

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, March 16 2015

7:00 p.m.

MEETING #5000

CALL TO ORDER

ROLL CALL

INVOCATION by Vernon Bogart

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

March for Meals Month – Meals on Wheels

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).

Terry Malone – Resolution of Support for DCCC Plan

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes, March 2, 2015;
2. Approval of City Commission Meeting Minutes, March 2, 2015;
3. Appropriation Ordinance No. 6, March 16, 2015;
4. Cereal Malt Beverage Applications:
(a) Quick Pick Inc. 2501 Central Avenue.
5. Approval of Subordination Agreement with Emprise Bank for Estes Enterprises, Inc.

ORDINANCES & RESOLUTIONS

Ordinance No. 3603: An Ordinance Establishing an Arts in Public Places Advisory Committee and Providing Procedures for Funding, Governing, Appropriations and Expenditures for a Public Art Program for Dodge City, Kansas. Report by Ernestor DeLaRosa.

Approval of Arts in Public Places Policy and appointment of Committee. Report by Ernestor DeLaRosa.

Resolution No. 2015-05: A Resolution of the Government Body of the City of Dodge City, Kansas establishing the date and time of a public hearing for consideration of adoption of a Star Bond Project Plan within a Star Bond District previously created within the City pursuant to K.S.A. 12-17,160 Et seq., and providing for the giving of notice of such public hearing (Heritage Area). Report by Ken Strobel.

Resolution No. 2015-06: A Resolution Establishing fees and rates for Water Utility Service for the City of Dodge City. Report by Nannette Pogue.

Resolution No. 2015-07: A Resolution establishing fees and rates for Sanitary Sewer Service for the City of Dodge City. Report by Nannette Pogue.

Resolution No. 2015-08: A Resolution establishing fees and rates for Solid Waste Collection Service in the City of Dodge City. Report by Nannette Pogue.

Resolution No. 2015-09: A Resolution establishing fees and rates for Storm Water Utility Service for the City of Dodge City. Report by Nannette Pogue.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of Bids for the Reconstruction of 14th Street. Report by Ray Slattery.
2. Approval of action to reject bids for the Asphalt Street Project. Report by Ray Slattery.
3. Approval of Agreement with Olsson Associates for the Design of Central Avenue Improvements. Report by Ray Slattery.
4. Approval of Lease Agreement with BNSF Railroad for use of Right of Way. Report by Paul Lewis.
5. Approval of Change Order #4 for Trail Street Reconstruction. Report by Ray Slattery.

ADJOURNMENT

PROCLAMATION
March for Meals Month

WHEREAS, on March 22, 1972, President Richard Nixon signed into law a measure that amended the Older Americans Act of 1965 and established a national nutrition program for seniors 60 years and older; and

WHEREAS, Meals on Wheels America established the national March for Meals Campaign in March 2002 to recognize the historic month, the importance of Older Americans Act Nutrition programs – both congregate and home-delivered – and raise awareness about the escalating problem of senior hunger in America; and

WHEREAS, the 2015 observance of the March for Meals campaign provides an opportunity to support Meals on Wheels programs that deliver vital and critical services by donating, volunteering and raising awareness about senior hunger and isolation; and

WHEREAS, Older Americans Act Nutrition Programs – both congregate and home-delivered – in Kansas have served our communities admirably for more than 40 years; and

WHEREAS, volunteer drivers for Meals on Wheels programs in Kansas are the backbone of the program and they not only deliver nutritious meals to homebound seniors and individuals with disabilities, but also caring concern and attention to their welfare; and

WHEREAS, Meals on Wheels programs in Kansas provide nutritious meals to seniors throughout the State and help them maintain their health and independence and avoid unnecessary hospitalizations and/or premature institutionalization; and

WHEREAS, Meals on Wheels programs in Kansas provide a powerful socialization opportunity for thousands of seniors to help combat loneliness and isolation; and

WHEREAS, Meals on Wheels programs in Kansas deserve recognition for the contributions they have made and will continue to make to local communities, our State and our Nation.

NOW, THEREFORE, BE IT RESOLVED THAT I, Brian Delzeit, Mayor of Dodge City, Kansas, do hereby proclaim March 2015 as

March for Meals Month

and urge every citizen to take time this month to honor our Meals on Wheels programs, the seniors they serve, and the volunteers who care for them. Our recognition of, and involvement in, the national 2015 March for Meals campaign can enrich our entire community and help combat senior hunger and isolation in America.

Dated this 16th day of March, 2015.

Brian Delzeit, Mayor

ATTEST:

Nannette Pogue, City Clerk



March 12, 2015

TO: City Commission

SUBJECT: Visitor's Section of 3/16/2015 City Commission Meeting

Terry Malone will be present and will talk in the Visitor's Section of the City Commission meeting on 3/16/2015. Attached is the information he will discuss with you. Two of these documents are Resolutions that he may present to the Commission to take action on.

Also attached to this memo is the Resolution of Support that the City Commission adopted on May 5, 2014.

Resolution No. 2014-15

A RESOLUTION OF THE CITY OF DODGE CITY, KANSAS, ENDORSING EFFORTS BY THE DODGE CITY COMMUNITY COLLEGE BOARD OF TRUSTEES AND THE KANSAS BOARD OF REGENTS TO CREATE A KANSAS BOARD OF REGENTS ACADEMIC CENTER IN DODGE CITY.

WHEREAS, the Dodge City Community College Board of Trustees is considering the opportunities and possibilities that would be created through the development of a Kansas Board of Regents Academic Center in Dodge City; and

WHEREAS, the Academic Center is anticipated to be a regional baccalaureate center for Southwest Kansas; and

WHEREAS, the Academic Center is anticipated to consist of three colleges – a lower division college, upper division college and technical institute; and

WHEREAS, the proposed the lower division college will offer the existing programs and services of Dodge City Community College; and

WHEREAS, the proposed upper divisional college will offer baccalaureate degrees in both face-to-face and virtual modalities; and

WHEREAS, the proposed technical institute will offer blended, traditional learning and cooperative internship style workplace learning; and

WHEREAS, it is anticipated that a new ten million dollar (\$10,000,000.00) technical institute building will be constructed on the Academic Center campus; and

WHEREAS, an annual commitment of five million dollars (\$5,000,000.00) is anticipated in state funding and will be added to other new and existing revenue streams to operate the Academic Center; and

WHEREAS, it is anticipated that the Kansas Board of Regents will govern the Academic Center through Fort Hays State University; and

WHEREAS, it is proposed that Fort Hays State University will provide oversight and fund all activities and functions except those specifically retained by the Dodge City Community College Trustees pursuant to an operating agreement yet to be negotiated between Fort Hays State University and Dodge City Community College; and

WHEREAS, the Academic Center will have a positive educational and economic impact on Dodge City, Ford County, and the entire state of Kansas.

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

that we, the Governing body of the City of Dodge City, Kansas are supportive of the efforts of the Dodge City Community College Trustees and the Kansas Board of Regents in their pursuit of the establishment of a Kansas Board of Regents Academic Center in Dodge City.

ADOPTED AND APPROVED THIS 5TH DAY OF MAY, 2014.



Attest:

City of Dodge City, KS



Brian Delzeit, Mayor



Nannette Pogue, City Clerk

RESOLUTION 2014 _____
In Pursuit of Keeping Dodge City Community College
Independently Owned and Operated by the Residents Of Ford County, Kansas

WHEREAS, the administration of Dodge City Community College has decided not to pursue a merger with Fort Hays State University as contemplated when this board passed Resolution No 2014-15; and

WHEREAS, the decision not to merge with Fort Hays State University resulted from a nonnegotiable demand by Fort Hays State University that Dodge City Community College would have to be dissolved in order for the merger proposal to go forward; and

WHEREAS, the institution of Dodge City Community College which has been in existence for 80 years is owned by the residents of Ford County, Kansas; and

WHEREAS, the residents of Ford County, Kansas, have invested approximately \$165,000,000 to build, operate and manage Dodge City Community College over the last 80 years in order to provide the highest quality of education and career development for its students; and

WHEREAS, the continued existence of Dodge City Community College is of vital importance to the residents of Ford County, Kansas, as they depend on the affordable educational and training opportunities that Dodge City Community College provides; and

WHEREAS, the dissolution of Dodge City Community College would be highly detrimental to Ford County, Kansas, and southwest Kansas.

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

That we, the Governing body of the City of Dodge City, Kansas encourage the Board of Trustees of Dodge City Community College to work in partnership with Fort Hays State University and other state universities to provide educational and training opportunities without dissolving Dodge City Community College.

ADOPTED AND APPROVED THIS _____ DAY OF _____, 2015.

Seal:

City of Dodge City, KS

Attest:

Brian Delzeit, Mayor

Nannette Pogue, City Clerk

RESOLUTION 2014 _____
In Pursuit of Keeping Dodge City Community College
Independently Owned and Operated by the Residents Of Ford County, Kansas

WHEREAS, the administration of Dodge City Community College has decided not to pursue a merger with Fort Hays State University as contemplated when this board passed resolution No 2014-18; and

WHEREAS, the decision not to merge with Fort Hays State University resulted from a non-negotiable demand by Fort Hays State University that Dodge City Community College would have to be dissolved in order for the merger proposal to go forward; and

WHEREAS, the administration of Dodge City Community College proposed an operational agreement between Dodge City Community College and Fort Hays State University dated November 5, 2014, which is attached hereto and incorporated herein by reference; and

WHEREAS, the operational agreement proposed by the administration of Dodge City Community College seeks an expanded partnership with Fort Hays State University to achieve three basic goals:

1. To collaborate and offer a 4-year baccalaureate education;
2. To assist in offering technical training for students and area businesses through a technical institute;
3. To enhance the economy of Dodge City, Ford County, and southwest Kansas;

WHEREAS, such operational plan accomplishes the goals which will benefit all residents of Ford County, Kansas, by providing increased opportunities including potential baccalaureate programs and technical training without dissolving Dodge City Community College; and

WHEREAS, the proposed operational agreement will have a positive educational economic impact on Dodge City, Ford County, and southwest Kansas.

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

That we, the Governing body of the City of Dodge City, Kansas encourage the Board of Trustees of Dodge City Community College to support the operational agreement and the goals stated there.

ADOPTED AND APPROVED THIS _____ DAY OF _____, 2015.

Seal:

City of Dodge City, KS

Attest:

Brian Delzeit, Mayor

Nannette Pogue, City Clerk

**Dodge City Community College /
Fort Hays State University
Operational Agreement
November 5, 2014**

Dodge City Community College (DCCC) seeks an expanded partnership with Fort Hays State University (FHSU) for three basic goals:

- to collaborate in offering 4-year, baccalaureate education,
- to assist in offering technical training for students and area businesses through a Technical Institute,
- to enhance the economy of Dodge City, Ford County, and southwest Kansas.

Operational Priorities:

- The DCCC Board of Trustees is committed to offering 4-year educational opportunities and expanded technical training for the students of Southwest Kansas.
- DCCC will remain a separate legal entity, with full autonomy over its governance, finances, staffing, educational programs, support services, athletics, and all other activities necessary for its operation. The college will not “dissolve” itself to enter into partnerships with FHSU.
- Athletics are and will remain an important element in DCCC’s programing, finances, and community interactions. DCCC will remain a member of the NJCAA and Jayhawk Conference.
- All revenues generated by DCCC operations will be used exclusively for the support of DCCC programs and services. This includes all mil levy revenues, tuition, fees, state aid reimbursements, grants, gifts, endowments, auxiliary services, and any other revenue source.
- The DCCC Board of Trustees retains the right to hire, evaluate, and employ/dismiss the college President, who acts as the sole chief executive officer of the college.
- Four-year educational programing and technical training will be based on feasibility/needs surveys conducted jointly by both institutions.
- To avoid possible disruptions of agreements/contracts/understandings with outside agencies (Federal Department of Education, Kansas State Department of Education, licensing and accrediting agencies, grant offices, auxiliary enterprises, etc.) the college will retain the name *Dodge City Community College*.

Accreditation: DCCC will retain a separate accreditation with the Higher Learning Commission (HLC) within the AQIP Pathway. The next Systems Portfolio is due on June 30, 2016.

Governance: DCCC will remain an independent community college, operating under the authority of K.S.A. 71-201. The governing body will consist of a six-member Board of Trustees,

elected locally, with specific duties outlined in Kansas State law. The Board retains the right to approve educational and auxiliary programming, to hire, evaluate, and dismiss personnel at its own discretion, including the college President. Further, the Board reserves the authority to determine all necessary policies and procedures for the college's operation.

Finances: The DCCC Board of Trustees will retain sole authority over the college's finances, including the power to assess a mil levy, enter into contracts, approve a budget, own and sell property and equipment, receive state aid reimbursement, receive grants and degrees, and to perform any/all other activities necessary for the operation of the college. The college will retain all funds currently in its accounts.

Federal Identification: DCCC will retain its current Federal Employer Identification Number (FEIN)—52-1718586—along with all other identifiers for the purposes of receiving grants, entering into contracts, aiding entitlements, and receiving gifts and additional appropriations.

Benefits: Benefits for faculty and staff shall remain in their present form(s), subject to review by the Health Insurance Committee and to negotiations between the Board of Trustees and the Faculty Association. DCCC shall retain all funds currently in its Health Insurance reserve funds.

Endowment/Foundation: DCCC shall retain all Endowment and Foundation moneys for use as it deems necessary and appropriate.

Auxiliary Services: DCCC shall retain all auxiliary revenues for use as it deems necessary and appropriate. These include, the college Bookstore, Food Services, gate receipts, and any other revenues from similar sources.

Staffing: DCCC will retain all control for hiring, evaluating, promoting, compensating, and dismissing members of the administration, faculty, and staff. No reduction in force will occur in order to facilitate extended partnerships with FHSU.

Faculty: DCCC faculty members will retain their current professorial rank and tenure status. For the purpose of negotiating salary and working conditions, the faculty will continue to be represented by the Faculty Association, affiliated with the Kansas National Education Association (KNEA). Faculty and Administration will continue to abide by the provisions of the current *Negotiated Agreement*—which is subject to change at the agreement of both parties. All faculty members—whether full-time or part-time—are expected to meet the credential requirements set by the HLC and any other licensing agency that may be within their discipline. No reduction in force regarding faculty will occur in order to facilitate extended partnerships with FHSU.

Educational Programming: DCCC will retain all control of its educational programming within the parameters set by the DCCC Board of Trustees, the Kansas State Board of Regents and the U.S. Department of Education. Determination of course requirements, syllabi, textbooks, and assessment instruments will be made by the appropriate departments at DCCC. All degrees, certificates, diplomas, and transcripts will be issued in the name of *Dodge City Community College*. DCCC will continue to abide by the transfer and articulation agreements set for higher

education across the state. It is understood that individual departments on the DCCC campus will work to extend articulations with their counterparts at FHSU. Any agreements that DCCC establishes with FHSU shall not prevent it from entering into additional partnerships with other 4-year colleges and universities for the delivery of baccalaureate programming and technical training.

Athletics: DCCC will remain a member of the National Junior College Athletic Association (NJCAA) and the Kansas Jayhawk Community College Conference (KJCCC), subject to the rules and regulations of those organizations. Upon leaving the college, student athletes will receive degrees, certificates, diplomas, and/or transcripts issued in the name of *Dodge City Community College*. Athletic programs will remain under the sole control of DCCC, administrated by the Director of Athletics and his/her staff.

Baccalaureate Programming: DCCC will collaborate with FHSU to offer students with baccalaureate coursework in areas of locally identified need. The college will make available facilities and equipment. As soon as reasonably possible, FHSU will identify the courses and programs it intends to offer on the DCCC campus—in order to facilitate advance planning. Financial compensation(s) for DCCC by FHSU will be determined through mutual agreement. DCCC will further support students in the baccalaureate programs with admissions, enrollment, advising, counseling, and information regarding financial aid.

FHSU will retain the sole right to hire, train, evaluate, compensate, promote, and dismiss faculty at its own discretion. Further, it retains the right to decide all degree requirements for its baccalaureate programming at DCCC, to develop a sequence of offerings, and to determine course and/or instructor assessments. Any degree, certificate, diploma, or transcript that a student earns through this programming will be issued in the name of *Fort Hays State University*. Nothing shall prevent students from being simultaneously enrolled in both DCCC and FHSU; students may receive degrees, certificates, and/or diplomas from either organization or from both, provided they meet the necessary requirements. State aid reimbursement will be awarded on a credit-by-credit basis, accorded to that institution responsible for the particular credit. Should a student be dismissed from one of the programs, he/she retains the right to remain enrolled in the other program, provided that institution agrees.

Technical Institute: DCCC will make available space and supporting services for a Technical Institute on its campus. The initial cost of construction and subsequent upkeep will be the responsibility of the Kansas State Board of Regents and/or FHSU. Funding for continued operation of the Institute will be the responsibility of KBOR and/or FHSU. Purchase of equipment will also be the responsibility of those parties. DCCC will make available security and maintenance as necessary and will be compensated for those services by KBOR and/or FHSU. Further, the college will offer assistance for students in the Technical Institute regarding admissions, enrollment, advising, counseling, and information regarding financial aid. Career advisement and job placement in the specific technical programs are activities best reserved for the Institute. Should the Institute cease operation, DCCC retains the right to assume control of the facility, equipment, and coursework should it so choose.

The Institute will be officially named by KBOR and/or FHSU. The Institute will be primarily responsible for promoting its programs and for recruiting students. Further, the Institute will hold sole authority for attracting corporate partners, for developing curriculum, and for hiring, training, evaluating, compensating, and dismissing faculty and staff. The Institute will determine its own policies and procedures as well as requirements for the degrees, certificates, diplomas it deems necessary and appropriate for its students. These will be issued in the name of the Institute determined by KBOR and/or FHSU. The Institute will bear liability for accidents and injuries that might occur in the course of its operations.

It is understood that existing academic and technical programs at DCCC and at the Institute will not be in competition. DCCC will offer coursework in general education and 2-year level technical training. The Institute will offer advanced, industry specific coursework. Programming can be developed as a joint venture between DCCC and FHSU. Nothing shall prevent students from being simultaneously enrolled in both DCCC and the Institute; students may receive degrees, certificates, and/or diplomas from either organization or from both, provided they meet the necessary requirements. State aid reimbursement will be awarded on a credit-by-credit basis, accorded to that institution responsible for the particular credit. Should a student be dismissed from one of the programs, he/she retains the right to remain enrolled in the other program, provided that institution agrees. Financial compensation(s) for DCCC by the Institute will be determined through mutual agreement.

Reserved Right: In the event that FHSU finds the provisions of this agreement unacceptable, DCCC retains the right to pursue partnerships with other 4-year colleges and universities for the delivery of baccalaureate programming and technical training.

CITY COMMISSION WORK SESSION MINUTES

City Hall Commission Chambers

Monday, March 2, 2015

6:30 p.m.

MEETING #4997

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

WORK SESSION

1. Discussion of Relocation of Park Shop

The meeting was adjourned on a motion by Commissioner Rick Sowers, seconded by Commissioner Joyce Warshaw. The motion carried unanimously.

Mayor

ATTEST:

Nannette Pogue, City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, March 2 2015

7:00 p.m.

MEETING #4998

CALL TO ORDER

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

INVOCATION by Vernon Bogart

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

Problem Gambling Awareness Month. Debbie Snapp, Chairman of the Southwest Kansas Problem Gambling Awareness Committee spoke in support of the 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).

Vernon Bogart – spoke about gambling and the real cost of gambling.

The 2nd AAA Community Traffic Improvement Award was presented to the Dodge City Police Department represented by Deputy Chief Drew Francis and Corporal Thad Brown. The representative from AAA introduced Troy Wells from KDOT who helps identify police departments to win the award. The City of Dodge City Police Department won the award because of a variety of programs that have been put in place in the community promoting Community Traffic Improvement. The Police Department was presented the Gold Award from AAA for outstanding efforts for promoting Traffic Safety. Last year, they were presented the Silver Award.

Kent Smoll publicly thanked the Boothill Casino for being a business in Dodge City and investing in the community.

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes, February 16, 2015;
2. Approval of City Commission Meeting Minutes, February 16, 2015;
3. Appropriation Ordinance No. 4, February 16, 2015;
4. Change order for Brick Street Repair Project.

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

ORDINANCES & RESOLUTIONS

Ordinance No. 3601: An Ordinance Annexing to the City of Dodge City the Described Property (U.S. Highway 50 from the existing city limits to 130 feet east of the centerline of Avenue P), in Accordance with K.S.A. 12-520 ET.SEQ; and Providing for Zoning Thereof was approved on a motion by Commissioner Kent Smoll. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

Ordinance No. 3602: An Ordinance Authorizing and Providing for the Issuance of Sales Tax Revenue Bonds, Series 2015, of the City of Dodge City, Kansas, for the Purpose of Providing Funds to pay a Portion of the Costs of Constructing and Equipping Certain Public Facilities and Projects; Making Certain Covenants and Agreements to Provide for the Payment and Security Thereof and Authorizing Certain Other Documents and Actions in Connection Therewith was approved on a motion by Commissioner Kent Smoll. The motion was seconded by Commissioner Joyce Warshaw. The motion carried unanimously.

Resolution No. 2015-03: A Resolution Prescribing the Form and Details of and Authorizing and Directing the Sale and Delivery of Sales Tax Revenue Bonds, Series 2015, of the City of Dodge city, Kansas, previously authorized by Ordinance No. 3602 of the City; Making Certain Covenants and Agreements to Provide for the Payments and Security Thereof; and Authorizing Certain Other Documents and Actions connected Therewith was approved on a motion by Commissioner Kent Smoll. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

Resolution No. 2015-04: A Resolution Providing for Substitute Improvements to be Financed with proceeds of the City of Dodge City, Kansas General Obligation Refunding and Improvement Bonds, Series 2013-A was approved on a motion by Commissioner Joyce Warshaw. The motion was seconded by Commissioner Jan Scoggins. The motion carried unanimously.

UNFINISHED BUSINESS

New Business

1. Commissioner Jan Scoggins moved to approve the bid of \$148,515.00 from Diamond Roofing for the City Hall Roof Project. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.
2. Commissioner Jan Scoggins moved to approve the Agreement for Engineering Services with PEC, P.A. for U.S. 50 and Fairway Drive Intersection Design in the amount of \$77,500. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

OTHER BUSINESS

City Manager, Cherise Tieben:

- March 4th there will be a forum at American Legion at 7:00;
- March 5th Volunteer Reception at the Depot;
- March 9 Dodge City Night in Topeka;
- March 10 USD 443 visioning session;
- March 26, Public Official Exchange in Ford;
- Remind everyone with whom you talk to register to vote and show up to vote.

Commissioner, Kent Smoll:

- Expressed condolences to Commissioner Sowers' family for loss of Angela's grandmother.

Commissioner, Jan Scoggins:

- Congratulated the Dodge City Police force for receiving the AAA gold award for traffic safety.

Commissioner, Joyce Warshaw:

- Congratulated Police Department for the AAA award;
- School conferences will be upcoming in the next week or so;
- Recommend everyone, see to their fire alarms, etc. Had a family member die over the weekend in a fire;

Mayor, Brian Delzeit:

- Gave sales tax report, shop local and often.

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

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

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

City or County of Ford County

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 licenses premises.	

SECTION 2 - APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required):			
Name	Phone No.	Date of Birth	
<u>Nageeb ALHAJ</u>	<u>620-408-7716</u>	<u>1-1-68</u>	
Residence Street Address	City	Zip Code	
<u>3806 Gary Ave</u>	<u>Dodge City, KS</u>	<u>67801</u>	
Applicant Spousal Information			
Spouse Name	Phone No.	Date of Birth	
<u>Laura ALHAJ</u>	<u>620-408-7716</u>		
Residence Street Address	City	Zip Code	
<u>3206 Gary Ave</u>	<u>Dodge City, KS</u>	<u>67801</u>	

SECTION 3 - LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name	Name		
<u>Quick Pick, Inc</u>	<u>Quick Pick</u>		
Business Location Address	Address		
<u>2501 Central</u>	<u>2501 Central</u>		
City	City	State	Zip
<u>Dodge City</u>	<u>Dodge City</u>	<u>KS</u>	<u>67801</u>
Business Phone No.	<input type="checkbox"/> I own the proposed business or special event location. <input type="checkbox"/> I do not own the proposed business or event location.		
Business Location Owner Name(s)			
<u>Nageeb ALHAJ</u>			

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

Memorandum

To: City Commission
From: Nannette Pogue, City Clerk
Date: March 12, 2015
Subject: Subordination Agreement

Recommendation: Staff recommends adoption of the Subordination Agreement with Emprise Bank regarding Estes Enterprises revolving loan.

Background: In October, 2007, the City entered into a \$90,000 revolving loan fund agreement with Estes Enterprises for the renovation of the Long John Silver's facility here in Dodge City. At the time the City took a second mortgage on the property. The payments on the note have been paid as scheduled and the current remaining balance is approximately \$39,000. Estes Enterprises recently entered into a refinancing agreement with Emprise Bank which resulted in the payoff of the first mortgage on the property. No additional funds were advanced by Emprise on the Long John Silver's facility, however Emprise is requesting that the City subordination its mortgage in order to make the total refinancing package workable.

Justification: In light of the fact that all payments on the obligation to the City have been timely paid since 2007, and that the refinancing package will be of assistance to a local entrepreneur without jeopardizing the City's original mortgage status, staff is recommending approval of the Subordination Agreement.

Legal Consideration: The City Attorney's suggested changes to the Agreement have been accepted and made.

Attachment: Emprise Bank Subordination Agreement.



SUBORDINATION AGREEMENT

Borrower: ESTES ENTERPRISES INC
PO BOX 1027
PRATT, KS 67124-1027

Lender: Emprise Bank
Corporate Lending
257 N Broadway
Wichita, KS 67201-2970

Creditor: City of Dodge City, Kansas

Dodge City, KS _____

THIS SUBORDINATION AGREEMENT dated March __, 2015, is made and executed among ESTES ENTERPRISES INC, PO BOX 1027, PRATT, KS 67124-1027 ("Borrower"); City of Dodge City, Kansas ("Creditor"); and Emprise Bank, Corporate Lending, 257 N Broadway, Wichita, KS 67201-2970 ("Lender").

CURRENT INDEBTEDNESS OWING TO CREDITOR. As of the date of this Agreement, Borrower is indebted to Creditor in the **aggregate amount of \$90,000.00**. This amount is the total indebtedness of every kind from Borrower to Creditor.

REQUESTED FINANCIAL ACCOMMODATIONS. Creditor and Borrower each want Lender to provide financial accommodations to Borrower in the form of (A) new credit or loan advances, (B) an extension of time to pay or other compromises regarding all or part of Borrower's present indebtedness to Lender, or (C) other benefits to Borrower. Borrower and Creditor each represent and acknowledge to Lender that Creditor will benefit as a result of these financial accommodations from Lender to Borrower, and Creditor acknowledges receipt of valuable consideration for entering into this Agreement. **Based on the representations and acknowledgments contained in this Agreement, Borrower and Creditor agree with Lender as follows:**

SUBORDINATED INDEBTEDNESS. The words "Subordinated Indebtedness" as used in this Agreement mean the following specific indebtedness from **Borrower to Creditor**, including all renewals, extensions, modifications and substitutions for the indebtedness, including principal, interest, and all costs and attorneys' fees, relating to the indebtedness: **A loan evidenced by that certain promissory note in the principal amount of \$90,000.00, secured by that certain Mortgage dated October 19, 2007 and recorded November 6, 2007 at Book 366, Pages 475-477.**

SUPERIOR INDEBTEDNESS. The words "Superior Indebtedness" as used in this Agreement mean and include all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be now or hereafter owing from **Borrower to Lender**. The term "Superior Indebtedness" is used in its broadest sense and includes without limitation all principal, all interest, all costs, attorneys' fees, all sums paid for the purpose of protecting Lender's rights in security (such as paying for insurance on collateral if the owner fails to do so), all contingent obligations of Borrower (such as a guaranty), all obligations arising by reason of Borrower's accounts with Lender (such as an overdraft on a checking account), and all other obligations of Borrower to Lender, secured or unsecured, of any nature whatsoever.

SUBORDINATION. All Subordinated Indebtedness of Borrower to Creditor is and shall be subordinated in all respects to all Superior Indebtedness of Borrower to Lender. If Creditor holds one or more Security Interests, whether now existing or hereafter acquired, in any of Borrower's real property or personal property, Creditor also subordinates all Creditor's Security Interests to all Security Interests held by Lender, whether now existing or hereafter acquired.

PAYMENTS TO CREDITOR. Borrower will not make and Creditor will not accept, at any time while any Superior Indebtedness is owing to Lender, (A) any payment upon any Subordinated Indebtedness, (B) any advance, transfer, or assignment of assets to Creditor in any form whatsoever that would reduce at any time or in any way the amount of Subordinated Indebtedness, or (C) any transfer of any assets as security for the Subordinated Indebtedness, except upon Lender's prior written consent; provided, however, that until (i) there occurs an event of default under the Related Documents ("Event of Default"), (ii) Lender has provided written notice to Creditor of such Event of Default, and (iii) such Event of Default is then continuing, Creditor shall be entitled to receive regularly scheduled payments with respect to the Subordinated Indebtedness.

In the event of any distribution, division, or application, whether partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of Borrower's assets, or the proceeds of Borrower's assets, in whatever form, to creditors of Borrower or upon any indebtedness of Borrower, whether by reason of the liquidation, dissolution or other winding-up of Borrower, or by reason of any execution sale, receivership, insolvency, or bankruptcy proceeding, assignment for the benefit of creditors, proceedings for reorganization, or readjustment of Borrower or Borrower's properties, then and in such event, (A) the Superior Indebtedness shall be paid in full before any payment is made upon the Subordinated Indebtedness, and (B) all payments and distributions, of any kind or character and whether in cash, property, or securities, which shall be payable or deliverable upon or in respect of the Subordinated Indebtedness shall be paid or delivered directly to Lender for application in payment of the amounts then due on the Superior Indebtedness until the Superior Indebtedness shall have been paid in full.

Should any payment, distribution, security, or proceeds thereof, other than regularly scheduled payments, be received by Creditor at any time on the Subordinated Indebtedness contrary to the terms of this Agreement, Creditor immediately will deliver the same to Lender in precisely the form received (except for the endorsement or assignment of Creditor if necessary), for application on or to secure the Superior Indebtedness, whether it is due or not due, and until so delivered the same shall be held in trust by Creditor as property of Lender. In the event Creditor fails to make any such endorsement or assignment, Lender, or any of its officers on behalf of Lender, is hereby irrevocably authorized by Creditor to make the same.

SUBORDINATION AGREEMENT

In addition, Creditor agrees to subordinate all of its right, title, interest or claim, if any, in and to: (i) all proceeds of all policies of insurance covering any collateral or insuring the Borrower; and (ii) all awards or other compensation made for any taking of all or any part of any collateral, to the rights of Lender in and to such insurance proceeds and condemnation awards until the Superior Indebtedness is fully paid.

So long as any indebtedness remains outstanding under the Related Documents, Lender shall be exclusively entitled to receive any and all insurance or condemnation awards or proceeds for repair, reconstruction, or renewal of any collateral as Lender shall direct in its sole discretion. If, Lender determines, in its sole discretion, to apply such proceeds to the Superior Indebtedness, the proceeds shall be applied first to the Superior Indebtedness, then such excess, if any up to the total amount owing to Creditor, shall be made payable to Creditor, or if Creditor's rights to receive such proceeds are disputed by the Borrower or other parties, then Lender may either make such excess payable to the joint order of Borrower and Creditor as its interests may appear under the Subordinated Indebtedness, or Lender may interplead such excess into court for further disposition.

Creditor agrees at any time and from time to time to execute such documents as Lender or the insurer may reasonably require to confirm that any rights that Creditor may have as loss payee or additional insured are expressly subject and subordinate to the rights of Lender as an additional insured or loss payee pursuant to the terms of this Agreement. If any insurance or condemnation awards or proceeds are tendered or paid to Creditor in violation of this Section, Creditor shall immediately transfer such awards or proceeds to Lender.

CREDITOR'S NOTES. Creditor agrees to deliver to Lender, at Lender's request, all notes of Borrower to Creditor, or other evidence of the Subordinated Indebtedness, now held or hereafter acquired by Creditor, while this Agreement remains in effect. At Lender's request, Borrower also will execute and deliver to Creditor a promissory note evidencing any book account or claim now or hereafter owed by Borrower to Creditor, which note also shall be delivered by Creditor to Lender. Creditor agrees not to sell, assign, pledge or otherwise transfer any of such notes except subject to all the terms and conditions of this Agreement.

CREDITOR'S REPRESENTATIONS AND WARRANTIES. Creditor represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Creditor which would limit or qualify in any way the terms of this Agreement; (B) this Agreement is executed at Borrower's request and not at the request of Lender; (C) Lender has made no representation to Creditor as to the creditworthiness of Borrower; and (D) Creditor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Creditor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Creditor's risks under this Agreement, and Creditor further agrees that Lender shall have no obligation to disclose to Creditor information or material acquired by Lender in the course of its relationship with Borrower.

CREDITOR'S WAIVERS. Creditor waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Superior Indebtedness or of any nonpayment related to any Security Interests, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional Superior Indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Borrower; (D) to proceed directly against or exhaust any Security Interests held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever. Nothing contained herein shall prohibit the Creditor from pursuing any legal rights against Borrower in the event of a default by Borrower in payment of the Subordinated Indebtedness.

LENDER'S RIGHTS. Lender may take or omit any and all actions with respect to the Superior Indebtedness or any Security Interests for the Superior Indebtedness without affecting whatsoever any of Lender's rights under this Agreement. In particular, without limitation, Lender may, without notice of any kind to Creditor, (A) make one or more additional secured or unsecured loans to Borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part thereof, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold Security Interests for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such Security Interests, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale thereof, as Lender in its discretion may determine; and (G) assign this Agreement in whole or in part.

DEFAULT BY BORROWER. If Borrower becomes insolvent or bankrupt, this Agreement shall remain in full force and effect. In the event of a corporate reorganization or corporate arrangement of Borrower under the provisions of the Bankruptcy Code, as amended, this Agreement shall remain in full force and effect and the court having jurisdiction over the reorganization or arrangement is hereby authorized to preserve such priority and subordination provided under this Agreement in approving any such plan of reorganization or arrangement. Any default by Borrower under the terms of the Subordinated Indebtedness also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

DURATION AND TERMINATION. This Agreement will take effect when received by Lender, without the necessity of any acceptance by Lender, in writing or otherwise, and will remain in full force and effect until Creditor shall notify Lender in writing at the address shown above to the contrary. Any such notice shall not affect the Superior Indebtedness owed Lender by Borrower at the time of such notice, nor shall such notice affect Superior Indebtedness thereafter granted in compliance with a commitment made by Lender to Borrower prior to receipt of such notice, nor shall such notice affect any renewals or substitutions for any of the foregoing. Such notice shall affect only indebtedness of Borrower to Lender arising after receipt of such notice and not arising from financial assistance granted by Lender to Borrower in compliance with Lender's obligations under a commitment. Any notes lodged with Lender pursuant to the section titled "Creditor's Notes" above need not be returned until this Agreement has no further force or effect.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

SUBORDINATION AGREEMENT

Attorneys' Fees; Expenses. In the event any dispute between the Lender and Creditor should result in litigation and Lender employs an attorney to enforce this Agreement against Creditor or define Lender's rights as opposed to Creditor's rights under this Agreement, Lender shall be entitled to recover its reasonable attorneys' fees and costs of suit from Creditor if Lender prevails in the litigation.

Authority. The person who signs this Agreement as or on behalf of Creditor represents and warrants that he or she has authority to execute this Agreement and to subordinate the Subordinated Indebtedness and the Creditor's security interests in Creditor's property, if any.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Kansas without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Kansas.

Choice of Venue. If there is a lawsuit, Creditor agrees upon Lender's request to submit to the jurisdiction of the courts of Sedgwick County, State of Kansas.

Interpretation. In all cases where there is more than one Creditor, then all words used in this Agreement in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Creditor named in this Agreement or when this Agreement is executed by more than one, the words "Creditor" shall mean all and any one or more of them. Reference to the phrase "Creditor" includes the heirs, successors, assigns, and transferees of each of them.

Successors and Assigns. This Agreement shall be understood to be for the benefit of Lender and for such other person or persons as may from time to time become or be the holder or owner of any of the Superior Indebtedness or any interest therein, and this Agreement shall be transferable to the same extent and with the same force and effect as any such Superior Indebtedness may be transferable.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Creditor, shall constitute a waiver of any of Lender's rights or of any of Creditor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Legend. Creditor agrees to cause all promissory notes, mortgages, security agreements or other instruments evidencing or securing the Subordinated Indebtedness or any part thereof to contain the following legend:

Pursuant to, and to the extent provided in, a Subordination Agreement dated March __, 2015, the terms and provisions of which are incorporated herein by this reference, the rights, title and interest of any holder of this document or instrument of indebtedness evidenced or secured hereby are subordinate to the rights, title and interests of Emprise Bank to the extent provided in such Subordination Agreement.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Subordination Agreement, as this Subordination Agreement may be amended or modified only by written agreement of the parties hereto from time to time, together with all exhibits and schedules attached to this Subordination Agreement from time to time.

Borrower. The word "Borrower" means ESTES ENTERPRISES INC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Creditor. The word "Creditor" means City of Dodge City, Kansas.

Lender. The word "Lender" means Emprise Bank, its successors and assigns.

Note. The word "Note" means and includes without limitation all of Borrower's Promissory Notes and/or Credit Agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for Promissory Notes or Credit Agreements.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Superior Indebtedness.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel

SUBORDINATION AGREEMENT

mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

Subordinated Indebtedness. The words "Subordinated Indebtedness" mean the indebtedness described in the section of this Agreement titled "Subordinated Indebtedness".

Superior Indebtedness. The words "Superior Indebtedness" mean the indebtedness described in the section of this Agreement titled "Superior Indebtedness".

BORROWER AND CREDITOR EACH ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION AGREEMENT, AND BORROWER AND CREDITOR EACH AGREE TO ITS TERMS. THIS AGREEMENT IS DATED March __, 2015.

BORROWER:

ESTES ENTERPRISES INC

By: _____

**ERIC N ESTES, President of ESTES ENTERPRISES
INC**

CREDITOR:

CITY OF DODGE CITY, KANSAS

By: _____

_____, Mayor

[SEAL]

ATTEST:

CITY OF DODGE CITY, KANSAS

By: _____

_____, Clerk

Memorandum

To: City Commission
*From: Ernestor De La Rosa, Asst. to
the City Manager*
Date: March 16, 2015
Subject: Public Art
Agenda Item: Ordinances and Resolutions

Recommendation: Staff recommends approval of Ordinance No. 3603, which establishes a Public Art Program in Dodge City, Kansas.

Background: City staff has had a couple of work sessions with the City Commission to receive input and to hear comments and questions regarding the program's funding mechanism and program overall. In addition to the City Commissioners' input, feedback was also received from the City Manager and City Attorney. Ordinance No. 3603 establishes an Arts in Public Places Committee to provide procedures for funding, governing, appropriations and expenditures for a Public Art Program in Dodge City.

Justification: The goal of Dodge City's Art in Public Places Program is to provide original artworks that are easily accessible to the general public throughout the City. The program is being designed to offer a wide range of artistic styles, themes, and media, all of outstanding quality. The promotion of art in public places adds to Dodge City's quality of life and aesthetic appreciation for the arts which can be used as a strong economic development tool.

Financial Considerations: Under the proposed ordinance, the City Commission may annually commit to the Public Arts Fund, an amount equal to the following percentage formula:

- 1 percent for projects under 1 million
- 1/2 of one percent for projects between 1-3 million
- 1/3 of one percent for projects over 3 million

from any capital improvement project of which require City bonds to be issued for such projects and are included in the Capital Improvement Plan.

Purpose/Mission: The proposed program is consistent with the City's Core Purpose of "Together We Serve to Make Dodge City the Best Place to be."

Legal Considerations: The ordinance has been reviewed and revised by the City Attorney.

Attachments: Public Art Ordinance No. 3603.

Ordinance No. 3603

AN ORDINANCE ESTABLISHING AN ARTS IN PUBLIC PLACES ADVISORY COMMITTEE AND PROVIDING PROCEDURES FOR FUNDING, GOVERNING, APPROPRIATIONS AND EXPENDITURES FOR A PUBLIC ART PROGRAM FOR DODGE CITY, KANSAS.

WHEREAS, research indicates that state and local funding for the arts has a measurable positive financial impact on a state's or local area's economic vitality; and

WHEREAS, the promotion of art in public places adds to a community's quality of life and aesthetic appreciation for the arts which can be used as a strong economic development tool; and

WHEREAS, a public art program can create aesthetically pleasing environments within Dodge City buildings, parks, and other public places; and

WHEREAS, the Dodge City Commission hereby endorses establishment of the art in public places program:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DODGE CITY, KANSAS:

SECTION I. ESTABLISHMENT OF ARTS IN PUBLIC PLACES ADVISORY COMMITTEE:

- A. There is hereby established an Art in Public Places Advisory Committee for the City of Dodge City (the "Public Arts Committee"). The Public Arts Committee shall consist of 5 members including 3 residents of Dodge City and 2 City staff appointed by the City Commission for a term of 3 years.
- B. The purpose of the Public Arts Committee shall be to:
 - a) Provide advice and counsel to the City Commission regarding the selection and placement of Public Artwork throughout the City;

- b) Develop and recommend for City Commission approval, policies and procedures for the operation of the Public Arts Committee regarding the selection and acquisition of Public Artwork and the placement of the same throughout the City;
- c) Develop and recommend for City Commission approval, policies for the determination of eligibility of Public Artwork for funding from the Public Art's Fund and for fiscal management of such fund;
- d) Actively solicit grants and other or other forms of financial assistance for the funding of Public Art work. Develop a long range plan for placement of Public Artwork and recommend priorities for development.
- e) All recommendations of the Public Arts Committee shall be subject to the final approval by the City Commission

SECTION II. ESTABLISHMENT OF PUBLIC ARTS FUND:

- A. There is hereby established a fund entitled the "Public Arts Fund", which fund shall be reserved for the financing and funding of the design, selection, acquisition, creation, installation and placement of Public Artwork within the City of Dodge City.
- B. All monies resulting from compliance with Section III of this ordinance, and any other grants, awards or funds contributed or obtained for the purpose of the support of Public Art shall be deposited in the Public Arts Fund, which fund shall be maintained and managed by the City Clerk. Any and all interest earned on investment of said funds shall be deposited in, and become a part of, the Public Arts Fund.

SECTION III. FUNDING FOR PUBLIC ART:

A. From and after the effective date of this ordinance, the City Commission may annually commit to the Public Arts Fund, as provided for herein, an amount equal to the following percentage formula:

- 1 percent for projects under 1 million
- 1/2 of one percent for projects between 1-3 million
- 1/3 of one percent for projects over 3 million

Based on the total amount of bonds issued for City capital improvement projects, which funds shall be used for the purpose of acquisition, purchase, and installation of Public Artwork in public places within the City of Dodge City.

SECTION IV. DEFINITIONS: For purposes of this Policy the following terms shall have the following meanings:

- A. City Capital Improvements: Means the construction of any new, or renovation of any existing, City buildings, facilities, utilities, parking facilities (including parking lots), street improvements, streetscape improvement projects, bridges, park land, and recreational facilities, any of which require city bonds to be issued for such projects and which are included in the annual Capital Improvement Plan.
- B. Public Artwork: Pieces of visual art placed on public or private property selected and approved in accordance with procedures of the Public Arts Committee and approved by the Dodge City Commission.

SECTION V. DEVELOPMENT OF PROCEDURES FOR PUBLIC ARTWORK:

- A. The process for selection and placement for Public Artwork will be the responsibility of the Public Arts Committee subject to final approval by the Dodge City Commission.

- B. To facilitate the placement of art in public places, the Public Arts Committee shall develop policies and procedures for the creation, selection, eligibility, acquisition and placement of Public Artwork, a draft of which policies and procedures shall be submitted to the City Commission within 3 months of the date of enactment of this ordinance for review and adoption by the Dodge City Commission.
- C. The City Manager's Office will provide staff assistance in the preparation of such policies and procedures and the implementation of the Public Arts Committee's activities regarding projects eligible for funding.
- D. In the development of said policies and procedures the Public Arts Committee shall consider the following:
 - 1. Efforts will be made to obtain a majority of the art work from local and regional sources;
 - 2. Art pieces will be selected by open competition, limited competition, and direct selection;
 - 3. Regional and national artists, as well as local artists, will be seriously considered;
 - 4. Projects conceived and executed by a design team (artist and architect working together) shall be considered.
- E. The Public Arts Committee will develop programs to educate the community before and after the installation of the art work.
- F. The Public Arts Committee is encouraged to work with owners and developers for the inclusion of works of art as part of any building construction or development.

SECTION VI. EFFECTIVE DATE:

This ordinance shall be effective upon one publication in the Dodge City Daily Globe.

ADOPTED this ____ day of March, 2015.

City of Dodge City, Kansas

By _____
Brian Delzeit, Mayor

Attest: _____
Nannette Pogue, City Clerk

Memorandum

To: City Commission
*From: Ernestor De La Rosa, Asst. to
the City Manager*
Date: March 16, 2015
Subject: Committee Appointments
Agenda Item: New Business

Recommendation: Staff recommends the City Commission to appoint the following City Staff and Community Members to serve in the Public Arts Committee:

- Darleen Clifton-Smith
- Jim Johnson
- Patty McGee
- Melissa McCoy, Project Development Coordinator
- Ernestor De La Rosa, Assistant to the City Manager

Background: City staff has met with the Community members mentioned above and provided them with an overview of the Public Art Program and information about the purpose of the Public Arts Committee. Community members are well vested in the Arts Community in Dodge City, Kansas and are very interested in serving in the Public Arts Committee as established by Ordinance No. 3603.

Justification: As provided by Ordinance No. 3603, two City Staff and three Community Members are to be appointed to serve in the Public Arts Committee for a term of 3 years.

Financial Considerations: None

Purpose/Mission: These appointments are consistent with the City's Core Purpose of "Together We Serve to Make Dodge City the Best Place to be."

Legal Considerations: None

Attachments: None

Memorandum

To: City Commission
From: Cherise Tieben, City Manager
Date: March 12, 2015
Subject: Heritage STAR bond Project Plan

Recommendation: Staff recommends adoption of the attached Resolution which establishes the date for a public hearing to consider the Commission's adoption of the Heritage STAR bond project plan.

Background: As you are well aware, over the past year and a half, staff has been working on the Heritage STAR bond project plan. The Plan, which will bring significant improvements to the downtown area, includes the construction of a new 90 room Holiday Inn Express adjacent to the "Why Not Dodge?" aquatics facility in Wright Park, along with the renovation of the Guymon/Petro building into a themed dining facility. A new RV campground will become a reality along the west edge of Wright Park. New parking areas and landscaping will improve the aesthetic appeal of the entire area. In addition, the long awaited renovation and expansion of the Boot Hill Museum complex will begin to move forward.

Justification: Adoption of this Resolution is the first statutory step that needs to be taken in making the Heritage STAR bond project plan a reality. By statute the Commission is to conduct a public hearing before adopting the STAR bond project plan. Following adoption of this Resolution, notice of the April 20 public hearing date will be provided to the Community, including all land owners and occupants within the Heritage Area. The notice will also be published in the Daily Globe.

Financial Considerations: None at this time other than publication and postage expenses.

Legal Considerations: All documents were prepared by City bond council.

Attachments: Resolution Establishing Public Hearing.

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF DODGE CITY, KANSAS
HELD ON MARCH 16, 2015**

The governing body of the City of Dodge City, Kansas met in regular session at the usual meeting place in the City at 7:00 p.m., the following members of the City Commission were present:

Mayor _____, Commissioners

Absent: .

The Mayor declared that a quorum was present and called the meeting to order.

(Other Proceedings)

Among other business there was presented to the City Commission a Resolution entitled:

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING FOR CONSIDERATION OF ADOPTION OF A STAR BOND PROJECT PLAN WITHIN A STAR BOND DISTRICT PREVIOUSLY CREATED WITHIN THE CITY PURSUANT TO K.S.A. 12-17,160 ET SEQ., AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH PUBLIC HEARING (HERITAGE AREA).

The Resolution was considered and discussed; and thereupon on motion of Commissioner _____, seconded by Commissioner _____, the Resolution was adopted by the following roll call vote:

Aye:

Nay:

Thereupon, the Resolution having been adopted by majority vote of the members of the City Commission it was given No. 2015-_____, and was directed to be signed by the Mayor and attested by the City Clerk.

(Other Proceedings)

CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Dodge City, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

City Clerk

(Published in *The Dodge City Daily Globe* on _____, 2015)

RESOLUTION NO. 2015-_____

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING FOR CONSIDERATION OF ADOPTION OF A STAR BOND PROJECT PLAN WITHIN A STAR BOND DISTRICT PREVIOUSLY CREATED WITHIN THE CITY PURSUANT TO K.S.A. 12-17,160 ET SEQ., AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH PUBLIC HEARING (HERITAGE AREA).

WHEREAS, the City of Dodge City, Kansas (the “City”) desires to promote, stimulate and develop the general and economic welfare of the City and the state of Kansas (the “State”) and to assist in the development and redevelopment of eligible areas within the City, thereby promoting the general welfare of the citizens of the State and the City, by authorizing cities and counties to acquire certain property and to issue sales tax and revenue (STAR) bonds for the financing of STAR bond projects pursuant to the provisions of K.S.A. 12-17,160 *et seq.*, as amended (the “Act”); and

WHEREAS, pursuant to the Act the City is authorized to establish STAR bond project districts within eligible areas of the City, as said terms are defined in the Act, to approve STAR bond project district plans for the completion of STAR bond projects within such STAR bond project district, and to finance all or a portion of STAR bond project costs from state and local sales revenues derived from the STAR bond project district, other revenues described in the Act, or a combination thereof or from the proceeds of special obligation tax increment bonds of the City payable from such described revenues; and

WHEREAS, upon the creation of a STAR bond project district pursuant to the Act, the City may propose to undertake one or more STAR bond projects and shall prepare a STAR bond project plan, which may be implemented in separate development stages, in consultation with the City's planning commission; and

WHEREAS, after a public hearing after notice in accordance with the Act, the City Commission on March 19, 2012, adopted Ordinance No. 3527 creating a STAR Bond Project District; and

WHEREAS, after a public hearing after notice in accordance with the Act, the City Commission on October 23, 2014, adopted Ordinance No. 3594 expanding STAR Bond Project District to include the Heritage Area; and

WHEREAS, the City Commission is considering the adoption of the STAR Bond Project Plan for the Heritage Area dated March 10, 2015 which has been prepared by the City in consultation with the City's Planning Commission (the “STAR Bond Project Plan”) pursuant to the Act for the STAR Bond District, which STAR Bond Project Plan provides for the redevelopment of the STAR Bond District; and

WHEREAS, on March 10, 2015 the Planning Commission of the City made a finding that the STAR Bond Project Plan is consistent with the intent of the City's comprehensive plan for the development of the City; and

WHEREAS, the governing body of the City shall provide notice of such public hearing in accordance with the Act; and

WHEREAS, at the public hearing a representative of the City shall present the proposed STAR Bond Project Plan and all interested persons shall be given an opportunity to be heard; and

WHEREAS, following the conclusion of such public hearing, the governing body may adopt the STAR Bond Project Plan by ordinance passed upon a 2/3 vote; and

WHEREAS, the City Commission desires to establish April 20, 2015 as the date for the public hearing.

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

Section 1. Public Hearing. Notice is hereby given that a public hearing will be held by the City Commission to consider the approval of the STAR Bond Project Plan on April 20, 2015, at the Commission Chambers located at City Hall, 806 North Second Avenue, Dodge City, Kansas, 67801, the public hearing to commence at 7:00 p.m. or as soon thereafter as the City Commission can hear the matter. At the public hearing a representative of the City shall present the STAR Bond Project Plan, the City Commission will receive public comment on such STAR Bond Project Plan, and may, after the conclusion of such public hearing, the City Commission may approve the STAR Bond Project Plan by Ordinance passed upon a 2/3rds vote of the City Commission in accordance with the provisions of the Act.

Section 2. Notice of Public Hearing. The City Clerk is hereby authorized and directed to provide for notice of the public hearing by taking the following actions:

(a) A copy of this resolution shall be mailed by United States certified mail, return receipt requested, within 10 days of this date to:

- (i) the Board of County Commissioners of Ford County, Kansas;
- (ii) the Board of Education of U.S.D. No. 443;
- (iii) each owner and occupant of land within the proposed STAR Bond Project District.

(b) This resolution, specifically including *Exhibits A* and *B* attached hereto, shall be published once in the official newspaper of the City not less than one week nor more than two weeks preceding the date of the public hearing.

Section 3. STAR Bond Project District and Heritage Area. The STAR Bond Project District consists of two STAR bond project areas, which are depicted on the maps on *Exhibit A* attached hereto. The Heritage Area within the STAR Bond Project District is depicted on *Exhibit A* and legally described on *Exhibit B* attached hereto.

Section 4. Public Records. Copies of the STAR Bond Project Plan, including a summary of the feasibility study, relocation assistance plan and any financial guarantees of the proposed developer and a description and map of the STAR Bond District are public records and are available for public inspection during regular office hours in the office of the City Clerk, City Hall, 806 North Second Avenue, Dodge City, Kansas, 67801.

Section 5. Further Action. The Mayor, City Manager, City Clerk and other officials and employees of the City, including Gilmore & Bell, P.C., Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this resolution.

Section 6. Reimbursement. The City expects to make capital expenditures after the date of this Resolution in connection with acquisition of property and costs related to the STAR Bond Project Plan and the City intends to reimburse itself for such expenditures with the proceeds of bonds, notes or a lease purchase agreement in the maximum principal amount of \$4,105,000.

Section 7. Effective Date. This resolution shall be effective upon its adoption by the City Commission of the City of Dodge City, Kansas.

ADOPTED by the City Commission of the City of Dodge City, Kansas on March 16, 2015.

[SEAL]

Mayor

Attest:

City Clerk

Approved As To Form Only:

City Attorney

EXHIBIT A

**MAP OF STAR BOND PROJECT DISTRICT
AND
PROJECT AREAS**

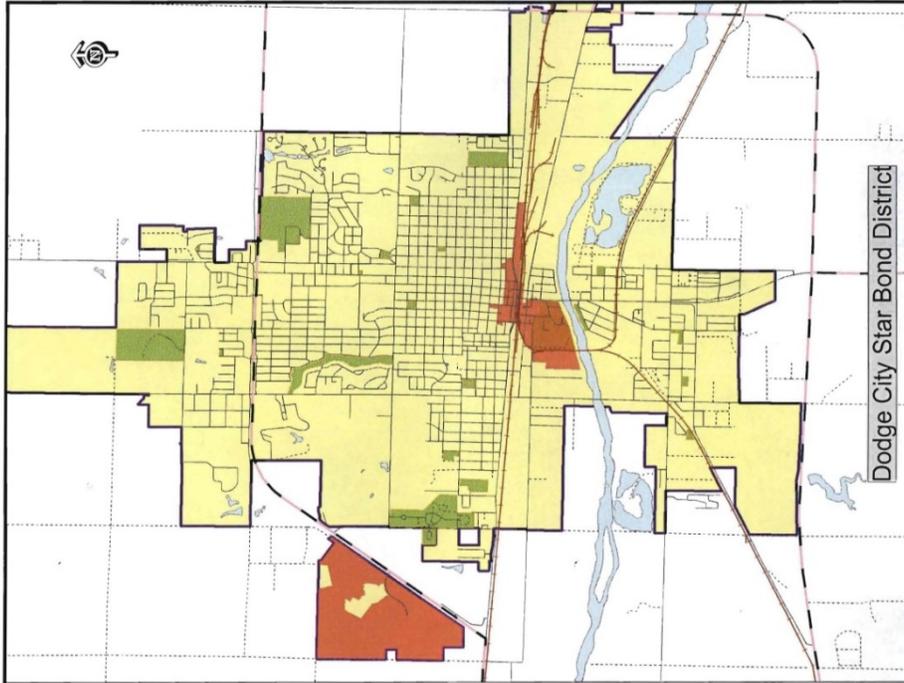


EXHIBIT B

LEGAL DESCRIPTION OF HERITAGE PROJECT AREA

Beginning at the intersection of the east r/w line of Fifth Ave. and the south r/w line of Wyatt Earp Blvd. as the point of beginning; thence north along the east r/w line of Fifth Ave. to the extended south line of the north 60 feet of Lots 41,42,43 and 44 of Walnut Street, Original Town; thence west along the said extended line to the west line of Lot 44, Walnut Street, Original Town; thence north along the west line of said Lot 44 to the south line of the platted alley; thence east along the south line of said alley to a point that is 82 feet west of the west r/w line of Fifth Ave.; thence north and parallel with a line that is 82 feet west of the west r/w line of Fifth Ave. to the south r/w line of West Spruce Street; thence east along the south r/w line of said West Spruce Street to the extended east line of the n-s alley in Block 20, Original Town; thence north along the said n-s alley to the south r/w line of West Vine Street; thence east along the south r/w line of said West Vine Street to the west r/w line of Third Ave.; thence south along the west r/w line of said Third Ave. to the extended south line of the e-w alley along Lots 17 thru 24, Gunsmoke Street, Original Town; thence east along the south line of said alley and continuing east extending thru the vacated alley along Lots 9 thru 16, Gunsmoke Street, Original Town; thence continuing along the south line of the e-w alley along Lots 1 thru 8, Gunsmoke Street, Original Town to the west r/w line of Central Ave.; thence south along the west r/w line of said Central Ave. to the projected south r/w line of Military Ave.; thence east along the projected south r/w line of said Military Ave. to the west line of Lot 12, Block 2, F.W. Boyd's Addition; thence south along the west line of said Lot 12 for a distance of 160 feet to the north line of an e-w alley; thence east along the north line of said e-w alley to the projected west line of Lot 1, Block 9, Centennial Addition; thence south along the projected west line of said Lot 1 to a point that intersects the south r/w line of Wyatt Earp Blvd.; thence east for a distance of 387.07 feet; thence south for a distance of 187.9 feet to the north r/w line of the B.N.&S.F. Railroad; thence west along the north r/w line of said B.N.&S.F. Railroad to the extended east r/w line of Central Ave.; thence south along the extended east r/w line of said Central Ave. to the north r/w line of the BN&SF Railroad; thence west along the north r/w of said BN&SF Railroad which is also the south r/w line of Wyatt Earp Blvd. to extended west line of Lot 49, West Trail Street, Original Town; thence south along the extended west line of said Lot 49 to the north r/w line of West Trail Street; thence east along the north r/w line of said West Trail Street to the west r/w line of South Second Ave.; thence south along the west r/w line of said South Second Ave. to the north line of the Arkansas River; thence in a southwesterly direction along the north line of said Arkansas River to the east line of Young's Place; thence north along the east line of said Young's Place to a point that is 528 feet south of the south r/w line of Park Street; thence east for a distance of 245 feet; thence north for a distance of 528 feet to the south line of Park Street; thence east along the south r/w line of said Park Street to the west/north line of the Burlington Northern/Cimarron Valley Railroad; thence northeasterly along the north line of said Burlington Northern/Cimarron Valley Railroad and extending to the point of beginning.

AND

A tract of land beginning at a point along the south r/w line of Military Ave. and the west line of Lot 12, Block 2, F.W. Boyd's Addition; thence south along the west line of said Lot 12 for a distance of 160 feet to the north line of an e-w alley; thence east along the north line of said e-w alley to the projected west line of lot 1, Block 9, Centennial Addition; thence south along the projected west line of said Lot 1 to a point that intersects the south r/w line of Wyatt Earp Blvd.; thence east for a distance of 387.07 feet; thence south for a distance of 187.9 feet to the north r/w line of the B.N. & S.F. Railroad; thence east along the said north r/w line of the B.N. & S.F. Railroad to the southeast corner of Western Beverage; thence northeasterly to the southwest corner of Lot 1, Santa Fe Plaza; thence easterly along the south line of Santa Fe Plaza to the southeast corner of Lot 5, Santa Fe Plaza; thence north along the east line of said

Lot 5 to the south r/w line of Wyatt Earp; thence west along the south r/w line of Avenue B; thence north along the extended west r/w line of said Avenue B to the northeast corner of Lot 7, Block 9, Centennial Addition; thence west along the south r/w line of military Ave. to the extended east line of Lot 29, Block 2, Original town; thence north along the extend east line of said Lot 29, Block 2, Original Town to the south r/w of Spruce Street; thence west along the south r/w of said spruce street to the northwest corner of Lot 21, Block 2, Original Town, said corner being on the east r/w line of Avenue A; thence south along the east r/w line of said Avenue A extending to the south r/w line of military Ave.; thence west along the south r/w line of Military Ave. to the point of beginning.

AND

A track of land beginning at a point along the south r/w line of Wyatt Earp Blvd. And the west r/w Line of Second Ave.; thence south along the west line of Second Ave. to the south r/w line of South Front Street as platted in Original Town; thence east along the south r/w line of South Front Street to a point that is 250 feet east of the east r/w line of Second Ave.; thence north to the north r/w line of the B.N. & S.F. Railroad; thence west along the north r/w line of said B.N. & S.F. Railroad, said line also being the extended south r/w line of Wyatt Earp Blvd. to the point of beginning.

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Nannette Pogue

Date: March 11, 2015

Subject: Utility Service Rates

*Agenda Item:
Ordinances and Resolutions*

Recommendation: I recommend the approval of: Resolution No. 2015-06, setting fees for the water utility; Resolution No. 2015-07, setting fees for the sanitary sewer service, Resolution No. 2015-08, setting fees for solid waste collection; and Resolution No. 2015-09, setting fees for the storm water utility service for the City of Dodge City.

Background: In March of 1992 the City Commission adopted Ordinance No. 2997 that sets forth an annual review of utility rates. Rates for utility service are set by the City Commission through adoption of the appropriate ordinance. City Code requires the commission to review rates annually to ensure adequate income is received to cover operational maintenance, capital and debt requirements. At a minimum, the rates for each utility shall be adjusted by the amount of increase in the Consumer Price Increase, (CPI), for the Midwestern part of the U.S. The CPI is tabulated by the Bureau of Labor Statistics in Kansas City, KS. Information received from the Bureau in December, 2014, indicates that the Dodge City area had an annual increase of 1.4% in 2014. From this figure, the City of Dodge City will base their increase for water, wastewater, solid waste services and drainage for 2015. The increase in the water rate is 1.4% and the base fee will increase 1.4%. The sewer rate will increase by 1.4% and the sewer monthly service charge will increase by 1.4%. Both the sanitary sewer and drainage fees have a proposed increase of 1.4%. Both the Resolution establishing rates for water and the Resolution establishing rates for sanitary sewer include a section that allows the City to charge one and one half the rate for service outside the city limits. To date, the City has not charged the one and one half rate for services outside the city limits.

Justification: The fee increases are part of an annual review of the fees to ensure adequate income is received to cover the costs of operation, capital and debt.

Additional Information: All fees including Industrial fees have been increased for the sanitary sewer fund. This will include the negotiated rates charged to National Beef and Mid-America Washout.

Financial Considerations: As the operational costs increase, the fees will keep pace to cover the costs of operations, debt payments and capital costs. Other steps will need to be taken to insure the wastewater revenues are adequate to cover future bond payments.

Purpose/Mission: On-going improvement of the City's utility systems

Legal Considerations: None

Attachments: 1. Resolutions; 2. Spreadsheet that illustrates current rates vs. proposed rates; 3. a list of rates from other similar size cities in Kansas.

2014 Utility Rates versus 2015 Utility Rates

	<u>2014</u>	<u>2015</u>
Water:		
Base Fee	7.93	8.05
Per 1000 gallon charge	\$2.13	\$2.16
Sewer:		
Base Fee	15.96	16.19
Per 1000 gallon charge	\$2.16	\$2.19
National Beef		
Volume charge regardless of flow per month per million gallons	\$1,203.01	\$1,219.85
BOD5 > 2,889,866 lbs per month - per pound above parameter	0.031	0.0314
TSS > 2,281,046 lbs per month - per pound above parameter	0.031	0.0314
TDS > 1,521,238 lbs per month - per pound above parameter	0.031	0.0314
O&G > 1,155,946 lbs. per month - per pound above parameter	0.031	0.0314
Mid-America Washout		
Volume charge if flow <= 1.5 mil gallons per month - per mil gal.	\$1,565.50	\$1,587.42
Volume charge if flow > 1.5 mil gallons per month - per mil gal.	\$2,348.25	\$2,381.13
BOD > 25,202 lbs. per month - per pound above parameter	\$0.0555	\$0.0563
TSS > 20,016 lbs. per month - per pound above parameter	\$0.0555	\$0.0563
TDS > 13,448 lbs. per month - per pound above parameter	\$0.0555	\$0.0563
Solid Waste:		
Refuse Pickup	\$16.52	\$16.76
Recycling Fee	\$1.28	\$1.30
Additional Unit	\$11.14	\$11.30
Grass Cart	\$2.64	\$2.68
Drainage		
Per Unit Fee	\$1.18	\$1.20

All other fees Remain the same

		NEW SERVICE FEE	RECONNECT	SHUT OFF FOR REPAIR	Amount of Water	Rates	Base Rate Water	Sewer Rates	Base Rate Sewer	Trash Rates	Yard Waste	RETURN CHECK FEE
Garden City	Residential	\$25.00 deposit, get back after 1yr without being late \$15.00 service fee after hours \$75.00 + \$25.00 deposit+\$15.00 service fee	\$15.32 ELECTRIC IN TWO WEEK THEY SHUT OFF WATER THEN HAS TO PAY ANOTHER DEPOSIT OF \$25.00	n/c n/c after hrs	0-15,000 15,001-30,000 30,001-60,000 60,001 and over	ICL \$1.80 OCL \$3.32 ICL \$2.05 OCL \$4.00 ICL \$2.45 OCL \$4.50 ICL \$3.00 OCL \$6.00	ICL \$11.15 OCL \$12.00 3/4" mtr ICL \$12.65 OCL \$15.00 1" mtr ICL \$15.15 OCL \$20.00 1 1/2" mtr ICL \$23.90 OCL \$37.50 2" mtr ICL \$42.65 OCL \$75.00 3" mtr ICL \$61.15 OCL \$112.00 4" mtr ICL \$80.15 OCL \$150.00 6" mtr ICL \$130.15 OCL \$250.00 8" mtr	\$2.00 per 1000 gal new occupant/multi users \$32.00	\$7.00 base fee	19.25 per month \$9.60 per additional Multiple family units \$16.00 per month	no yard waste goes with trash	\$25.00
	Commercial	\$35.00 deposit, get back after 1yr without being late \$15.00 service fee after hours \$75.00 + \$25.00 deposit+\$15.00 service fee		\$15.00 n/c n/c after hrs	no tier	Inside city limits \$1.86 Outside city limits \$3.72		\$2.00 per 1000 gal OCL - ALL RATES DOUBLED	\$12.00 base fee			
Liberal	Residential & Commercial after hours	\$20.00	no after hrs reconnect	\$30.00	\$20.00 first 3,000 gal \$30.00 additional 1,000 gal	\$6.70 \$2.60		\$5.45 first 3,000 gal \$2.00 each additional 1,000 gal \$16.65 for first year		\$12.80 per month	50 bags \$9.00	\$30.00
Hays	Residential & Commercial after hrs	\$100.00 deposit refund after two years have elapsed good credit after hrs \$30.00	\$20.00	\$30.00	100 cubic feet	ICL \$1.85 OSL \$3.15 100 cubic feet ICL \$3.71 OSL \$6.30 100 cubic feet Conservation tier ICL \$7.42 OSL \$12.61 100 cubic feet Conservation tier 2 Residential only ICL \$10.30 OSL \$17.51 100 cubic feet Conservation tier 2 Warning of water emergency (Residential only)	ICL \$8.18 OCL \$15.60 5/8" mtr ICL \$16.65 OCL \$28.35 3/4" mtr ICL \$24.14 OCL \$41.03 1" mtr ICL \$39.10 OCL \$66.47 2" mtr ICL \$76.50 OCL \$130.65 2" mtr ICL \$113.90 OCL \$193.63 3" mtr ICL \$168.70 OCL \$278.79 4" mtr ICL \$375.70 OCL \$638.69 6" mtr	ICL \$2.03 OSL \$3.45 100 cubic feet	ICL \$5.08 OCL \$5.52 5/8" mtr ICL \$9.11 OCL \$15.47 3/4" mtr ICL \$13.18 OCL \$22.41 1" mtr ICL \$21.36 OCL \$36.32 1 1/2" mtr ICL \$41.80 OCL \$71.05 2" mtr ICL \$62.23 OCL \$105.78 3" mtr ICL \$103.10 OCL \$175.26 4" mtr ICL \$205.27 OCL \$348.95 6" MTR	\$15.20 per month \$7.60 per additional	\$1.05 per tsq	\$25.00
Great Bend	Residential & Commercial	n/c \$26.50 after regular office hours	\$15.90 regular office hours or \$8.48 if they pay the bill at the door	n/c		\$1.91 per 1000 gal	\$8.00 5/8" mtr \$8.85 1" mtr \$9.65 1 1/2" mtr \$10.30 2" mtr \$10.90 3" mtr \$11.45 4" mtr \$12.25 6" mtr	\$19.75 customer w/o average \$3.30 per 1,000	\$6.55 base fee	no city trash	no city yard	\$25.00
Dodge City	Residential & Commercial	\$26.00 service fee \$52.00 after hours service fee	\$40.00 \$52.00 after hours	\$25.00	1000 gal	\$2.16 per 1000 gal		\$8.05	\$2.19	\$16.19	\$18.06 Additional trash \$11.30	\$2.68 \$20.00

RESOLUTION NO. 2015-06

A RESOLUTION ESTABLISHING FEES AND RATES FOR WATER UTILITY SERVICE FOR THE CITY OF DODGE CITY.

WHEREAS, for the peace, health, safety, and welfare of the citizens of Dodge City, it is deemed necessary for the City to provide water utility service to its citizens; and

WHEREAS, it is necessary for each and every resident using the water utility of Dodge City to pay a fair and equitable share of the cost of operation for said utility; and

WHEREAS, Chapter 15, Article I, Section 123 requires the rates for water usage by all residents of the City to be set annually by Commission Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Dodge City, Kansas, that the following shall be the fee schedule for Water Utility Service in Dodge City.

Section 1: REPEAL: Resolution 2014-06; adopted on the 17th day of March, 2014, is hereby repealed.

Section 3: RATES ESTABLISHED:

A. Fees for residents within the corporate limits of the City of Dodge City:

New Service Connection Fee	\$26.00
New service connection fee	\$52.00
After normal business hours, Saturdays, Sundays and Holidays	
Monthly Base Fee	\$ 8.05
Cost per thousand Gallons water	\$ 2.16
Kansas Water Protection fee	
Per thousand gallons water	\$.032

Sales Tax for Commercial Accounts
No Sales Tax on Residential Service

B. Fees for the residents within the service area of the City of Wright shall be the same as those listed above, plus any additional fees that were established when the City of Wright was originally provided with water service through the City of Dodge City's Water Utility.

- C. Fees will be one and one half times outside the corporate limits of Dodge City or the area serviced by the Wright Improvement District.

Section 4: LATE FEE: All bills for utility services furnished by the City are payable as specified under Chapter 15, Article I, Section 124. Failure to pay the total utility bill on the required date will result in a charge equal to 10% of the bill.

Section 5: DELINQUENCY FEE: a delinquency fee of \$40.00 will be charged to the past due account if not paid by the reminder due date

Section 6: RESTORATION OF SERVICE AFTER DISCONTINUANCE: Should the utility services be discontinued for being delinquent as outlined in Chapter 15, Article 1, Section 127, service shall be restored upon the payment of all rates, charges, penalties, and delinquency fees due. An additional charge for restoring service on Saturdays, Sundays and holidays is \$15.00.

Section 7: A fee of \$25.00 shall be charged to shut off water service for repair.

Section 8. New utility service applications will be required to provide a current signed and dated lease agreement prior to utility service being granted. The lease agreement will have the current lessee's name that is applying for utility service plus the landlord's name, address and phone number. The lease agreement shall be signed by both parties with current dates. Copies of the lease agreement will be required. If the applicant is delinquent for prior utility services, all delinquent accounts shall be paid and current before utility services is granted.

Section 9. EFFECTIVE DATE: The rates specified hereinabove shall be come effective during the month of April, 2015 as appropriate and upon its adoption by the City Commission and publication in the official City newspaper.

PASSED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, this 16th day of March, 2015.

Mayor

ATTEST:

Nannette Pogue, City Clerk

RESOLUTION NO. 2015-07

A RESOLUTION ESTABLISHING FEES AND RATES FOR SANITARY SEWER SERVICE FOR THE CITY OF DODGE CITY.

WHEREAS, for the peace, health, safety, and welfare of the citizens of Dodge City, it is deemed necessary for the City to provide wastewater collection and treatment service to its citizens; and

WHEREAS, such wastewater collection and treatment services includes residential, commercial, and industrial users; and

WHEREAS, Federal Regulations require that all users pay a fair and equitable share of the collection of wastewater and for the costs of treatment plant construction, operation and maintenance, and replacement costs.,

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Dodge City, Kansas, that the following shall be the fee schedule for Sewer Service in Dodge City.

Section 1: REPEAL: Resolution 2014-07 adopted on the 17th day of March, 2014 is hereby repealed.

Section 2: SEWER USE FEES:

Sewer use fees to pay for the cost of collection and treatment of wastewater, for operation and maintenance of the wastewater collection and treatment system and for the cost of replacement of components of the system shall be established, as set forth herein below:

2.1 Residential Customers

Monthly Service charge	\$16.19
Monthly volume charge per 1,000 gallons	\$2.19

2.2 Mobile Home Parks served by master meter (s)

Monthly service charge	\$16.19
Master meter monthly accumulative reading, Q, multiplied by \$2.19 per 1,000 gallons	A= (Q) (2.19) (1000)
Total Bill =	T= \$16.19 + A

2.3 Commercial Customers with wastewater having strengths not exceeding 300 mg/1 of five day biological oxygen demand (BOD) or 700 mg/1 of total dissolved solids (TDS) per day:

Monthly service charge	\$16.19
Monthly volume charge per 1,000 gallons	\$2.19

2.4 Industrial Customers and Commercial Customers exceeding the BOD and TDS limits set forth in 2.3 hereinabove but not using the City sewer system:

Monthly service charge	\$16.19
Monthly volume charge per 1,000 gallons	\$2.19
Monthly 5 day BOD charge per lb.	\$0.1138
Monthly TDS charge, per lb.	\$0.07

2.5 Industrial Customers and Commercial customers exceeding the BOD and TDS limits set forth in 2.3 hereinabove and who use the City sewer system shall pay both a monthly service charge, and a monthly volume and strength charge as specified:

Monthly service charge	\$16.19
Monthly volume charge	\$2.19
Monthly 5 day BOD charge per lb.	\$0.1138
Monthly TDS charge, per lb.	\$0.07

The calculation of the strength charges for BOD and TDS shall be made as follows:

$$SBOD = V_s \times 8.34 \times CBOD \times BOD$$

$$STDS = V_s \times 8.34 \times CTDS \times TDS$$

$$ST = SBOD + STDS$$

Where:

SBOD shall be the strength charge attributable to 5 day biochemical demand

STDS shall be the strength charge attributable to the Total Dissolved Solids

V_s shall be the wastewater volume in million gallons

8.34 shall be the weight of water, pounds per gallon

CBOD shall be the unit charge for 5 day Biochemical Oxygen Demand in dollars per pound

CTDS shall be the unit charge for Total Dissolved Solids in dollars per pound

BOD shall mean five day BOD in mg/l

TDS shall mean Total Dissolved Solids in mg/l

- 2.7 National Beef, which is an industrial customer, has negotiated the following rate to discharge a high volume of wastewater that may exceed the limits allowed for industrial customers. The rate is based on a daily discharge of wastewater regardless of flow.

Volume charge regardless of flow per month	\$1,219.85 per million gallons
BOD ₅ > 2,889,866 lbs. per month	\$0.0314 per pound above parameter
TSS > 2,281,046 lbs. per month	\$0.0314 per pound above parameter
TDS > 1,521,238 lbs. per month	\$0.0314 per pound above parameter
O&G > 1,155,946 lbs. per month	\$0.0314 per pound above parameter

- 2.8 Mid-America Washout, which is an industrial customer, has negotiated the following rate to discharge a high volume of wastewater than may exceed the limits allowed for industrial customers. The rate structure is based on a daily discharge of 50,000 gallons of wastewater.

Volume charge if flow <= 1.5 million gallons per month	\$1,587.42 per million gallons
Volume charge if flow >1.5 million gallons per month	\$2,381.13 per million gallons
BOD > 25,020 lbs. per month	\$ 0.0563 per pound above parameter
TSS > 20,016 lbs. per month	\$ 0.0563 per pound above parameter
TDS > 13,448 lbs. per month	\$ 0.0563 per pound above parameter

- 2.7 Fees will be one and one half times outside the corporate limits of Dodge City.

3.0 OTHER TYPES OF CONTRIBUTORS

Any person desiring to use the wastewater treatment system by transporting liquid matter to said system by a means other than through the sewer system may do so if the quantity, quality, type, and character of the liquid waste to be deposited in the system is of a type permitted under the laws of the City, and consists solely of organic or biodegradable waste from septic tanks and cesspools.

Such fees shall be based on two factors, a flat fee designed to pay for testing and the cost of administration and billing and a volume charge.

To simplify the administration and accounting for the material dumped, the volume charge will be based on the total volume of the tank used, rather than a measurement of the actual volume of

material in the tank. The OMI staff has the right to measure any tank to determine the volume if there is any question about the reported volume.

The septage disposal fee shall be as follows:

Flat fee for administration and testing	\$35.95
Volume charge	\$ 0.1540 per gallon

4.0 EXTRA MONITORING FOR HIGH STRENGTH WASTES

When regulations require monitoring of wastewater from any user, whether for extra strength or for high discharges, that user shall pay a monitoring charge consisting of all costs for personnel, materials and equipment necessary to collect and analyze samples of the wastewater and shall also pay an additional administrative charge of 10% of the cost of collection and analysis.

5.0 PERMIT APPLICATION FEES

All applicants required to obtain a Wastewater Contribution Permit shall pay permit fee, at the time their application is filed with the City, of \$100.00 to cover the costs of checking and processing said Application. No application shall be accepted by the City unless the fee is paid at the time of filing.

6.0 EFFECTIVE DATE: The rates specified hereinabove shall be come effective during the month of April, 2015 as appropriate and upon its adoption by the City Commission and publication in the official City newspaper.

PASSED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, the 16th day of March, 2015.

Mayor

ATTEST:

Nannette Pogue, City Clerk

RESOLUTION NO. 2015-08

**A RESOLUTION ESTABLISHING FEES AND RATES FOR SOLID WASTE
COLLECTION SERVICE IN THE CITY OF DODGE CITY**

WHEREAS, for the peace, health, safety, and welfare of the citizens of Dodge City, it is deemed necessary for the City to provide Solid Waste Collection service to its citizens; and

WHEREAS, such Solid Waste Collection services includes both scheduled and non-scheduled garbage, refuse and trash pickup and disposal, and;

WHEREAS, because of current Ford County Landfill regulations, yard waste must be separated from municipal solid waste, now requiring the City to make separate collections, and;

WHEREAS, it is necessary for each and every citizen of the City of Dodge City to pay a fair and equitable share of the cost of this Solid Waste Collection Service.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Dodge City, Kansas:

Section 1: REPEAL: Resolution 2014-0814; adopted on the 17th day of March, 2014, is hereby repealed.

Section 2: SERVICE TO DWELLINGS:

2.1 Dwellings shall include all single family residences, duplexes, or two family dwellings. Fees for dwellings shall be \$16.76 per month per dwelling plus an additional fee of \$1.30 per month per dwelling for recycling and the handling of disposal of household hazardous wastes.

2.2 Multiple family dwellings shall be all residential buildings, except hotels or motels, having three (3) or more separate living units. Fees for multiple family dwellings shall be \$16.76 for the first dwelling unit and \$11.30 for each additional dwelling unit plus an additional fee per month per unit of \$1.30 for recycling and the handling of disposal of household hazardous wastes.

2.3 Special fees. In addition to the base rates provided herein above, special fees shall be charged in those cases where the Sanitation Department personnel shall be required to collect such items as refrigerators, stoves, furniture, etc., and large accumulations of trash or metal. In addition, trash placed by either the poly-kart or dumpster will also be subject to an additional charge.

2.4 Commercial rate. The commercial rate will apply to landlords, contractors, or any other type of business that would require pick up of large accumulations of trash

Special fees for some items are as follows:

ITEM	FEE
Refrigerators	\$5.00 plus any fee for disposal of compressor or refrigerant
Freezers	\$5.00 plus any fee for disposal of compressor or refrigerant
Air Conditioners	\$5.00 plus any fee for disposal of compressor or refrigerant
Stoves, dishwashers or other white goods	\$5.00 per item
Metal goods	\$5.00 per item
Furniture, Mattresses, Carpet, or other large household items	\$5.00 per item
Bagged or loose trash not in poly-kart or dumpster	\$1.00 per 40 lb. Bag
Should there be more than three (3) items placed at curb for special pickup, these items will be considered as a bulky accumulation and subject to that charge.	
Trees and other large brush accumulations and other bulky large accumulations	Minimum of \$25.00 per load plus \$12.50 per hour plus landfill charges
Alley Cleanup	Minimum of \$25.00 per load plus \$12.50 per hour plus landfill charges
Late Pickup	A \$2.00 charge for pickup of items and karts not placed at the curb by 7:00 a.m. on the scheduled day for pickup
Commercial Rates as follows:	
Large accumulations of brush, loose or bagged household trash, and other bulky large accumulations	\$40.00 per load plus \$25.00 per hour plus landfill fees
Special Cleanup Fee	\$100 per hour equipment fee plus \$25 per hour staff fee plus landfill charges and any other costs associated to the cleanup

Section 3. SERVICE TO HOME OCCUPATIONS

Home occupations and similar activities, but not including child care facilities shall pay \$16.76 per month fee for the residence and shall also pay an additional \$16.76 per month fee for service to the home occupation. Such home occupations shall also pay an additional \$1.30 each for the residence and for the home occupation for recycling and the handling and disposal of household hazardous wastes.

Section 4. SPECIAL CONDITIONS

Any special conditions not included in the above rate schedule shall be determined by the Superintendent of Public Works, subject to the approval of the Governing Body.

Section 5. YARD WASTE

As the Ford County Landfill requires that all yard wastes be separated from solid waste and that all yard wastes cannot be bagged, the City of Dodge City requires all residents desiring to have their yard waste disposed of by the City shall rent a container, provided by the City, for a cost of \$2.68 per month. Residents may dispose of yard waste by bagging the waste. Bags may not weigh more than 40 lbs. when full. Crews will pick up the bags for \$1.00 per bag.

Section 6. EFFECTIVE DATE: The rates specified hereinabove shall be come effective during the month of April, 2015 as appropriate and upon its adoption by the City Commission and publication in the official City newspaper.

PASSED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, the 16th day of March, 2015.

Mayor

ATTEST:

Nannette Pogue, City Clerk

RESOLUTION NO. 2015-09

**A RESOLUTION ESTABLISHING FEES AND RATES FOR STORM WATER
UTILITY SERVICE FOR THE CITY OF DODGE CITY.**

WHEREAS, for the peace, health, safety, and welfare of the citizens of Dodge City, it is deemed necessary for the City to provide Storm Water Utility Service to its citizens; and

WHEREAS, it is necessary for each and every resident of the City of Dodge City to pay a fair and equitable share of the cost of operation for said utility; and

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Dodge City, Kansas, that the following shall be the fee schedule for Storm Water Utility Service in Dodge City.

Section 1: REPEAL: Resolution 2014-09; adopted on the 17th day of March, 2014, is hereby repealed.

Section 2: RATES ESTABLISHED:

All properties are assessed \$1.20 per Drainage Unit per month. A Drainage Unit Has been established by Charter Ordinance No. 33.

Section 3. EFFECTIVE DATE: The rates specified hereinabove shall be come effective during the month of April, 2015 as appropriate and upon its adoption by the City Commission and publication in the official City newspaper.

PASSED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS this the 16th day of March, 2015.

Mayor

ATTEST:

Nannette Pogue, City Clerk

Memorandum

To: City Manager
City Commissioners
From: Tanner Rutschman, E.I. 
Civil Engineer
Date: March 16, 2015
Subject: Bids for N. 14th Ave. Reconstruction -
Country Acres St. to Ross Blvd. (ST 1502)
Agenda Item: New Business

Recommendation: Approve the proposal from JAG Construction Co., for the construction of the N. 14th Ave Reconstruction Project from Country Acres St. to Ross Blvd. in the amount of \$756,275.00.

Background: Over the years 14th Ave. has slowly been reconstructed with a 9" NRDJ (Non-Reinforced Dowel Jointed) concrete cross-section. This specific section of 14th Ave. is currently composed of a composite cross-section that is made up of 6 inches of asphalt and a 3 inch concrete whitetopping. This concrete whitetopping was placed in 2002 and was only intended to act as a band-aid until the City was able to allot funds for a full-depth reconstruction to match the material and thickness of the rest of 14th Ave. This proposed reconstruction project will accomplish that with a new full-depth 9" NRDJ concrete cross-section. The Commission has already approved funding of this project through General Obligation Bonds.

Justification: This project will restore a deteriorating major roadway and will reduce maintenance costs while bringing the quality of the driving surface up to par with the rest of 14th Ave.

Financial Considerations: The construction of the N. 14th Ave. Reconstruction Project from Country Acres St. to Ross Blvd. will cost \$756,275.00. Funding of this project will be through General Obligation Bonds.

Purpose/Mission: The completion of this Project aligns with the City's Core Value of administering Ongoing Improvements to provide for the citizens and prepare for the community's future by maintaining our street infrastructure in an acceptable condition and extending the life of the street.

Legal Considerations: By approving the bid with JAG Construction Co., the City will enter into a contract with JAG Construction Co., and be responsible to make payments to JAG Construction Co., for the completed work.

Attachments: A bid tabulation sheet for JAG Construction Co., and Smoky Hill, LLC; which includes the Engineer's Estimate.

Memorandum

*To: City Manager
City Commissioners*

*From: Tanner Rutschman, E.I.
Civil Engineer*

Date: August 27, 2014

*Subject: 2015 Asphalt Street Projects,
ST 1501*

Agenda Item: New Business



Recommendation: Reject all bids for the construction of the 2015 Asphalt Street Projects. The Engineer's Estimate for the project was \$96,125.00. The low bid from Klotz Sand Co. was \$14,957.75 or 15.5% over the Engineer's Estimate. Staff will work to determine the best way to proceed with the project moving forward.

Background: The City budgets money every year to be put towards road infrastructure improvements. The budgeted amount for this project does not have room for deviation at this time.

Justification: This year's budget for the Street Program does not have much wiggle room and City staff will need time to go over the budget and decide what projects can be put on hold and where funds can be funneled from.

Financial Considerations: Since the bids are being recommended for rejection, there will not be any financial Consideration at this time.

Purpose/Mission: The completion of this project would align with the City's core value of ongoing improvement.

Legal Considerations: By rejecting the bid, the city will not have any responsibility to Klotz Sand Co.

Attachments: Bid Tab with the Engineer's Estimate.

Memorandum

*To: City Manager
City Commissioners*

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

Date: March 11, 2015

*Subject: Consulting Agreement for Central Ave. Left
Turn Lane Design, ST 1506.*

Agenda Item: New Business

Recommendation: Approve Consulting Services Agreement with Olsson Associates, Inc. for \$123,400, pending review by City Attorney.

Background: As part of a proposed development at the Village Square Mall site and to improve the traffic flow and safety of traffic on Central Ave. from Layton St. north to near the US 50 intersection, a Two Way Left Turn Lane (TWLTL) has been proposed. Olsson Associates have been working with the developer on the improvements necessary to gain access to Central Ave. across KDOT's Control Access Right-of-Way and with the City on the proposed improvements to Central Ave.; which are necessary for the access across KDOT's Control Access Right-of-Way. This project was outlined in the 2015 Street Program the Commission approved earlier this year.

Justification: To provide access to the new development on the mall property, improve the existing traffic flow and safety on Central Ave.; a TWLTL needs to be installed on Central Ave.

Financial Considerations: The contract with Olsson Associates is for \$123,400.00. Funding of this project will be from GOB funds which were approved earlier this year. The Developer will be responsible for a portion of the design and construction improvements, terms of their participation are currently being negotiated.

Purpose/Mission: This meets the core value of On Going Improvements not only for the street, but allows for new development to take place. The completion of this project will enable the City to have the documents necessary to bid the improvement and allow for construction to meet the developer's time line.

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

Attachments: The Consulting Services Agreement with Olsson Associates.

LETTER AGREEMENT FOR PROFESSIONAL SERVICES

March 5, 2015

City of Dodge City
Attn: Ray Slattery, PE
806 N. 22nd Ave.
Dodge City, Kansas 67801

Re: LETTER AGREEMENT FOR PROFESSIONAL SERVICES
Central Ave. Improvements (the "Project")

Dear Mr. Slattery:

It is our understanding that City of Dodge City, Kansas ("Client") requests Olsson Associates, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project: as more specifically described in "Scope of Services" attached hereto. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: March 2015
Anticipated Completion Date: September 2015

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services a fixed fee of One Hundred Twenty Three Thousand Four Hundred Dollars (\$123,400.00). Olsson's reimbursable expenses for this Project are included in the fixed fee. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Ray Slattery, PE.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of maximum 30 days from the date set forth above, unless changed by us in writing.

OLSSON ASSOCIATES, INC.

By _____
Mark A. Bachamp, P.E.

By _____
Paul Parrish, P.E.

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

City of Dodge City, Kansas

By _____
Signature

Print Name _____

Title _____

Dated _____

- Attachments
- General Provisions
- Scope of Services
- Exhibit A

SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated March 5, 2016 between City of Dodge City, Kansas (“Client”) and Olsson Associates (“Olsson”) providing for professional services. Olsson’s Scope of Services for the Agreement is indicated below.

PROJECT DESCRIPTION AND LOCATION

Project will be located at: Central Avenue, Dodge City, KS

Project Description: Public Street Improvements for Central Avenue

The Project shall be generally described as the widening of Central Ave. to add a center turn lane and ancillary improvements located along Central Avenue between Layton Street and Highway 50 in Dodge City, Kansas (the “Project”). Attached hereto as **Exhibit A** is a concept plan generally depicting the scope of the Project. The Project includes approximately 1,500 linear feet of public streets along Central Avenue and San Jose Street. The street improvements will include new entrance drives to adjacent properties, and a new traffic signal at intersection of Central Avenue and San Jose Street.

SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

Phase 100 - Surveying Services

Task 101: Easements – Provide right-of-way and easement legal descriptions and exhibit drawings (8”x14” “tract map”) sealed by a Registered Land Surveyor licensed in the State of Kansas (assumed 9 tracts at \$400.00 per tract). The legal descriptions are to be provided in digital format compatible with Microsoft Word. The City to provide Certificate of Title of the property being affected by the project.

Subtotal Fee \$3,600.00

Phase 200 – Public Street Design

Task 201: Develop Preliminary Plans for Public Streets – Olsson will provide preliminary plans for the construction of approximately 1,500 linear feet of public streets along Central Avenue and San Jose Street per attached **Exhibit A**. The public streets will be designed to Dodge City standards. Plans will include all required submittals to Dodge City for review.

Task 202: Traffic Signal at Central Avenue and San Jose Street – Olsson will design a traffic signal meeting KDOT or Dodge City signal standards. Design of the signal will include street lighting mounted on the signal poles, location of the signal controller per City and power company preferred location. Vehicle detection (Loops/Video/Radar) per the preference of the City. Pedestrian pushbuttons and heads can be provided. Preliminary Clearance intervals will be provided on the plans. The Contractor/Signal Supplier will program the Controller for operation.

Task 203: Traffic Control, Pavement Marking and Signing – Olsson will prepare a traffic control plan for pavement widening along Central Ave. Traffic Control is expected to be a phased operation with inside and outside lane closures during different times of construction to keep the street open to traffic for the majority if not all of construction. Olsson will provide permanent pavement markings and traffic signing and quantities along public streets.

Task 204: Street Lighting – Olsson will design the relocation of street lighting (assumed 5 street lights) and review the street lighting system including pole locations, controller locations, and photometric design complying with Dodge City standards.

Task 205: Retaining Walls – Olsson will provide retaining wall layouts including the horizontal layout, top and bottom wall profiles, and typical section. The retaining walls are assumed to be less than 4 feet high.

The retaining wall design **excludes** structural design and global stability. If required, the structural design of the retaining wall and global stability analysis will be the responsibility of the wall manufacturer and contractor.

Task 206: Sanitary Sewer and Water Lines – Olsson will design the adjustment of sanitary sewer manholes (assumed 2 manholes). It is assumed there will be no relocation of the sanitary sewer mains. Olsson will design the relocation of fire hydrants (assumed 1 fire hydrant) and water lines approximately 130 linear feet near the intersection of Central Avenue and San Jose Street. A new waterline will be designed to the new McDonalds (approximately 600 feet) including a new fire hydrant.

Task 207: Storm Sewer – Olsson will relocate the storm sewer as needed for San Jose street realignment. Also inlets caused to be moved because of the widening of Central Ave. will be relocated.

Task 208: Develop Final Plans for Public Streets – Olsson will respond and incorporate preliminary plan comments and provide final plans for public streets including all required submittals to Dodge City for review.

Task 209: Develop Construction Documents for Public Streets – Olsson will respond and incorporate final plan comments and will provide construction documents for public streets including all required submittals to Dodge City for approval.

Subtotal Fee \$96,500.00

Phase 300 – Project Management & Meetings

Task 301: Project Management

- Project Coordination with City including comment responses letters
- Monitor design scope, schedule, and fee
- Quality Assurance/ Quality Control

Task 302: Meetings

- Attend pre-design project kick off meeting
- Meet with City as necessary in connection with design reviews (assumed 2 meetings)

- Attend Utility Meetings (assumed 2 meetings)
- Attend Public Meeting (assumed 1 meeting)
- Attend Pre-construction Meeting

Task 303: Utility Coordination – Olsson will coordinate with private and public utilities and provide necessary plans and information.

Utility coordination excludes the design to relocate any private utility including, but not limited to, gas lines, communication lines, and electric transmission lines.

Task 304: KDOT Highway Access Permit and Coordination – Olsson will prepare and submit KDOT Application for Highway Access (KDOT Form 827) for the proposed shared McDonald’s & Mall entrance along Central Avenue per attached **Exhibit A**, approximately 400 feet south of Highway 50. Olsson will coordinate with KDOT to provide necessary plans and information for KDOT review.

Task 305: State and Federal Permits – Olsson will prepare and submit State and Federal Permits for approval, including:

- KDHE – NOI For Authorization to Discharge Stormwater Runoff from Construction Activities
- KDWPT – Endangered Species Documentation
- KSHS – Historic Preservation Documentation
- SWPPP

Subtotal Fee \$17,800.00

Phase 400 – Bidding Phase Services

Task 401: Invitation for Bids - Prepare an Engineers Opinion of Probable Cost prior to the invitation of bids. Identify potential contractors and distribute copies of Invitation to Bid for the Contract.

Task 402: Distribute Plans and Specifications
Prepare and distribute one set of construction contract drawings and specifications for the project to the City. Plan sets will be distributed to plan service agencies for use during bidding. Prepare and distribute construction contract documents to potential bidders. (Maintain a record of prospective bidders and suppliers to whom drawings or specifications have been issued).

Task 403: Answer Questions / Prepare Addendum(s) and Distribute
Interpret construction contract drawings and specifications, and provide responses to questions from bidders requiring clarification during bidding periods. Prepare and issue addenda to the construction contract documents when required.

Task 404: Recommendation of Award
Evaluate bids and make written recommendations to the City concerning contract award to the lowest responsive bidder.

Subtotal Fee \$5,500.00

TOTAL \$123,400.00

EXCLUDED SERVICES

- A. Flood plain modeling
- B. Certificate of Title Work
- C. Preliminary and Final Platting
- D. BMP Design
- E. Full time construction staking or construction observation
- F. As-Built drawings
- G. Traffic Studies
- H. Traffic Signal Timing Field Implementation
- I. Traffic Signal Interconnect
- J. Design to relocate of any gas, communication, or electric transmission lines
- K. Geotechnical Investigation and Studies
- L. Retaining wall structural design and global stability analysis
- M. U.S. Army Corps of Engineers permits
- N. Landscape Plans (beyond seeding)
- O. Permitting, Submittal and/or Plan Review Fees

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

OLSSON ASSOCIATES, INC.

By _____
Mark A. Bachamp, P.E.

Paul Parrish, P.E.

If you accept this Scope of Services, please sign:

CITY OF DODGE CITY, KANSAS

By _____
Signature

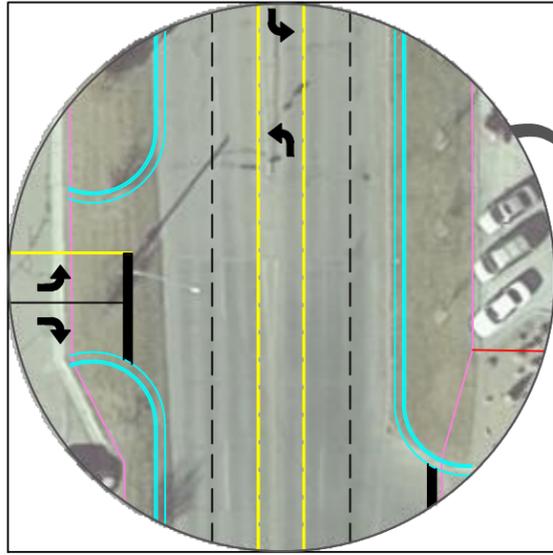
Print Name _____

Title _____

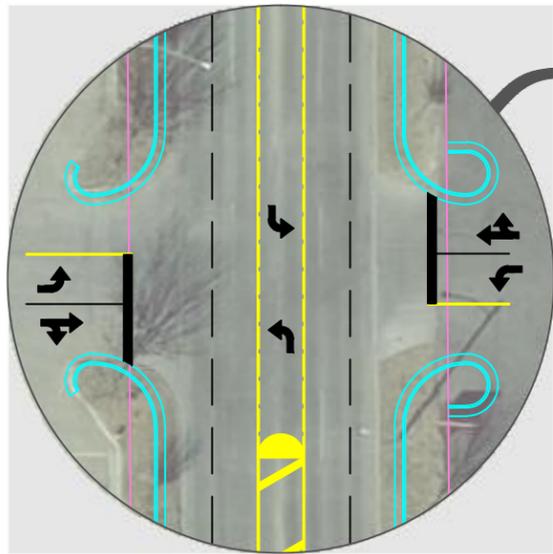
Dated: _____

EXHIBIT A CONCEPT PLAN

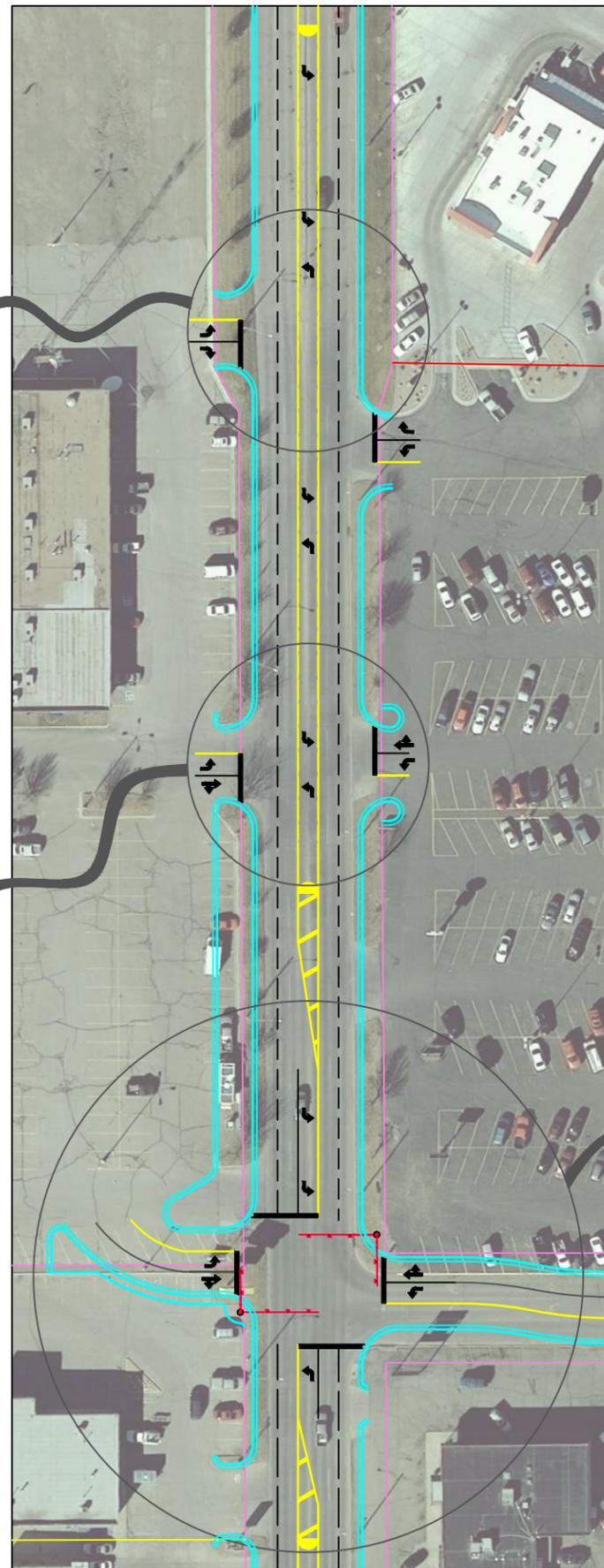
McDONALD'S ENTRANCE



MALL/GIBSON'S MAIN ENTRANCE



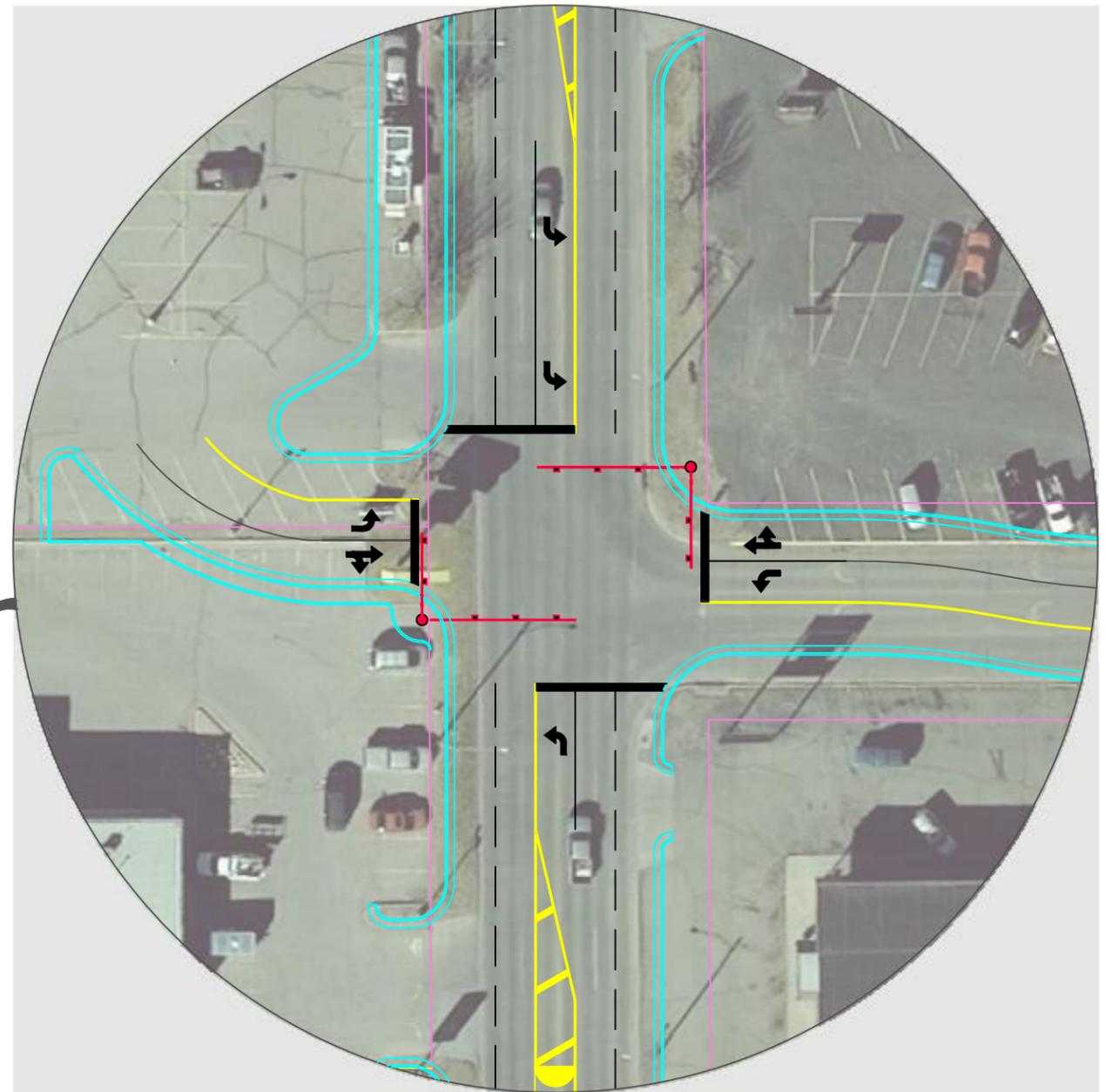
THIS SCALE IS REPRESENTATIVE OF THE MAIN PLAN.
THE ZOOMED IN VIEWS ARE HALF THE SCALE.



CENTRAL AVE. TRANSPORTATION DEVELOPMENT DISTRICT EXPANSION

*THIS EXPANSION WILL WIDEN CENTRAL AVE. TO ALLOW FOR A CENTER TWO-WAY LEFT-TURN LANE FROM THE SAN JOSE ST. INTERSECTION NORTH TO U.S. HIGHWAY 50.

CENTRAL AVE.- SAN JOSE ST. INTERSECTION



GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated March 5, 2015 between City of Dodge City, Kansas ("Client") and Olsson Associates, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

SECTION 1—OLSSON'S SCOPE OF SERVICES

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

SECTION 2—ADDITIONAL SERVICES

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not reasonably contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, either party may terminate this Agreement and Olsson will be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 If the parties determine additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services upon receiving consent from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way,

topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Intentionally Omitted.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.9 Intentionally Omitted.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until

the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

3.11 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods.

SECTION 4—MEANING OF TERMS

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of

Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Construction Cost Estimate": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with diligent observation,

some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than twenty-one (21) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same twenty-one (21) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered

and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration, if both parties agree in writing to such submission or litigation. If arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Intentionally Omitted.

6.2.3 Arbitration, if agreed to, or litigation, may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Ford County, Kansas.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information,

recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants.

7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions.

7.3 Construction Cost Estimate

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's

Construction Cost Estimate provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Construction Cost Estimate. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Construction Cost Estimate was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Construction Cost Estimate was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Construction Cost Estimate, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Construction Cost Estimate.

7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations.

7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

7.6 Standard of Care

Olsson will perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) will not be considered a breach of this Agreement and the time required for performance will be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall

give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

7.8 Confidentiality

In performing this Agreement, the parties may disclose to each other written or oral non-public, confidential or proprietary information, including but not limited to, information of a business, planning, marketing or technical nature and models, tools, hardware and software, and any documents, reports, memoranda, notes, files or analyses that contain, summarize or are based upon any proprietary or confidential information (hereafter referred to as the "Information").

7.8.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.8.2 The existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.8.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.8.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.8.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.8.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.8.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.8.3.5 is received from a third party not subject to any confidentiality obligations.

7.8.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.8.5 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the

Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.8.6 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party will be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.8.7 The obligations of confidentiality set forth herein will survive termination of this Agreement, but will only remain in effect for a period of one (1) year from the date the Information is first disclosed.

7.9 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.9.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.9.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials will not result in Olsson being deemed a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.9.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of

samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.9.4 Intentionally Omitted.

7.9.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.9.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.9.5.2 Intentionally Omitted.

7.10 Controlling Law and Venue

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Kansas. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in Ford County, Kansas.

7.11 Subconsultants

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.12 Assignment

7.12.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.12.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.12.2 Neither Client nor Olsson will assign, sublet 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, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. 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. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.12.3 Nothing under this Agreement will be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.13 Intentionally Omitted.

7.14 Limitation on Damages

7.14.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.14.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants will be liable to the other or will make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages will include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.14.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall be limited to amounts covered and payable under any applicable insurance policy Olsson is required to obtain under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement. Olsson's insurance coverages are as follows:

Workers' Compensation Employer's Liability	Statutory – per state law \$500,000/Each Accident
General Liability	\$1,000,000/Occurrence \$2,000,000/Aggregate
Automobile Liability Single Limit for BI/PD	\$1,000,000 Combined

Professional Liability \$1,000,000 Each Claim &
Aggregate

7.15 Entire Agreement

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.



Parks and Recreation

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

Memorandum

To: City Commission
From: Melissa McCoy, Project Development Coordinator
Paul Lewis, Parks and Recreation Director 
Date: March 11, 2015
Cc: Cherise Tieben, City Manager
Subject: Approval of Land Lease Agreement with BNSF
Railway Company

RECOMMENDATION: Staff recommends that the City Commission approve the indefinite Term Lease with BNSF Railway Company for the use of the railroad right away for a beautification project which includes landscaping and parking from an area South of Wyatt Earp Blvd along the south boundary of the railroad right of way running easterly from 5th Avenue abutting South Front Street to a point approximately 275 feet east of the 1st Ave. intersection.

BACKGROUND: City Staff including representatives from Administration, the City Attorney, Engineering Services and Parks and Recreation collaborated with BNSF and their Commercial Leasing Company, Jones Lang LaSalle (JLL), on the lease agreement. The Railroad (RR) Lease drawings were developed by Ray Slattery, Director of Engineering Services. The RR Lease drawings are attached.

The enhancement of landscaping and parking is an essential component of the Star Bonds Heritage District. The additional parking will increase capacity for activities and events in the Heritage District as well as the downtown. This beautification project will also vastly improve a blighted area.

PROJECT SPECIFICS: The project will construct new parking and landscape areas along the South Front Street right of way and the south boundary of the railroad right of way from the west side of Second Avenue to Fifth Avenue paralleling the tracks. From Second Avenue east to the Atchison, Topeka, Santa Fe (ATSF) Railway Depot landscaping will only be on railroad right away. Landscaping will be installed between the parking area and the tracks to within approximately 15 ft. of the southernmost rail of the tracks. This would essentially mirror the landscaping on the north side of the tracks and will also include fencing and walking trails. The landscaping will feature trees, shrubs and grasses.

JUSTIFICATION: The approval of the indefinite term lease with the BNSF Railway Company will allow for the beautification and development of parking in this blighted area located in the Heritage District. This agreement is necessary

FINANCIAL CONSIDERATIONS: There is no financial obligation associated with this agreement. Due to arrangements discussed by the City Manager and the BNSF Railway Company Administration, the \$1800 yearly rental fee was waived for the use of the railroad right of way.

Construction costs for the parking and landscape improvements are budgeted to be \$1,044,000 and will be funded through STAR Bond proceeds from the Heritage District.

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 legal agreement required by the BNSF Railway Company. The City Attorney has reviewed and approved the agreement as to form.

ATTACHMENTS:

BNSF Railway Company Indefinite Term Land Lease
Railroad Lease Request Drawings

**INDEFINITE TERM LEASE
LAND**

THIS INDEFINITE TERM LEASE FOR LAND ("Lease") is made and entered into to be effective as of the ___ day of _____, 2015 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Lessor") and **CITY OF DODGE CITY**, a municipal corporation ("Lessee").

RECITALS

A. Lessor is in the railroad transportation business and owns or controls a system of rail tracks ("Lessor's Track(s)") and various real properties associated therewith, including certain Premises as described below which Lessee desires to lease from Lessor.

B. Lessor has agreed to lease to Lessee the Premises, subject to the terms, conditions and limitations provided herein.

AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

Section 1. Premises and Term.

A. Lessor leases to Lessee and Lessee leases from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property, situated in the City of Dodge City, County of Ford, State of Kansas, along Line Segment 7300, Mile Post 352.57 and constituting the shaded area shown upon Print No. 62567, dated January 28, 2015 a copy of which is attached hereto as Exhibit "A" and made a part hereof ("Premises").

B. Lessee leases the Premises from Lessor beginning _____ ("Commencement Date"), and shall continue until terminated by either party as provided in this Section 1(B). This Lease may be terminated by either party, at any time, without cause, for convenience, by serving upon the other party written notice of termination at least thirty (30) days in advance. Upon the expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease.

C. Upon termination, either (i) Lessor may retain from prepaid rent, as an additional charge for use of the Premises, a sum equal to three (3) months Base Rent (as defined below), and any unearned portion of the annual Base Rent, in excess of such retainage, paid in advance shall be refunded to Lessee or (ii) if Lessor has not been paid sufficient Base Rent to satisfy the above retainage, then Lessee shall pay Lessor a sufficient sum so that, together with sums already held by Lessor, Lessor shall hold a sum equal to three (3) months Base Rent which Lessor shall retain as an additional charge for use of the Premises, and such additional sum shall be paid by Lessee within thirty (30) days of termination of the Lease.

D. Each consecutive twelve-month period this Lease is in effect, beginning with the Effective Date of this Lease, is herein called a "Lease Year."

E. Lessee acknowledges that it is assuming all risks associated with Lessor's right to terminate this Lease at any time as provided above, and (i) Lessor gives no assurance that Lessor will delay termination of this Lease for any length of time whatsoever, (ii) Lessee may expend money and effort during the term of this Lease which may not ultimately be of any benefit to Lessee if Lessor terminates this Lease, but nonetheless, Lessor shall have the right to terminate the Lease if Lessor determines in its sole and absolute discretion that

Lessor desires to terminate, and (iii) in no event shall Lessor be deemed to have any legal obligations to continue to lease the Premises for any length of time.

Section 2. Use and Compliance.

A. Lessee may use the Premises for the sole and exclusive purpose of parking, fencing and beautification (i.e. landscaping) and for no other purpose without the prior written consent of Lessor. Any improvements necessary for Lessee's use of the Premises are subject to the terms and conditions as set forth in Section 8 herein. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Premises.

B. Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Laws" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Premises, this Lease, and/or Lessee's obligations under this Lease, and shall include all Environmental Laws (as defined in Section 4(A)).

C. If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the Premises, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

Section 3. Rent.

A. Lessee shall pay as rental for the Premises, in advance, an amount equal to Zero and no/100 (\$0.00) annually during the term of the Lease, ("Base Rent"). Base Rent shall increase 0% annually during the term of the Lease. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided herein. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

BNSF Railway Company
P.O. Box 676160
Dallas, Texas 75267-6160

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee pursuant to the notice provisions of Section 36 below. No rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor has actually posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee had failed or delayed in making any payment.

B. Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease Lessee hereby waives any rights it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of

rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

C. Lessee shall pay the Base Rent and all additional amounts due pursuant to Section 9 as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Lease.

D. If any Base Rent or any payment under Section 9 or any other payment due by Lessee hereunder is not paid within five (5) days after the date the same is due, Lessor may assess Lessee a late fee ("Late Fee") in an amount equal to 5% of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment. In addition to said Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Lessee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

Section 4. Environmental.

A. Lessee shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.

B. Lessee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises and to Lessor's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. Lessee shall use its best efforts to promptly respond to any release on or from the Premises. Lessee also shall give Lessor's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises.

C. In the event that Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.

D. Lessee shall promptly report to Lessor in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee expects to use on the Premises the following Hazardous Materials: None, and to store on the Premises the following Hazardous Materials (as defined in Section 4(F) below): None; provided, however, that Lessee may only use and store the listed Hazardous Materials in such amounts as are necessary and customary in Lessee's industry for the permitted uses hereunder ("Permitted Substances"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials not disclosed in this Section 4(E) is a breach of this Lease.

F. For purposes of this Section 4, "Hazardous Materials" means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

G. Lessor may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the Premises through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Lessee prior to termination of this Lease.

Section 5. Access to Adjacent Property by Lessee.

If access to and from the Premises can be accomplished only through use of Lessor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Lessor may impose by notice to Lessee. Lessor shall have the right to designate the location or route to be used. Lessee understands and agrees that all of the terms and obligations under this Lease applicable to Lessee shall also be applicable to Lessee with respect to Lessee's use of any property adjacent to the Premises which Lessee may use just as though the property has been specifically described as part of the Premises, including, without limitation, the indemnity provisions of Section 13. Notwithstanding anything to the contrary herein, this Section 5 shall not grant Lessee any right to cross any of Lessor's Tracks. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

Section 6. Access to Premises by Lessor.

A. Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Premises as allowed hereunder, (i) enter the Premises for inspection of the Premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, and operate trackage, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Premises, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the Premises, or to prospective purchasers or mortgagees of the Premises, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused.

B. For purposes stated in this Section 6, Lessor will at all times have keys with which to unlock all of the doors and gates on the Premises, and Lessee will not change or alter any lock thereon without Lessor's permission.

C. In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Lessor as described in this Section 6 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

Section 7. Warranties.

LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Premises are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Premises, Lessor shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

Section 8. Premises Condition; Lessee Improvements.

A. Lessee represents that the Premises, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Commencement Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this Section 8 affects the commencement of the term of the Lease or the obligation of Lessee to pay rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Premises for any purpose other than as set forth in Section 2; (ii) Lessee has previously disclosed in writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the term of the Lease. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this Section 8, and that Lessor is relying on these acknowledgments and agreements and would not have entered into this Lease without such acknowledgements and agreements by Lessee.

B. If improvements are necessary for Lessee's use of the Premises, including a landscaping plan, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the Premises which are necessary for Lessee's use of the Premises and are acceptable

to Lessor in Lessor's sole discretion ("Lessee Improvements"). The construction and installation of any Lessee Improvements shall be subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor for approval as set forth below, such approval to be in Lessor's sole and absolute discretion. Within forty-five (45) days after the Commencement Date, Lessee shall submit detailed plans and specifications, and the identity of Lessee's proposed general contractor for the Lessee Improvements for Lessor's review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its sole and absolute discretion) by written notice delivered to Lessee within sixty (60) days after receipt of the same from Lessee. In the event of any disapproval, Lessor shall specify the reasons for such non-approval. If Lessor fails to deliver notice to Lessee of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's plans, specifications and proposed contractor shall be deemed disapproved. If Lessor specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this Lease by written notice to Lessor. Upon approval of the plans and specifications by Lessor, Lessor and Lessee shall sign the same, and they shall be deemed a part hereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of Exhibit "B" attached to the Lease and all applicable terms and conditions of the Lease regarding alterations and improvements. Lessee shall not construct, install or make any other alteration or improvement to the Premises without Lessor's prior written consent. The Lessee Improvements constructed or installed pursuant to the above provisions shall be owned by Lessee during the term of the Lease and removed from the Premises or surrendered to the Lessor pursuant to Section 20 below upon termination of this Lease.

Section 9. Taxes and Utilities.

A. In addition to Base Rent, Lessee shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the term of this Lease and may become due or levied against the Premises, against Lessee, against the business conducted on the Premises or against the Lessee Improvements placed thereon during the term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease provided; however, that Lessee shall only be responsible for the payment of property taxes levied against the Premises to the extent such taxes are separately assessed by the applicable taxing authority as a result of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee any utility or other services. If this Lease is a transfer of an existing lease, Lessee must make arrangements with the present lessee for payment of any delinquent and current taxes, utilities, and other charges prior to taking possession. If such arrangements are not made, Lessee agrees to pay all such taxes, utilities, and other charges. If Lessor should make any such payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

B. Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less during any Lease Year, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00) during any Lease Year then such excess shall be paid by Lessor, but the Base Rent herein shall be increased by an amount equal to twelve percent (12%) of such excess payable for each Lease Year such amounts are payable.

Section 10. Track Clearance.

A. Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Premises (nine and one-half (9-1/2) feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Premises ("Minimal Clearances"); provided that if any law, statute, regulation, ordinance, order,

covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 10, then Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 10, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

B. Lessor's operation over any Lessor's Track on or about the Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 10 or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom.

C. Lessee shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on Lessor's Tracks.

Section 11. Repairs; Maintenance.

A. Lessee shall, at its sole expense, take good care of the Premises (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee shall keep and maintain any paved areas, sidewalks, curbs, landscaping, and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

B. Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Premises.

Section 12. Safety; Dangerous and Hazardous Conditions.

It is understood by Lessee that the Premises may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

Section 13. Indemnity.

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;
- (iii) LESSEE'S OCCUPATION AND USE OF THE PREMISES;
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR
- (v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 13(A), LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LESSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

D. Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 14. Equal Protection.

It is agreed that the provisions of Sections 10, 12, and 13 are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under Sections 10, 12, and 13.

Section 15. Assignment and Sublease.

A. Lessee shall not (i) assign or otherwise transfer this Lease or any interest herein, or (ii) sublet the Premises or any part thereof, without, in each instance, obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. For purposes of this Section 15, in the event that there are aggregate transfers or other changes in the ownership interests of Lessee resulting in a change of more than 20% of the ownership interests as held on the date hereof, a transfer shall be deemed to have occurred hereunder. Any person or legal representative of Lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

B. Any assignment, lease, sublease or transfer made pursuant to Section 15(A) may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.

Section 16. Liens.

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section 16 or any other Section of this Lease.

Section 17. Insurance.

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

- A.** All risks property insurance covering all of Lessee's property including property in the care, custody or control of Lessee. Coverage shall include the following:
- ◆ Issued on a replacement cost basis.
 - ◆ Shall provide that in respect of the interest of Lessor the insurance shall not be invalidated by any action or inaction of Lessee or any other person and shall insure the respective interests of Lessor as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee or any other

person.

- ◆ Include a standard loss payable endorsement naming Lessor as the loss payee as its interests may appear.
- ◆ Include a waiver of subrogation in favor of Lessor.

B. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$ 2,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

C. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

D. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Lessee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

E. If construction is to be performed on the Premises by Lessee, Lessee or Lessee's contractor shall procure Railroad Protective Liability insurance naming only the Lessor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Lessor prior to performing any work or services under this Lease

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Lessee agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Lessee's care, custody, or control.

Lessee's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Railroad and Staubach Global Services - RR, Inc. as additional insureds with respect to work performed under this Lease. Severability of interest and naming Railroad and Staubach Global Services - RR, Inc. as additional insureds shall be indicated on the certificate of insurance.

Lessee is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Premises, Lessee shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be contracted by Lessee, Lessee shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming Railroad as an additional insured, and shall require that the contractor shall release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Lessee is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this Section 17 shall entitle, but not require, Railroad to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

For purposes of this Section 17, Railroad shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 18. Water Rights and Use of Wells.

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Lessor.

Section 19. Default.

A. An "Event of Default" by Lessee shall have occurred hereunder if any of the following shall occur:

(i) if Lessee violates any safety provision contained in this Lease;

(ii) if Lessee fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;

(iii) if a decree or order of a court having jurisdiction over the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;

(iv) if the Premises is abandoned or vacated by Lessee.

B. If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof, (iii) cure the default by making any such payment or performing any such obligation, as applicable, at Lessee's sole expense, without waiving or releasing Lessee from any obligation, or (iv) enter into and upon the Premises or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Premises or any part thereof as the agent of Lessee and in such event, Lessee shall be immediately

liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as rent for the Premises for the period of reletting. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedies set forth in this Section 19 shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a breach or default.

Section 20. Termination.

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the Premises and shall remove any Lessee Improvements, and restore the Premises to substantially the state and environmental condition in which it was prior to Lessee's use ("Restoration Obligations"). If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Premises, and in such event Lessee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, (ii) upon written notice to Lessee may take and hold any Lessee Improvements and personal property as its sole property, without payment or obligation to Lessee therefor, or (iii) specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Further, in the event Lessor has consented to Lessee Improvements remaining on the Premises following termination, Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor conveying such Lessee Improvements to Lessor.

Section 21. Survival of Obligations.

Notwithstanding any expiration or other termination of this Lease, all of Lessee's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

Section 22. Holding Over.

If Lessee fails to surrender the Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease.

Section 23. Multiple Party Lessee.

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

Section 24. Damage or Destruction.

If at any time during the term of this Lease, the Premises are damaged or destroyed by fire or other casualty, then Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee Improvements, personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Lessee under the provisions of this Lease.

Section 25. Eminent Domain.

If any part of the Premises is taken by eminent domain, Lessor may either terminate this Lease or continue the Lease in effect. If Lessor elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Lessor shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, will be the property of Lessor; without prejudice, however, to claims of Lessee against the condemning authority for moving costs and the unamortized cost of leasehold improvements paid for by Lessee taken by the condemning authority. If this Lease is terminated under this Section 25, rent will be payable up to the date that possession is taken by the condemning authority, and Lessor shall refund to Lessee any prepaid unaccrued rent less any sum then owing by Lessee to Lessor.

Section 26. Representations.

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Premises except as herein expressly set forth.

Section 27. Signs.

No signs are to be placed on the Premises without the prior written approval of Lessor of the size, design, and content thereof.

Section 28. Consents and Approvals.

Whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will Lessee make, any claim, and Lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval.

Section 29. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

Section 30. Public Record.

It is understood and agreed that this Lease shall not be placed of public record.

Section 31. Governing Law.

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the state in which the Premises are located.

Section 32. No Waiver.

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 33. Binding Effect.

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

Section 34. Force Majeure.

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

Section 35. Entire Agreement/Modification.

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreement held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

Section 36. Notices.

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 3(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not

less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

City of Dodge City
P. O. Box 880
Dodge City, KS 67801
Attn: Paul Lewis

If to Lessor:

BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828
Attn: Senior Manager – Land Revenue Management

With a copy to:

Staubach Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, Texas 76131-2800
Attn: Director – Leases and Permits

Section 37. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

Section 38. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the term of this Lease, shall remain that of Lessor and Lessee.

Section 39. Severability.

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 40. Transferability; Release of Lessor.

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

Section 41. Tax Waiver.

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

Section 42. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

Executed by the parties to be effective as of the Effective Date above.

LESSOR

BNSF Railway Company
By Attorney-in-Fact: Jones Lang LaSalle, Inc.

By: _____
Name: Ed Darter
Title: Sr. Vice President

LESSEE

City of Dodge City

By: _____
Name: _____
Title: _____

COORDINATE SYSTEM: KS_S

TRACKING NO. 2

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

CITY OF DODGE CITY

SCALE: 1 IN. = 150 FT.
KANSAS
LA JUNTA
DATE 01/28/2015

DIV. SUBDIV. L.S. 7300

SECTION: 26
TOWNSHIP: 28S
RANGE: 25W
MERIDIAN: 6PM

4000 W Wyatt Earp Blvd

Front St

3rd Ave

Guns smoke St

N 2nd Ave

W Wyatt Earp Blvd

To: SPEARVILLE

To: SEARS

4th Ave

6th Ave

W Trail St

3rd Ave

2nd Ave

Maple St

1st Ave

E Trail St

Forest Ave

N

MP 352.57
100°14.678'W-37°45'1.145"W

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGH, Swisstopo, and the GIS User Community

LEGEND:

- PREMISES
- RIGHT OF WAY LINE
- TRACK
- FENCE

DESCRIPTION:
4 PARCELS OF LAND CONTAINING A TOTAL OF 54,964 SQ. FT.
(1.26 A.C.) MORE OR LESS SHOWN HATCHED.

AT DODGE CITY
COUNTY OF FORD

STATE OF KS

REVISION 2

DRAWN BY: JNC

DRAWING NO. 62567

MAP REF. 501626

COORDINATE SYSTEM: KS_S

TRACKING NO. -

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

CITY OF DODGE CITY

SCALE: 1 IN. = 150. FT.
KANSAS
LA JUNTA
DATE 01/28/2015

SECTION: 26
TOWNSHIP: 26S
RANGE: 25W
MERIDIAN: 6PM

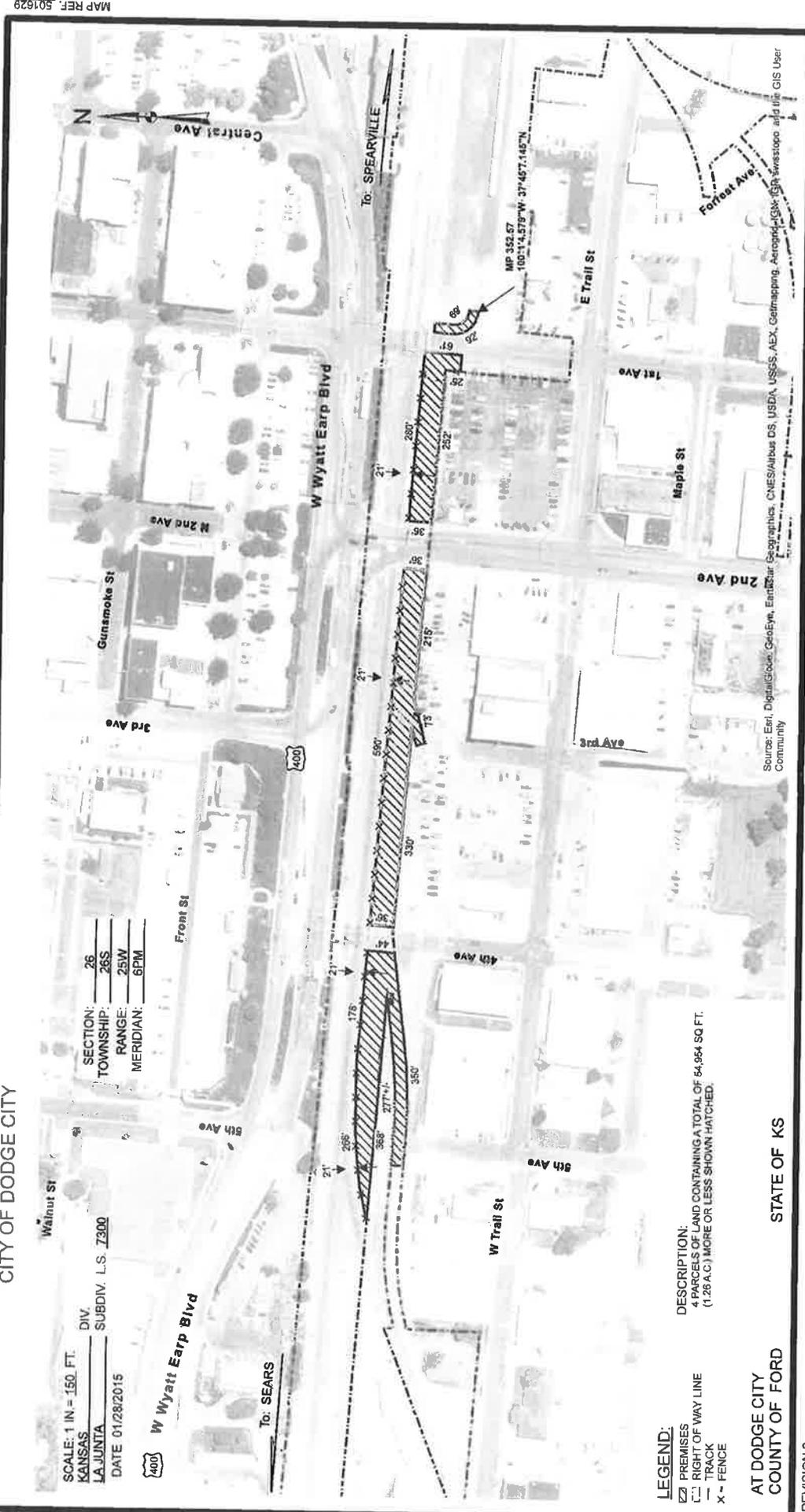
DIV. _____
SUBDIV. L.S. 7300

4000 W Wyatt Earp Blvd

To: SEARS

TRACKING NO. -

TRIM LINE



- LEGEND:**
- ▨ PREMISES
 - RIGHT OF WAY LINE
 - TRACK
 - x FENCE

DESCRIPTION:
4 PARCELS OF LAND CONTAINING A TOTAL OF 64,954 SQ. FT.
(1.26 A.C.) MORE OR LESS SHOWN HATCHED.

AT DODGE CITY
COUNTY OF FORD

STATE OF KS

REVISION 2

DRAWN BY: JNC

DRAWING NO. 62567

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Geomatics, Aerophotogrammetry, IGN, Swisstopo and the GIS User Community

MAP REF. 501629

COORDINATE SYSTEM: KS_S

TRACKING NO. 2

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
CITY OF DODGE CITY

CITY OF DODGE CITY

SCALE: 1 IN. = 150 FT.
KANSAS
LA JUNTA
DATE 01/28/2015

DIV. _____
SUBDIV. L.S. T300

SECTION: 26
TOWNSHIP: 26S
RANGE: 25W
MERIDIAN: 6PM

W Wyatt Earp Blvd

Front St

3rd Ave

2nd Ave

Gunsmoke St

Central Ave

To: SEARS

To: SPEARVILLE

5th Ave

4th Ave

3rd Ave

2nd Ave

1st Ave

W Trail St

Maple St

Forest Ave

MP 362.67
100°14.919'W 37°45'7.46"N

LEGEND:

- EZ PREMISES
- C-1 RIGHT OF WAY LINE
- TRACK
- X - FENCE

DESCRIPTION:
4 PARCELS OF LAND CONTAINING A TOTAL OF 64,954 SQ FT.
(1.26 AC.) MORE OR LESS SHOWN HATCHED.

AT DODGE CITY
COUNTY OF FORD

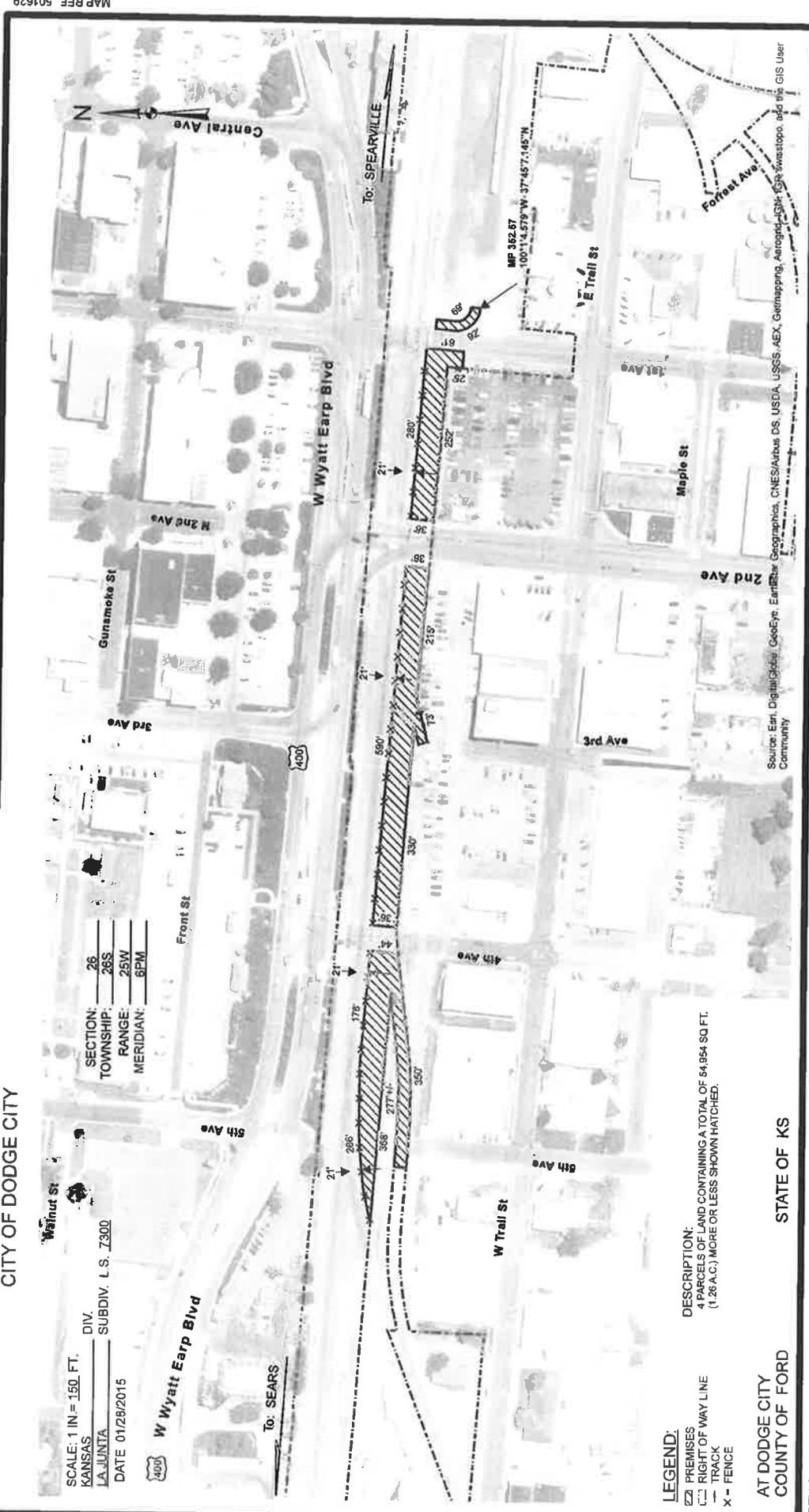
STATE OF KS

REVISION 2

DRAWN BY: JNC

DRAWING NO. 62567

MAP REF. 501629



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Geomatics, Aerogrid, IGN, IGC, Swisstopo, and the GIS User Community

EXHIBIT "B"

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (the "Agreement") supplements that certain Indefinite Term Lease for Land ("Lease") dated _____, _____ by and between **BNSF Railway Company**, a Delaware corporation ("Lessor") and _____, a(n) _____ ("Lessee"). In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms not defined herein shall have the meaning assigned to such terms in the Lease.

In the event Lessee uses one or more general contractors or subcontractors ("Contractor(s)") for any improvements, alterations, build out, finish out, or other similar work on the Premises ("Work"), Lessee agrees to and accepts the following:

1. Prior to performing any Work, Lessee shall obtain Lessor's approval of each Contractor and any Work to be performed by such Contractor shall be performed pursuant to a written contract between Lessee and the Contractor ("Work Contract") approved in advance by Lessor.
2. Prior to commencing any Work, Lessee shall submit for Lessor's review and approval Lessee's plans, specifications and/or drawings for such Work (collectively, "Plans") in accordance with the procedure set forth in the Lease.
3. All Work must be performed at Lessee's sole cost and expense and in accordance with the Plans which have previously been approved by Lessor.
4. Lessee shall cause its Contractors to meet all insurance and indemnification requirements required of Lessee under the Lease and shall obtain indemnification and insurance provisions from its Contractors in favor of Lessor and in the same form as set forth in the Lease.
5. Prior to the commencement of the Work, all required local building, fire, health and other departments must approve all Plans requiring approval by local building codes. In addition, the Work shall be performed, installed and/or constructed in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations, including without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C.A. 12101 et seq.
6. Lessee shall be responsible for obtaining all municipal and other governmental licenses or permits for the Work with copies furnished to Lessor prior to commencement of any construction.
7. Lessee shall furnish Lessor, for Lessor's approval, a copy of its schedule of the Work. Lessee shall perform the Work in accordance with the schedule approved by Lessor, and any changes in such schedule must be approved by Lessor in writing in advance.
8. Notwithstanding the status of the completion of the Work, Lessee's obligation for payment of Base Rent and other amounts due under the Lease shall commence on the Commencement Date provided in the Lease. Notwithstanding anything herein to the contrary, Lessor may, in Lessor's sole discretion, permit Lessee and Lessee's Contractors to enter the Premises prior to the Commencement Date in order to commence Work; provided, however, that Lessee agrees that such early entry or occupation of the Premises shall be governed by all of the terms and conditions of the Lease and this Agreement (including the insurance and indemnity requirements therein), as such terms and conditions are more specifically set forth in the Lease and this Agreement.

9. During construction, Lessor reserves the right to inspect the Work at any time upon reasonable notice to Lessee.

10. Lessee's Contractors shall keep the Premises reasonably clean at all times during the performance of the Work.

11. All Work must be performed in a good and workmanlike manner, free from defects in materials and workmanship.

12. If any materialman's, mechanic's, laborer's or any other liens for any work claimed to have been undertaken for Lessee or at Lessee's request is filed against the Premises, Lessee shall indemnify, defend and hold harmless Lessor from any such liens filed during the term of the Lease and shall, at Lessee's own expense, cause all such liens to be removed within ten (10) days after written notice from Lessor to Lessee of the filing thereof.

13. Lessee must obtain Lessor's reasonable approval that the Work has been completed in substantial accordance with the approved plans and specifications. Lessor shall receive copies of all Certificates of Occupancy and as-built drawings (electrical, mechanical, fire and architectural) prior to approving the Work.

14. All guarantees and warranties provided by Lessee's Contractors shall be issued to Lessee and, for Work which is or will at the termination of this Lease be Lessor's property, also to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

LESSOR:

BNSF Railway Company

By: _____

Name: _____

Title: _____

LESSEE:

By: _____

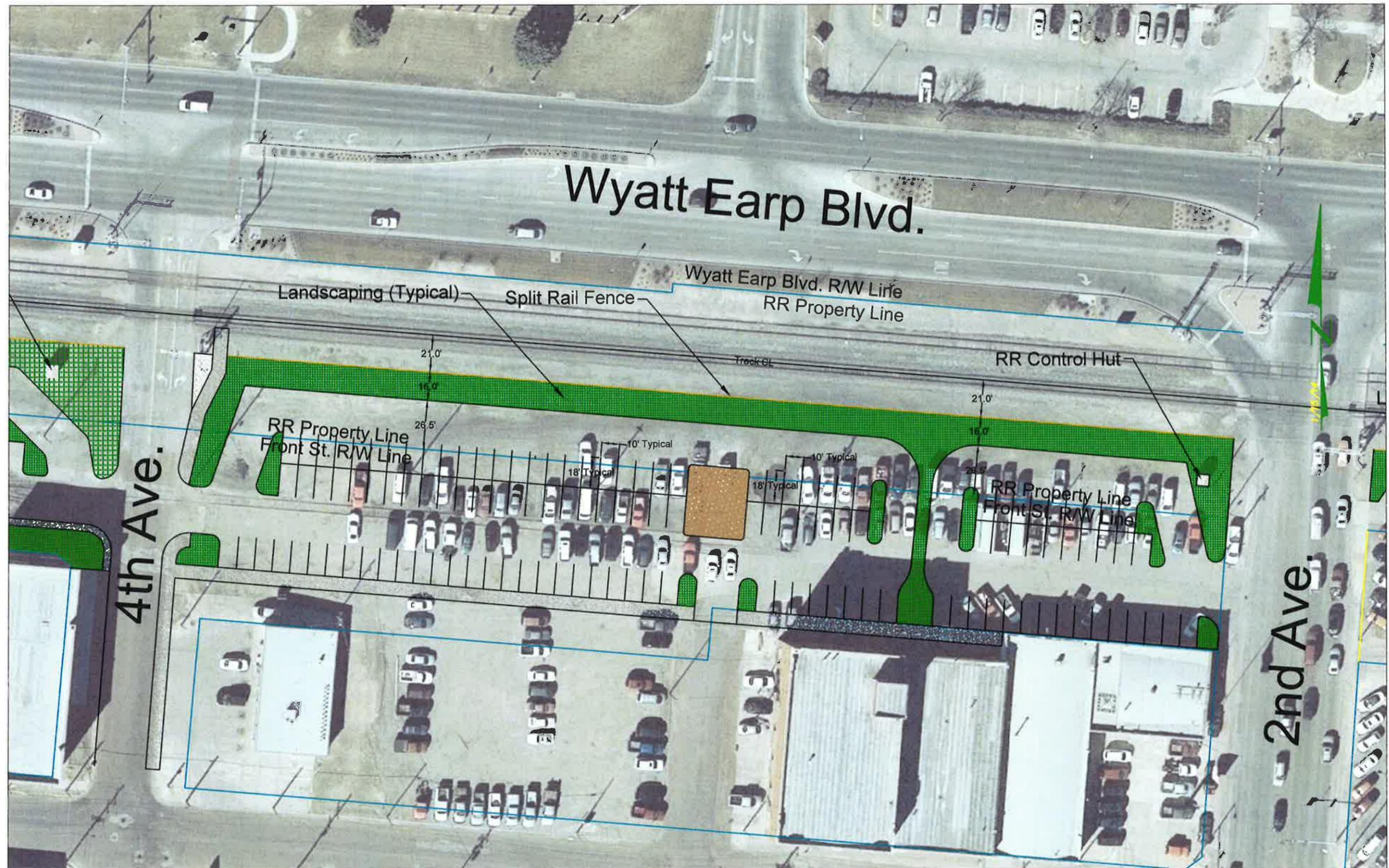
Name: _____

Title: _____

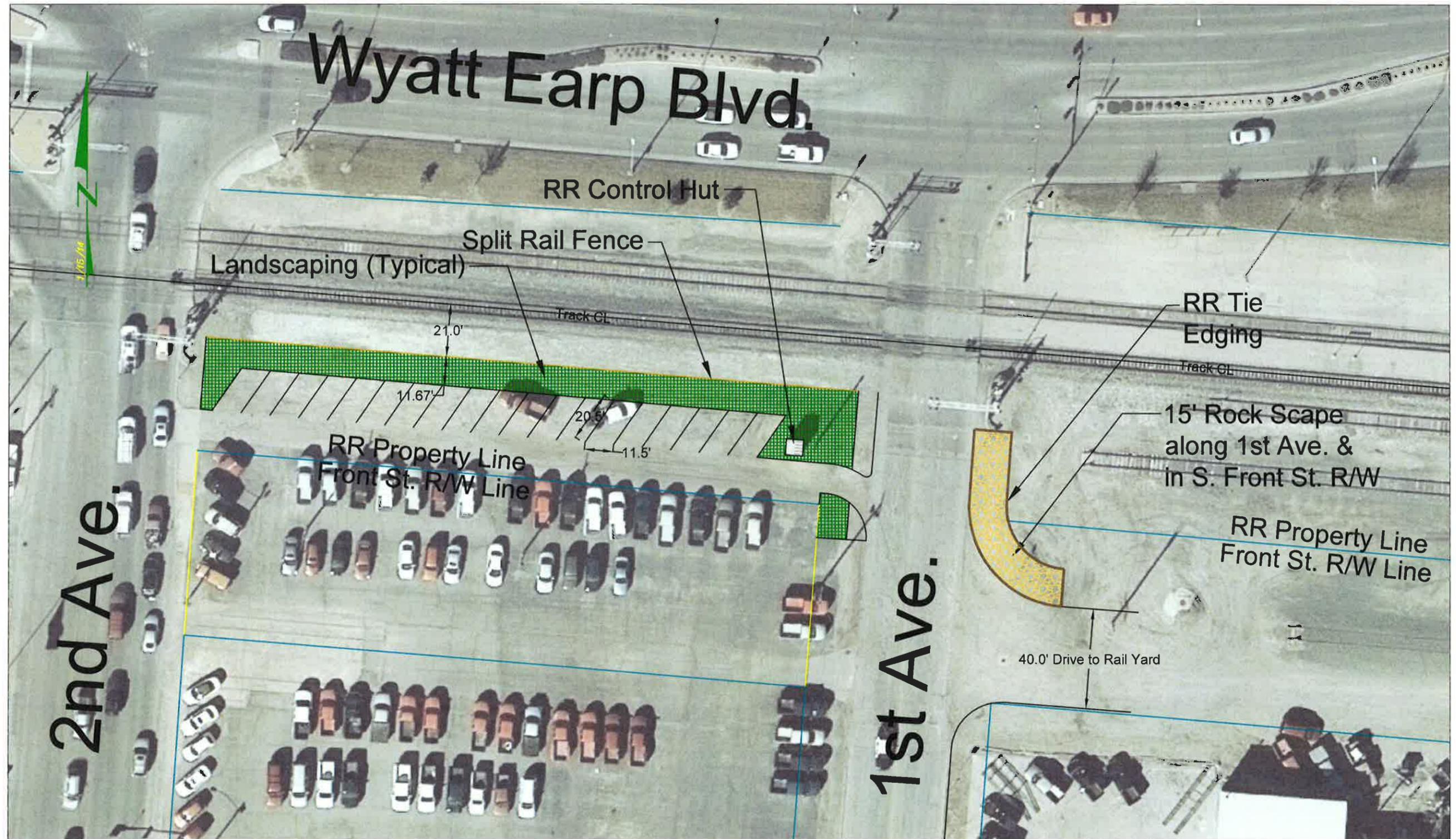
Railroad Lease Request - Parking Lot & Landscaping



Railroad Lease Request - Parking Lot & Landscaping



Railroad Lease Request - Parking Lot & Landscaping



Railroad Lease Request - Parking Lot & Landscaping



Memorandum

*To: City Manager
City Commissioners*
*From: Ray Slattery, P.E. 
Director of Engineering Services*
Date: March 12, 2015
*Subject: Change Order 4 for Trail Street
Reconstruction- 2nd Ave. to 14th Ave.
(ST 1203)*
Agenda Item: New Business

Recommendation: Approve the Change Order #4 of the Trail St. Reconstruction Project in the total amount of \$28,396.55.

Background: As part of the Trail St. Reconstruction Project, Landscape Islands were designed to be placed at the 3rd Ave., 4th Ave., 11th Ave. and 14th Ave. intersections within the brick inlay area. The openings for the landscape islands have been completed at the 3rd Ave. and 4th Ave. Since that time, there have been numerous vehicles run over or even through the island openings. The bricks were just placed on a thin sand base and held in place by landscape edging. Of course the weight of the vehicles have displaced the bricks. Because of this City staff and the design firm have an alternate design that should eliminate the possibility of the bricks being displaced. A 4" concrete base will be placed under the bricks, a concrete curb will be installed around the landscape opening to hold the bricks, and the landscape opening will be moved further from the street.

Justification: These changes will eliminate future problems and maintenance issues.

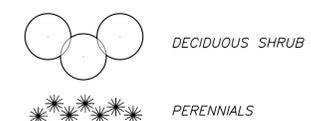
Financial Considerations: The cost of this Change Order is \$28,396.55. The project came in roughly \$400,000 under the Engineer's Estimate and well below the budgetted amount so money is available for these Change Orders.

Purpose/Mission: The completion of this project will ensure the safety of our citizens, maintain our infrastructure in an acceptable condition, and extend the life of this important roadway.

Legal Considerations: By approving the Change Order with Smoky Hill, LLC, the City will be responsible to make payments to Smoky Hill, LLC, for the completed work.

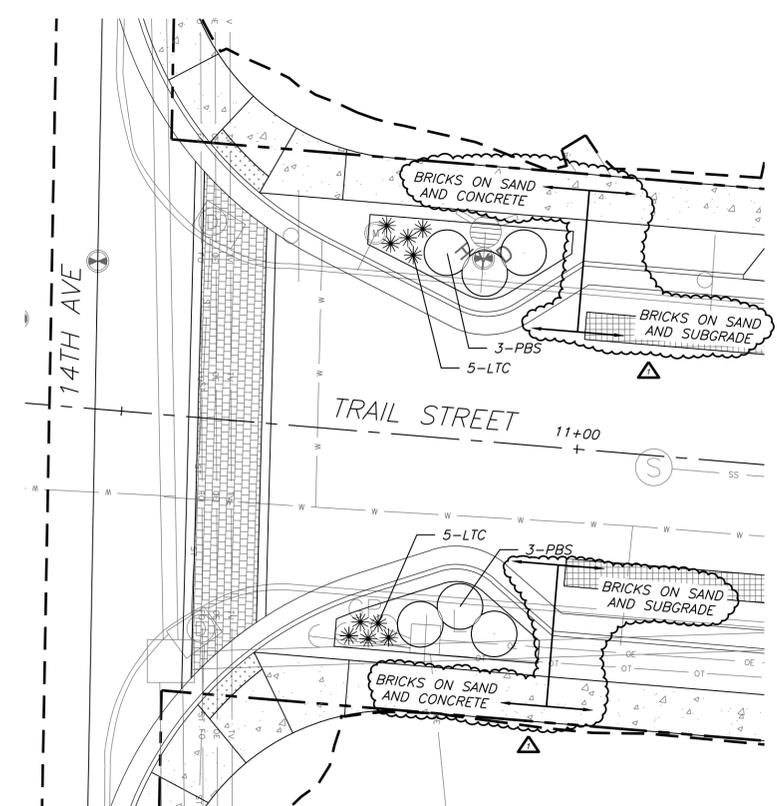
Attachments: Change Order #4 and Island Landscape Details

LEGEND

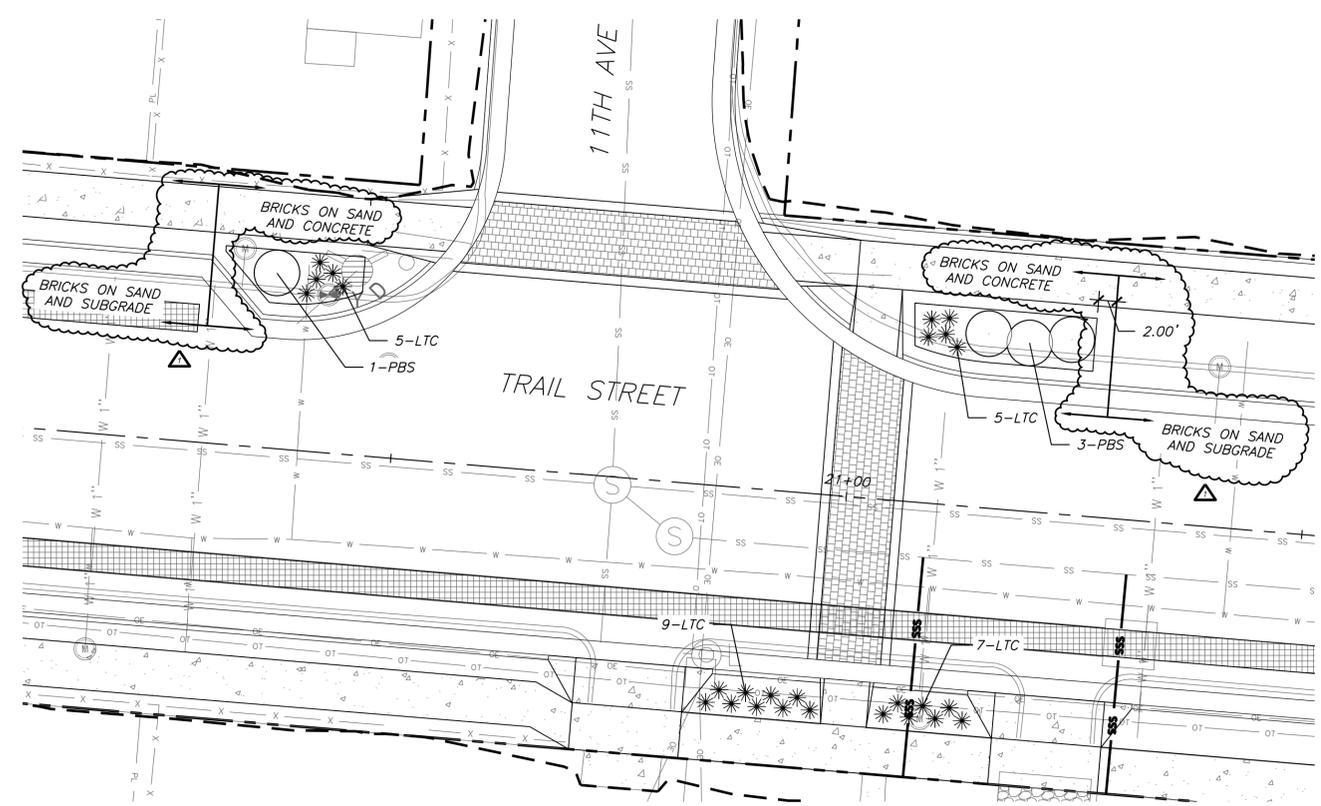


PLANT LIST

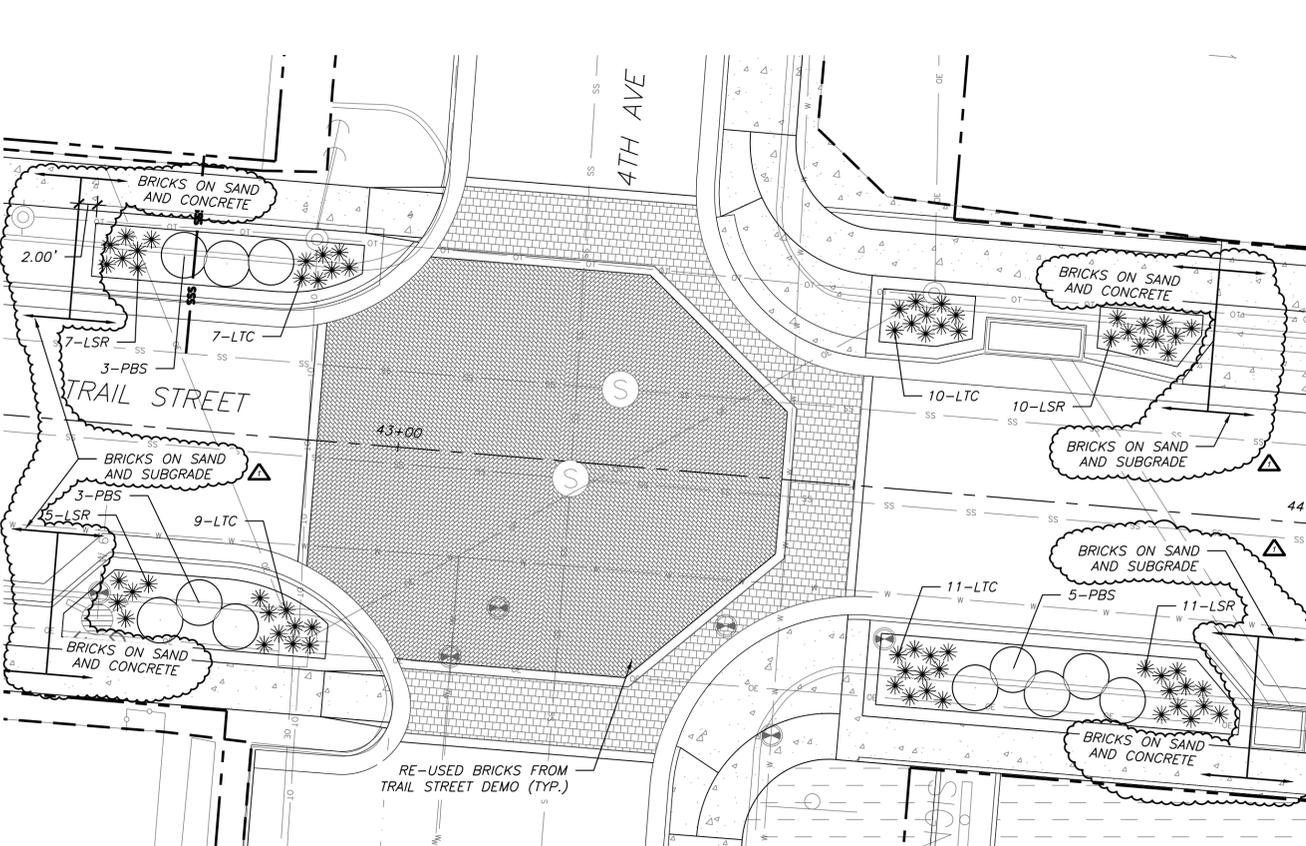
DECIDUOUS SHRUBS			
34	PBS	PAWNEE BUTTES SAND CHERRY <i>Prunus besseyi</i> 'Pawnee Buttes'	5 GAL. 18"-24" SPREAD
PERENNIALS			
33	LSR	LITTLE SPIRE RUSSIAN SAGE <i>Perovskia arcticifolia</i> 'Little Spire'	1 GAL. ESTABLISHED
73	LTC	LITTLE TRUDY CATMINT <i>Nepeta x 'Little Trudy'</i>	1 GAL. ESTABLISHED



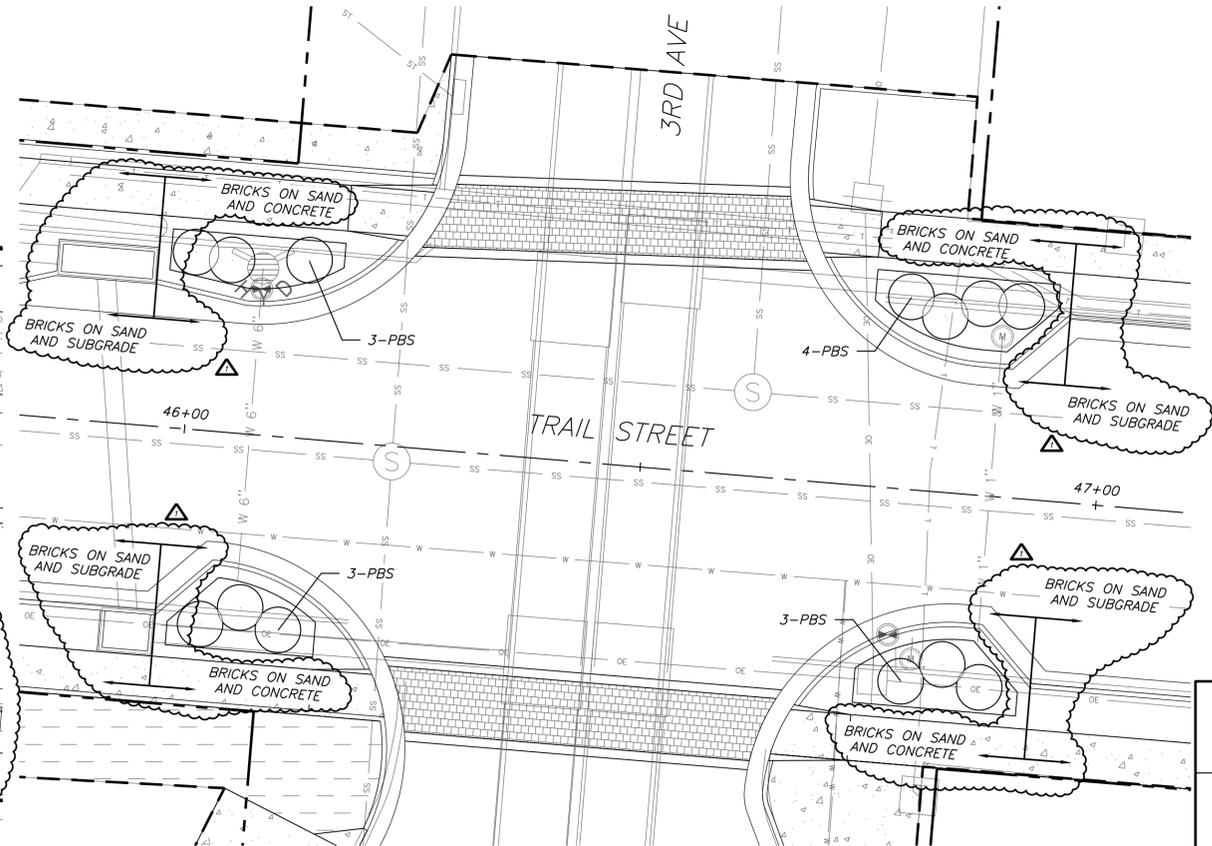
14TH AVE & TRAIL ST LANDSCAPE
SCALE: 1" = 10'-0"



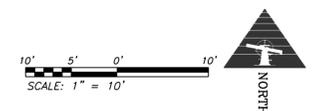
11TH AVE & TRAIL ST LANDSCAPE
SCALE: 1" = 10'-0"



4TH AVE & TRAIL ST LANDSCAPE
SCALE: 1" = 10'-0"



3RD AVE & TRAIL ST LANDSCAPE
SCALE: 1" = 10'-0"



REVISIONS:
▲ BRICK AROUND PLANTERS

ISSUED: 02/12/15



SMH
CONSULTANTS

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DODGE CITY

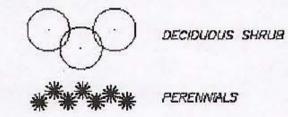
TRAIL STREET
LANDSCAPE PLAN



DATE: 12/02/13
W.O.: 3037
89 OF 128

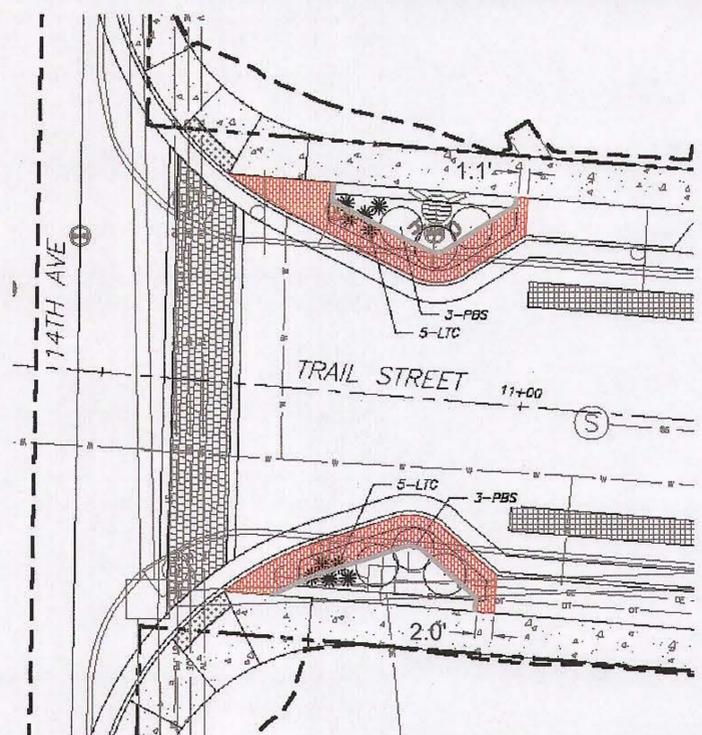
STATE	PROJECT NO.	YEAR	SHEET NO.	TOTAL SHEETS
KANSAS	Trail Street Project Number: ST1203	2013	89	128

LEGEND

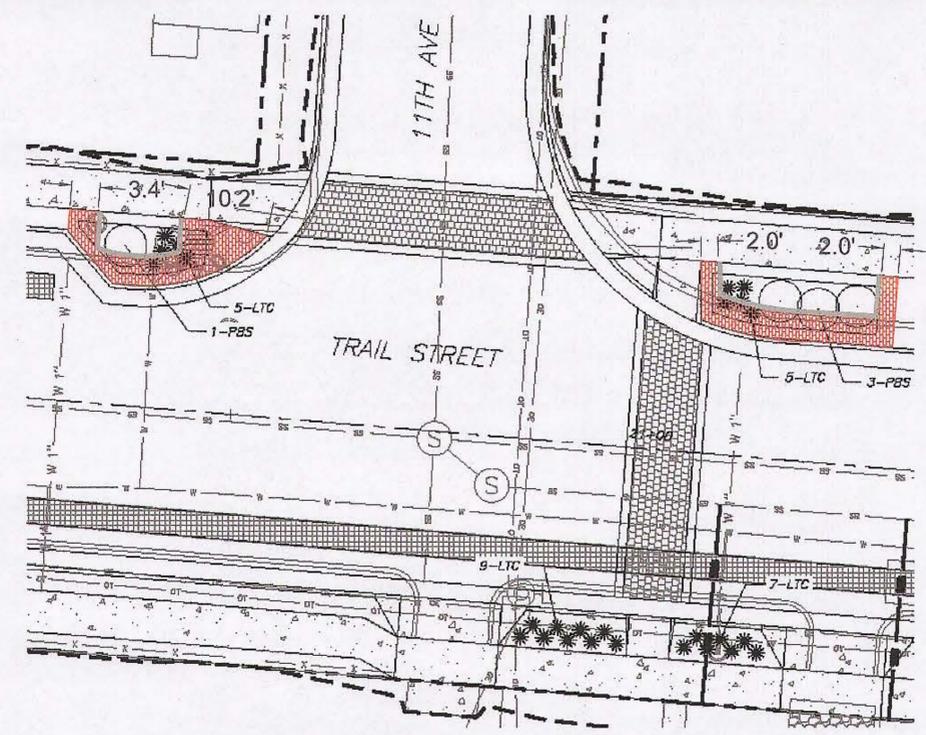


PLANT LIST

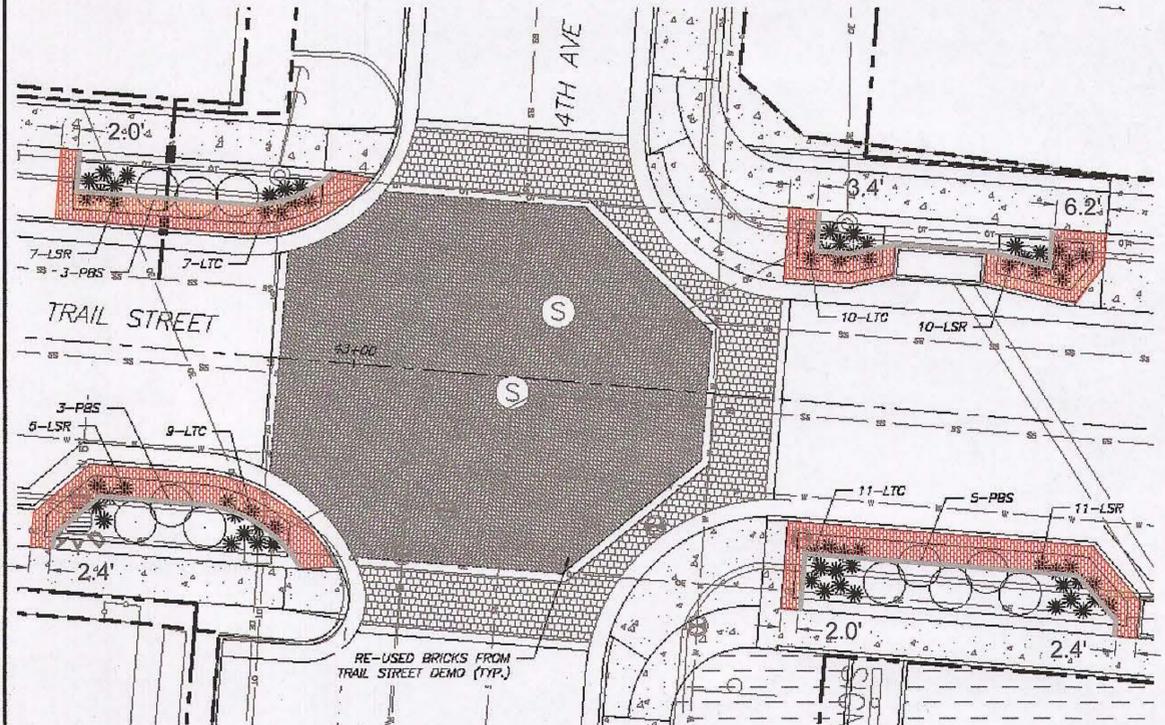
DECIDUOUS SHRUBS		
34	PBS PAWNEE BUTTES SAND CHERRY <i>Prunus besseyi</i> 'Pawnee Buttes'	5 GAL 18"-24" SPREAD
PERENNIALS		
33	LSR LITTLE SPIRE RUSSIAN SAGE <i>Perovskia atriplicifolia</i> 'Little Spire'	1 GAL ESTABLISHED
73	LTC LITTLE TRUDY CATMINT <i>Nepeta x 'Little Trudy'</i>	1 GAL ESTABLISHED



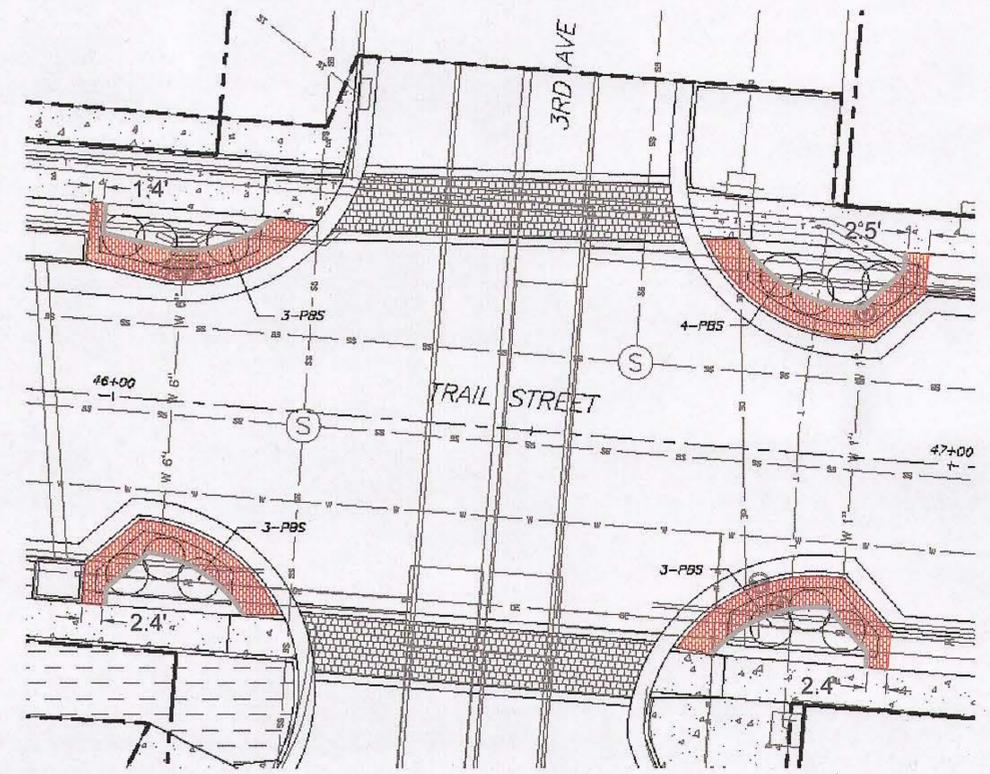
14TH AVE & TRAIL ST LANDSCAPE
SCALE: 1" = 10'-0"



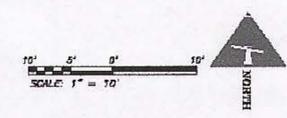
11TH AVE & TRAIL ST LANDSCAPE
SCALE: 1" = 10'-0"



4TH AVE & TRAIL ST LANDSCAPE
SCALE: 1" = 10'-0"



3RD AVE & TRAIL ST LANDSCAPE
SCALE: 1" = 10'-0"



	CITY OF DODGE CITY
	TRAIL STREET LANDSCAPE PLAN
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