1001 N 2nd Ave.

**All the attractions will fly their National Day of the Cowboy flags
July 25-August 4, During Dodge City Days, *Saddle Up and Enjoy the Ride*
For more information visit www.visitdodgecity.org**

DODGE CITY MID-YEAR REPORT

Listed below are five highlights from the first year at the Dodge City Family YMCA

- We almost tripled the membership base from 2012
 - In 2012, the high for membership for DCPR was 1,046. In 2013, we finished with 2,608 members and currently stand at over 3,000.
- We have doubled the program income
 - In 2012, DCPR program income was around \$400,000. In 2013, we finished with \$809,443.38.
- We cut the deficit in half the first year
 - In 2012, DCPR program operations were subsidized by over \$400,000. In 2013, we had a deficit of \$221,000
- We received close to \$2 million for a grant from the 21st Century Community Learning Centers.
 - We have after-school child care in eight sites serving over 660 kids plus the Y site.
- For the facility, we have made many changes and added a Sports Academy
 - At the Y, we have added a new Child Care Center, Aerobics Room, Child Watch, Kitchenette, and expanded the Fitness Center. We have also added a YMCA Sports Academy for the Gymnastics and Cheerleading program at the former All 4 Fun site.

Here is a breakdown of the five major areas within our YMCA

- **Programs:** As stated above, we have added the After-School program at eight school sites and at the Y, and that is running great. We will have to make some adjustments next year as our 21st Century grant funding has dropped significantly. All other programs are running pretty well. We have attached a copy of our Mission Cost Analysis and we need to take a hard look at our price structure. The goal is to have all the program committees review their programs and give us a proposal. We will be coming back to ask for some leeway in our price structure as we move forward. As you can see, each program operates in the red.
- **Membership:** This department has exploded! We had to hire a part-time Membership Director to help with the workload. We are expecting big things from this department again this year.
- **Financial Development & Fiscal Management:** On the budget side, we are operating pretty well. Each Department Head is getting used to the financials and their budget line items to follow. For Financial Development, we need to do a better job in this area and increase our contributed dollars each and every year. We still have tax credits available for potential donors!
- **Facilities & Equipment:** Well, all the changes are finally done and we would love to do more. We LOVE the heater for the outdoor pool, THANK YOU!! We have made some minor renovations this year already in the front lobby with opening a wall in our Welcome Center to better accommodate our members. We added a Spinning Room. We will be adding a new office upstairs for the Business Director. Hopefully we can get all the tax credits donated and renovate the locker rooms, add a youth locker room with an Aquatics office and a youth fitness center. This would be a great addition!
- **Leadership & Mission:** All the exempt staff is trained in Mission and Character Development. This is an in-house training conducted by the CEO and the Branch Executive Director. Most of the staff has been to at least one YMCA training and the highlight will be next month with our first Staff Retreat in Estes Park, Colorado.

Overall, the YMCA has had a big impact on the community and we will continue to make a difference in Youth Development, Healthy Living and Social Responsibility. We appreciate the support and collaboration from the City of Dodge City.

Submitted by, Chad Knight CEO and Randi Clifford, Branch Executive Director

**CITY COMMISSION WORK SESSION
AND EXECUTIVE SESSION MINUTES**

City Hall Commission Chambers

Monday, July 7, 2014

4:00 p.m.

MEETING #4961

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

WORK SESSION

The Commissioners reviewed priorities established by the Department Heads. City Manager, Cherise Tieben shared with the City Commission the Capital Improvement priorities that the Department Heads had discussed at a retreat earlier in the month. The City Commission then discussed these capital improvements and prioritized them.

EXECUTIVE SESSION

At 6:15 P.M. Commissioner Kent Smoll moved to adjourn to Executive Session to Discuss Personnel Matters of Non-Elected Personnel to include City Manager, Cherise Tieben, not to exceed 30 minutes. Commissioner Joyce Warshaw seconded the motion. Motion carried unanimously.

The meeting reconvened to Regular Session at 6:45 p.m. Commissioner Rick Sowers moved to adjourn the meeting, Commissioner Jan Scoggins seconded the motion. Motion carried unanimously.

Mayor

ATTEST:

Nannette Pogue, City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, July 7, 2014

7:00 p.m.

MEETING #4962

CALL TO ORDER

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

INVOCATION by Pastor Jeff Turner of First Missionary Church

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

PETITIONS & PROCLAMATIONS

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).

Cathy Reeves gave quarterly update for the Dodge City Public Library

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, June 16, 2014;
2. Appropriation Ordinance No. 13, July 7, 2014;
3. Cereal Malt Beverage License;
 - (a) Walmart Market #372, 1905 N. 14th
 - (b) Love's Travel Stop #58, 1108 W Wyatt Earp Blvd.

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

ORDINANCES & RESOLUTIONS

Resolution No. 2014-18: A Resolution revising rental fees and charges for Cavalier Field was approved on a motion by Commissioner Joyce Warshaw. Commissioner Brian Delzeit seconded the motion. The motion carried 4-1, with Commissioner Kent Smoll voting no.

UNFINISHED BUSINESS**NEW BUSINESS**

Commissioner Kent Smoll moved to approve the final plat of 14th and Soule Subdivision which will create additional lots for future commercial development. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

The bid in the amount of \$54,916.50 from APAC-Kansas Sheers Division for the Thurow Park Path Placement was approved on a motion by Commissioner Rick Sowers, seconded by Commissioner Joyce Warshaw. The motion was carried unanimously.

The bid in the amount of 223,625 for Sheridan Roof Replacement from Building Solutions was approved on a motion by Commissioner Rick Sowers, seconded by Commissioner Joyce Warshaw. The motion was carried unanimously.

OTHER BUSINESS

City Manager, Cherise Tieben:

- Thanked everyone who contributed to the fireworks. Thanks to Jane Longmeyer and other volunteers for clean up after the event.
- Thanks to Melissa McCoy for helping with the 300 Motorcycle Rally. This was the first year for this event and Melissa spent a tremendous amount of time and energy toward this event. It was a good event. The World of Outlaws was outstanding.
- An invitation was sent out to Commissioners for a 2:00 meeting on July 11 to visit with Amtrak and BSNF Railroad officials.
- On July 14th a Joint City Commission meeting will be held at 6:00 in the Rose Room of the Government Center.
- At the next City Commission meeting the YMCA will have their annual report.

Parks & Recreation Director, Paul Lewis:

- Thanked the City fireworks display major sponsors: Dodge City Festival Inc., Victory Electric, Blackhills Energy, Cargill Meat Solutions, Dodge City Board of Realtors, OMI/CH2M Hill, and the Village Square Mall. This was a great show as usual. The committee members were Kevin Norton, Jane Longmeyer, Kent Stehlik, Sandie Masden, James Trombley, Connie Penick, and Craig Mellecker. The Police Auxillary helped with

traffic after the fireworks show and was a tremendous asset. He wanted to also thank Q97 for their assistance.

Commissioner, Kent Smoll:

– Was out of town during the fireworks show, but heard a lot of positive comments. We need to start on next year's contributions for fireworks. Sales tax report came in and through May, sales tax is up 3.3% over same period last year

Commissioner, Jan Scoggins:

– Thanked people who attended the meeting and are watching it on TV. Encourage citizens to tour the north wastewater treatment plant. It is very forward thinking.

Commissioner Rick Sowers:

– Commented on Melissa McCoy's hard work and appreciates all her efforts. Congratulations to the Dodge City 300. He thought it was a great event.

Commissioner, Joyce Warshaw:

– Reminded everyone listening that it is summertime and encourages citizens to take their time and be careful.

Mayor, Brian Delzeit

– July 4th was a great event. Thanked the Dodge City 300 and attended some of the events. It was a great event and the races were very good. The Dodge City 300 held a Vietnam Veterans welcome home event. He was honored to be on stage during this event. The 3I show is at the end of this week.

ADJOURNMENT

Commissioner Kent Smoll 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, July 14, 2014
Rose Room
Ford County Government Center
6:00 PM
Meeting #4963

CALL TO ORDER

Ford County: Chairman Chris Boys, Commissioners Danny Gillum and Shawn Tasset. All Present along with Sharon Seibel, County Clerk and Glen Kerbs, County Attorney

City of Dodge City: Mayor Brian Delzeit, Commissioners Kent Smoll, Jan Scoggins, Rick Sowers and Joyce Warshaw.

PUBLIC HEARING

A Public Hearing regarding increased estimated costs of projects to be financed by Special Sales Taxes approved on June 10, 1997.

RESOLUTIONS

City action: Resolution No. 2014-19 - Authorizing proceeding with projects to be financed from the proceeds of Special Sales Taxes approved at elections held on June 20, 1997 was approved on a motion by Commissioner Kent Smoll, seconded by Commissioner Jan Scoggins. The motion carried unanimously.

County action: Resolution No. 2014-15 - Authorizing proceeding with projects to be financed from the proceeds of Special Sales Taxes approved at elections held on June 20, 1997, was approved on a motion by Commissioner Danny Gillum, seconded by Commissioner Shawn Tasset. The motion carried unanimously

NEW BUSINESS

1. The CFAB Recommendation for Features and Amenities for Regional Aquatics Park was discussed. The report was given by Paul Lewis, Director of Parks and Recreation, and Dave Schwartz from Water's Edge, the Design Engineer.

Commissioner Smoll asked if the presentation was for amenities included in the \$10,000,000 budget. The answer was yes.

He also asked if the public wanted to comment.

Debbie Snapp has questions – wondered about wave pool in option A. She also asked about spectator bleachers. Asked about the cost of moving the sewer, is it included in the 10,000,000. Asked an operational question – what is opportunity for additional exercises, lessons, etc. and how are swimming lessons going to be expanded. Paul responded that these are programming decisions which haven't been discussed yet. She commented that the desire for the 50 meter pool wasn't just about competition, but there will be more demand with bigger pool and extra water.

Gretchen Torrez wanted to thank the joint commissions for this opportunity. Likes option A with the kiddie pool being shifted down. Likes the wind blowing through the swimming pool, prefers not to have the wind blocked.

Jerry Torrez asked questions about chemicals used and where the kiddie pool is situated.

Brandie Ferguson commented about the location of the pools, wonders if it is possible to see several pools at once. The answer was that in many cases, parents will have to trust that lifeguards will be watching.

Dave Schwartz commented on the location of the pools and the reasons for it. The goal is to make the water safe.

Commissioner Smoll commented that Hays didn't have a very effective way of cordoning off the lap pool from the rest of the center when having a swim meet. At Salina he appreciated the separation of the lap pool.

Commissioner Tasset commented about the blockage for the wind. Do we need to shut down slides in a high wind warning? The design engineer answered that the slides are rated for high wind.

Justin Swift asked if we have considered salt water. Dave Schwartz said it works for smaller pools, but not the bigger pools. He commented that it is hard to keep the hotel rooms full in other times except for the summer time.

Commissioner Smoll asked if there was a dump bucket on interactive play structure. Dave Schwartz answered that we can have it for an additional cost.

City action: Commissioner Rick Sowers moved to approve CFAB Recommendation for Features and Amenities for the Regional Aquatics Park, working with Option 1 as presented by Water's Edge. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously

Ford County Discussion:

Commissioner Tasset asked about the CFAB and what they have seen as far as the drawings and amenities proposed for the Aquatics Park. Danny Gillum asked if CFAB has done their due diligence in looking at all of the features and amenities. Dave Schwartz and Paul Lewis commented.

Mayor Delzeit asked Justin Banning, Chairman of the CFAB, if he felt the CFAB has had adequate information to make a recommendation. He said yes, they had all of the information presented to them.

Paul Lewis commented that what is being presented is the preliminary design concept, but contains all of the elements in the park.

Commissioner Tasset's other concern is: have we made up our mind if we are building a community pool or an attraction. While trying to decide on extra amenities, wondered what to consider and wondered if the wave pool should be considered instead of a lap pool.

Commissioner Smoll commented about what CFAB has seen and the conceptual drawings.

Commissioner Sowers commented on his experience with building these projects and the flexibility that can be had.

Commissioner Tasset asked about the budget. The answer was \$10,000,000.

Mayor Delzeit commented that he thought 10,000,000 is what has been voted on. He is not in favor of exceeding that.

County Action: Commissioner Danny Gillum moved to approve CFAB Recommendation for Features and Amenities for Regional Aquatics Park, working with Option A as presented by Water's Edge, Commissioner Shawn Tasset seconded the motion. Motion carried 2-1, Tasset opposed.

2. Approval of CFAB Recommendation for Aquatics Park Procurement Process-Report by Director of Parks and Recreation-Paul Lewis. Commissioner Smoll asked if City Manager and County Manager would be in charge of making certain decisions during the process.

City action: Commissioner Jan Scoggins moved to approve CFAB Recommendation for Aquatics Park Procurement Process, Commissioner Kent Smoll seconded the motion. Motion carried unanimously.

County Action: Commissioner Danny Gillum moved to approve CFAB Recommendation for Aquatics Park Procurement Process. Commissioner Chris Boys seconded the motion. Motion carried 2-1, Tasset opposed.

3. Discussion of CFAB Recommendation for Optional Enhancements for Regional Aquatics Park. Report by Director of Parks and Recreation, Paul Lewis. The priorities of the CFAB was a 50 meter pool, one with a 60 ft. addition, and one with a 75 ft. addition. Dave Schwartz discussed costs and benefits.

He then discussed the wave pool and costs.

Commissioner Sowers asked about bidding this as an alternative.

Debbie Snapp commented that a 50 meter pool would be nice, but the Aquatics Task Force is happy with what is proposed. She feels that the project has to be kept to an affordable construction cost so that the admission prices can be affordable. She is not in favor of a cover.

Commissioner Smoll is not in favor of the 50 meter pool being a priority. He would rather have a wave pool.

Mayor Delzeit asked where the additional funds might come from.

Commissioner Smoll just thinks there is additional potential.

Mayor Delzeit commented about who the water park will serve.

Debbie Snapp regrets that the 50 meter pool is about competition. She feels that it is more for water surface space. She talked about a cover. She feels people want outdoor activities. We are really fortunate for the Why Not Dodge tax to be able to have these activities in Dodge City.

Cherise Tieben suggested that the design be expanded to include possible additions to the projects.

Commissioner Tasset asked are we building a community project or an attraction.

City action: Commissioner Kent Smoll moved to approve spending additional design fees to include a 50 meter pool and a wave pool, so that these items can be bid as an alternate. Commissioner Rick Sowers seconded the motion. Motion carried unanimously.

County action: None

4. The Commissions discussed continuing Water's Edge Design Agreement to Phase II, final design. The report was given by Director of Parks and Recreation Paul Lewis

City action: Commissioner Kent Smoll moved to direct Water's Edge Design to proceed with Phase II, final design with modification to allow design fees for the addition of a 50 meter pool and a wave pool to be bid as alternates. The previous motion will be withdrawn, since it is basically the same action. Commissioner Rick Sowers seconded the motion. Motion carried unanimously.

County action: Commissioner Chris Boys moved to approve to direct Water's Edge Design to proceed with Phase II, final design with modification to allow design fees for the addition of a 50 meter pool and a wave pool to be bid as alternates. Commissioner Danny Gillum seconded the motion. Motion carried unanimously.

Upcoming Meetings were announced.

1. Monday, October 13, 2014 and Monday, December 8, 2014- Tentative Dates for Upcoming Joint Commission Meetings-Rose Room, Ford County Government Center

Adjournment

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

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

Mayor

ATTEST:

Nannette Pogue, City Clerk

SPECIAL CITY COMMISSION MEETING MINUTES

Rose Room - Ford County Government Center

Monday, July 14, 2014

Immediately following the Joint City/County Meeting

MEETING #4964

CALL TO ORDER

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

NEW BUSINESS

Commissioner Rick Sowers moved to authorize staff to enter into an agreement with Real Estate Research Consultants (RERC) for a fee not to exceed \$39,950 plus actual expenses to conduct a Feasibility Study for the STAR bond Heritage Hotel development. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

ADJOURNMENT

Commissioner Rick Sowers moved to adjourn the meeting. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

Mayor

ATTEST:

Nannette Pogue, City Clerk



City of Dodge City

806 N. Second Ave.
PO Box 880
Dodge City, KS 67801

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

Memorandum

To: City Manager
City Commissioners

From: Melissa McCoy

Date: July 17, 2014

Subject: Cancellation of Prior 29 TE-0374-01 ATSF
Railway Depot Agreement/New Project
Agreement for 29 TE 0374-01 ATSF Railway
Depot

Agenda Item: Consent Agenda

Recommendation: Staff recommends cancellation of the previous agreement from the Kansas Department of Transportation (KDOT) for the Transportation Enhancement (TE) funding award for the Atchison, Topeka and Santa Fe (ATSF) Railway Depot. In addition, staff recommends approval of the new project agreement for TE funds for the ATSF Railway Depot which allows the City of Dodge City to let the project.

Background: On January 13, 2014, the City of Dodge City approved the KDOT project agreement for the ATSF Railway Depot to repair the windows/doors and soffits on the north and east side of the building. After, a site visit by the KDOT Bureau of Local Projects, it was determined that due to the simplicity of the project, the City of Dodge City would be allowed to let their own bidding. Previously, per the agreement the funding recipients were required to have KDOT let all projects.

Justification: The previous agreement and funding match for the project were approved by the City Commission. The only change provided under the new agreement will be to allow the City to bid the project.

Financial Considerations: The financial consideration will remain the same from the previous agreement. The TE program is a reimbursement program where KDOT reimburses 80 % of eligible costs (construction and project administration). The cost estimate for the ATSF Project is \$257,750. The City is responsible for the remaining 20 % estimated at \$62,527 plus preliminary design fees anticipated to be \$5,000 or less. The 20 % match plus the architectural fees has been secured through the Tourism Task Force budget which is funded through the "Why Not Dodge" Sales Tax. These funds have been utilized previously for Depot Development and Stabilization. Staff would recommend that this fund be used for the 20 % match and for architectural fees.

Purpose/Mission: The Project is consistent with the City's Core Purpose of "Making Dodge City the best place to be" and our core value of Ongoing Improvement.

Legal Considerations: This is a standard form of agreement required by KDOT

Attachments:

29- TE-0374-01 ATSF Railway Depot Cancellation of Agreement

29- TE-0374-01 ATSF Railway Depot New Project Agreement

PROJECT NO. 29 TE-0374-01
TEA-T037(401)
TRANSPORTATION ENHANCEMENT PROJECT
ATSF RAILWAY DEPOT RESTORATION
CITY OF DODGE CITY, KANSAS

CANCELLATION OF AGREEMENT

PARTIES: **MICHAEL S. KING, Secretary of Transportation,** Kansas Department of Transportation (KDOT) (the “Secretary”)

The City of Dodge City, Kansas (the “City”)

Collectively referred to as the “Parties.”

PURPOSE: The Parties mutually desire to cancel Agreement No. 314-13 dated January 13, 2014, for Project No. 29 TE-0374-01 (“Project”) and enter into a new agreement for the Project to more accurately reflect the Parties’ respective responsibilities for the work to be performed under the Project.

EFFECTIVE

DATE: The Parties mutually agree Agreement No. 314-13 is cancelled as of the date signed by the Secretary or designee.

IN WITNESS WHEREOF, the Parties have caused this Cancellation of Agreement to be signed by their duly authorized officers.

ATTEST:

CITY OF DODGE CITY, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

PROJECT NO. 29 TE-0374-01
TEA-T037(401)
TRANSPORTATION ENHANCEMENT PROJECT
ATSF RAILWAY DEPOT RESTORATION
CITY OF DODGE CITY, KANSAS

AGREEMENT

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Dodge City, Kansas** (“City”), **collectively**, the “Parties.”

RECITALS:

- A. The Secretary is authorized by the current Federal-Aid Transportation Act to set aside certain portion of Federal funding allocated under the current Federal-Aid Transportation Act for Transportation Enhancement (TE) projects.
- B. The Secretary is empowered to pass through Federal Surface Transportation Program (STP) funds for TE projects to eligible state agencies or local governments.
- C. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for Federal STP funding under the Transportation Enhancement Provision of the current Federal-Aid Transportation Act.
- D. The City has requested and Secretary has authorized a Transportation Enhancement (TE) project, as further described in this Agreement.
- E. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states and local governments are, under certain circumstances, entitled to receive assistance in the financing of TE projects, provided however, that in order to be eligible for such federal-aid, such work is required by Federal law to be done in accordance with the laws of the state.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

- 1. “**Agreement**” means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. “**City**” means the City of Dodge City, Kansas, with its place of business at 806 2nd Avenue/P.O. Box 880, Dodge City, KS 67801.

3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
13. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

14. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
18. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
19. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **Restoration of Atchison, Topeka, and Santa Fe (ATSF) Railway Depot at 101 E Wyatt Earp Blvd, to include repair of north and east windows, doors, gutters, downspouts and metal soffits (Phase I), and Harvey House Dining Room Development (Phase II) in Dodge City, Kansas**, and is the subject of this Agreement.
20. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
22. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
23. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.
24. **“Useful Life Period”** means a sufficient period of time, as specifically designated in this Agreement in Article IV, paragraph 2, to secure the investment of federal funds in the Project based on the nature and magnitude of Project costs and generally accepted economic or useful life cycle norms for the type of Construction involved in the Project.
25. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities,

including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives such that the City may obtain participation of federal funds in the cost of the Project.

2. **Payment of Costs.** The Secretary agrees to reimburse the City for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, or Utility adjustments for the Project.

3. **Reimbursement Payments.** The Secretary agrees to make partial payments to the City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer, a licensed professional architect, and/or licensed landscape architect, as applicable, employed by the City that the Project is being constructed within substantial compliance of the Design Plans.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

4. **Letting and Administration by City.** The City shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the Design Plans, in the manner required by the FHWA and the Secretary, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

5. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and

federal design criteria appropriate for the Project in accordance with the current the American Institute of Architects (AIA) standards, the Secretary of the Interior's Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines, KDOT's Design Engineering Requirements, Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions required by the Secretary or by the City with the Secretary's concurrence, and with the rules and regulations of the FHWA pertaining to the Project.

6. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 5 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

7. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 5 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 5 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- (c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary

status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

8. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

9. **Design Exception Indemnification.** Any design exception to the current version of the American Association of State Highway and Transportation Officials (AASHTO) Design Standards shall be in accordance with 23 C.F.R. § 625. For any design exception, the City agrees to the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, to defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the design exceptions for this Agreement by the City, the City's employees, or subcontractors.

10. **Prevailing Wages.** The City will require the Contractor to pay prevailing wages. The City will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The City can obtain the current wage decision from KDOT's Bureau of Construction and Materials website.

11. **Required Construction Contract Provisions.** The City will obtain the mandatory Required Contract Provisions from KDOT's Bureau of Construction and Materials website and incorporate those provisions into the Construction contract.

12. **Performance Bond.** The City further agrees to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

13. **Plan Retention.** The City will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all the above-mentioned documents to the Secretary.

14. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the City will defend,

indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, subcontractors or its consultants. The City shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

15. **Indemnification by Contractors.** The City agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

16. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

17. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) **Right of Way Documentation.** The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) **Relocation Assistance.** The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as

defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. Intentionally deleted.

18. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

19. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

20. **Utilities.** The City agrees to the following with regard to Utilities:

(a) Utility Relocation. The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) Status of Utilities. The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that

all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

21. Hazardous Waste. The City agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed

under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

22. **Inspections**. The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the City's approved construction engineering program:

(a) By City personnel. City personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the City to inspect the Project, in which case the City shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

(b) By a Consultant. If the City does not have sufficient qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. However, any Consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the FHWA and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

(c) Protective Clothing. The City will require at a minimum all City personnel and all Consultant personnel performing Construction Engineering comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

23. **Corrective Work**. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the contractor's errors, omissions or deviations from the final Design Plans.

24. **Traffic Control**. The City agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal

traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same.

(b) Permanent Traffic Control. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) Parking Control. The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) Traffic Movements. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

25. Access Control. The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

26. Entrance Control. The City will control the construction or use of any entrances along the Project within the City including those shown on the final Design Plans.

27. Maintenance. When the Project is completed and final acceptance is issued the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

28. Financial Obligation. The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

29. Cost Estimates. The estimated cost for Construction is \$206,200, and for Construction Engineering is \$51,500, for total estimated costs of \$257,750. It is mutually agreed

these estimated cost figures are to be used for encumbrance purposes and adjustments will be made based on the actual Project costs, as approved by the Secretary.

30. **Prior Costs Incurred.** The City shall be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the FHWA.

31. **Audit.** All local governmental units, Non-Profit Organizations, and Indian Tribal governments shall comply with Federal-Aid Transportation Act and OMB Circular A-133 “Audits of State and Local Governments, and Non-Profit Organizations.” Further, the City agrees to the following provisions:

(a) **Common Rule.** It is the policy of the Secretary to make any final payments to the City for services related to the Project in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, “Audits of States, Local Governments and Non Profit Organizations” in 49 C.F.R. Part 18 (Common Rule), require an audit be performed by an independent certified public accountant in accordance with these standards. All information audited shall comply with 49 C.F.R. Part 18 (Common Rule).

(b) **Single Audit.** The Secretary may pay any final amount due for the authorized work performed based upon the City’s most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of KDOT’s Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Single Audit Report for items which are declared as not eligible for reimbursement. The City agrees to refund payment made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit.

32. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

33. **Organizational Registration Requirements.**

(a) **Dun & Bradstreet.** If it has not already done so, the City shall obtain a Data Universal Numbering System (DUNS) number, which may be obtained from Dun and Bradstreet, Inc. (D & B) by telephone (currently 866-705-5711) or the Internet (currently <http://fedgov.dnb.com/webform>).

(b) **System for Award Management.** The City agrees it shall maintain current registrations in the System for Award Management (<http://www.sam.gov>) at all times during which it has active federal awards.

34. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE IV

SPECIAL TRANSPORTATION ENHANCEMENT REQUIREMENTS:

1. **No 4(f) Status.** It is the Parties' intention that neither this Agreement nor the Project create or expand the status of any land involved in this Project as a "significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site," for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135 ("4(f) status"), except as otherwise modified by this Agreement.

(a) **Transportation Enhancement.** Unless otherwise stated below in this section, the Parties agree the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic, environmental or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135. Exceptions: NONE.

(b) **4(f) Determinations.** The Parties agree for purposes of any future determinations of 4(f) status issues as required by 49 U.S.C. § 303 or applicable regulations the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

2. **Useful Life.**

(a) **Useful Life Period.** The Parties agree the Useful Life Period of the Project is 20 years, commencing on the date the Secretary gives notice of final acceptance of the Project.

(b) **Insurance.** If the Project includes improvements to a building, the City will purchase and maintain insurance for property damage to the building continuously during the Useful Life Period of the Project in an amount equal to or in excess of the federal funds expended on the Project.

(c) **Change in Public Use.** After the Project is completed and during the entire Useful Life Period, any change in the public use of the real property for the Project will require written approval from the Secretary with FHWA concurrence.

(d) **Fees or Other Income.** During the Useful Life Period, any minimal fees collected or other income generated by the Project facility will be applied toward the

maintenance and operation of the Project facility or will be held in reserve for future maintenance or repair costs in accordance with the City’s maintenance plan for the Project.

(e) Recapture of Federal Investment.

(i) During the first 10 years of the Useful Life Period, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the City shall pay to the Secretary 100% of the federal funds invested in the Project.

(ii) Following the first 10 years of the Useful Life Period and until the Useful Life Period expires, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the City shall pay to the Secretary as recapture of federal funds invested in the Project an amount, which will be determined according to the following formula:

$$\frac{\text{Total Amount of Federal Funds Invested in the Project}}{\text{Entire Useful Life Period for the Project}} \times \frac{\text{Number of Full Years Remaining in the Useful Life Period at the time of unauthorized change in use}}{\text{Recapture Amount}}$$

(iii) Any payments due to the Secretary pursuant to this subparagraph (d) shall be made within ninety (90) days after receipt of billing from the Secretary’s Chief of Fiscal Services.

ARTICLE V

GENERAL PROVISIONS:

1. **Incorporation of Documents.** The final Design Plans, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for Construction Engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference and made a part of this Agreement.

2. **FHWA Approval.** Decisions as to what Project costs are federal Participating Costs will be made in accordance with the requirements of the FHWA.

3. **Civil Rights Act.** The “Special Attachment No. 1,” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

4. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

5. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

7. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF DODGE CITY, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Michael S. King, Secretary of Transportation
Kansas Department of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following “Nondiscrimination Clauses”.

CLARIFICATION

Where the term “Consultant” appears in the following “Nondiscrimination Clauses”, the term “Consultant” is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant’s assignees and successors in interest (hereinafter referred to as the “Consultant”), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the “Regulations”). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant’s obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- 10. Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- 11. Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- 13. Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.