

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

Tuesday, September 5, 2017

7:00 p.m.

MEETING #5075

## **CALL TO ORDER**

## **ROLL CALL**

**INVOCATION BY** Pastor Kirk Larson, Grace Community Church

## **PLEDGE OF ALLEGIANCE**

## **PETITIONS & PROCLAMATIONS**

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

Presentation to Nancy Trauer

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, August 21, 2017;
2. Appropriation Ordinance No. 17, September 5, 2017;
3. Cereal Malt Beverage License:
  - a. Boot Hill Museum, 500 W. Wyatt Earp Blvd.
4. Approval of Change Order #1 for Central Avenue Improvements-Phase 2.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No 3674:** An Ordinance Vacating a Portion of Robin Road Street Right-of-Way from the Eastern Right-of-Way Line of Roger Drive, as Platted, to its Eastern Terminus, or Rolliedee Hills Subdivision. Report by Project Development Coordinator/Assistant to the City Manager, Melissa McCoy.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. Approval of Change Order #1 of 4<sup>th</sup> Avenue Reconstruction-Phase 2. Report by Director of Engineering, Ray Slattery.
2. Approval of Agreement with Weaver & Tidwell, LLP to provide Consulting Services Related to registration, reporting, and compliance with the EPA Renewable Fuel Standard Program, as well as all facets of fuels compliance. Report by City Attorney, Bradley C. Ralph.

## **OTHER BUSINESS**

## **ADJOURNMENT**

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

Monday, August 21, 2017

7:00 p.m.

MEETING #5074

## **CALL TO ORDER**

**ROLL CALL:** Mayor Rick Sowers, Commissioners Kent Smoll, Jan Scoggins and Brian Delzeit. Commissioner Joyce Warshaw was reported absent.

**INVOCATION** by Pastor Dusty Cookson of First Christian Church

## **PLEDGE OF ALLEGIANCE**

## **PETITIONS & PROCLAMATIONS**

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

## **CONSENT CALENDAR**

1. Approval of City Commission Work Session Minutes, August 7, 2017;
2. Approval of City Commission Meeting Minutes, August 7, 2017;
3. Appropriation Ordinance No. 16, August 21, 2017;
4. Cereal Malt Beverage License:
  - a. Panaderia La Tapatia, 614 E. Wyatt Earp Blvd.
  - b. Dillon Stores, 1700 N. 14<sup>th</sup> Avenue.
5. Approval of Proposal from Diamond Roofing for the Roof on the Process Building at the North Waste Water Treatment Plant.

Commissioner Kent Smoll moved to approve the Consent Calendar as presented.

Commissioner Jan Scoggins seconded the motion. The motion carried 4-0.

## **ORDINANCES & RESOLUTIONS**

**Resolution No. 2017-25:** A Resolution Making Certain Findings and Determinations as to the Need for Housing Within the City of Dodge City, Kansas and Setting Forth the Legal Description of Real Property Proposed to be Designated as a Rural Housing Incentive District Within the City (Church Subdivision) was approved on a motion by Commissioner Jan Scoggins. Commissioner Brian Delzeit seconded the motion. The motion carried 4-0.

**NEW BUSINESS**

1. Commissioner Brian Delzeit moved to approve: the bid from Lewis Chevrolet in the amount of \$29,733 for a ¾ ton regular cab 2WD pickup truck for the Parks Department; the bid from Lewis Chevrolet in the amount of \$26,932 for a ¾ ton double cab pickup truck for the Construction Department; and the bid from Lopp Motors in the amount of \$23,969 for a full size long bed truck for the Cemetery Department. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.
2. Commissioner Kent Smoll moved to approve the bid from Dowling Construction in the amount of \$48,831.25 for the construction of the 2017 Curb, Gutter, and Sidewalk Program. Commissioner Jan Scoggins seconded the motion. The motion carried 4-0.
3. Commissioner Brian Delzeit moved to approve the Rural Business Development Grant Agreement from USDA Rural Development in the amount of \$76,960. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.
4. Commissioner Jan Scoggins moved to approve the quote from Gades Sales Co., Inc. in the amount of \$54,055 for the Traffic Signal Improvements. Commissioner Brian Delzeit seconded the motion. The motion carried 4-0.
5. Commissioner Jan Scoggins moved to approve the quote from Phillips Southern Electric Co. Inc. in the amount of \$73,298.65 for the Traffic Signal Improvement Installations. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

**OTHER BUSINESS**

## City Manager Cherise Tieben

- On August 23, there will be a meeting with the Mexican Consulate;
- On August 29, there will be a Police Awards Ceremony at 7:00 p.m. at the Hoover Pavilion;
- The next regular City Commission meeting will be held on Tuesday, September 5, instead of the Monday because it is Labor Day.

## Public Information Officer Jane Longmeyer

- The 911 Day of Remembrance will be held on September 11 at 7:00 p.m. at Liberty Garden. New this year will be the planting of 4 trees, being planted at the times of each of the 4 plane crashes that happened on September 11, 2001. There is a private donor for the trees.

## Commissioner Kent Smoll

- Shop local and shop often.

Commissioner Jan Scoggins

- Thanks to the Street Department for striping South Second Avenue;
- Thanked the Park Department for the second pickle ball court at the Park on Colleen Ave.

Commissioner Brian Delzeit

- Keep an eye on the United Wireless Arena Website. There are several concerts coming to the arena. A top comedian who has sold out several concerts, Tim Hawkins, will be at the arena on August 27. They just announced Winona Judd for the Christmas concert. Please look at the list of concerts, there is something for everyone.

Mayor Rick Sowers

**EXECUTIVE SESSION**

At 7:35 p.m. Commissioner Kent Smoll moved and Commissioner Jan Scoggins seconded the motion that the City Commission recess into executive session pursuant to the privileged consultation with the City's Attorney found in K.S.A. 75-4319(b)(2). The justification for closing the meeting is to discuss pending claims and possible litigation involving the City; along with advice from counsel. The open meeting will resume in the City Commission Chambers in 15 minutes at 7:50 p.m.

The City Commission will not take action upon returning to open session and prior to adjournment.

At 7:50 p.m. the City Commission reconvened to Regular Session.

**ADJOURNMENT**

Commissioner Jan Scoggins moved to adjourn the meeting. Commissioner Brian Delzeit seconded the motion. The motion carried 4-0.

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Mayor

ATTEST:

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City Clerk, Nannette Pogue

# CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

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

City or  County of \_\_\_\_\_

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

<b>SECTION 2 – APPLICANT INFORMATION</b>			
Kansas Sales Tax Registration Number (required):			
Name of Corporation <i>Boot Hill Museum, Inc.</i>		Principal Place of Business <i>Boot Hill Museum</i>	
Corporation Street Address <i>500 W. Wyatt Earp</i>		Corporation City <i>Dodge City</i>	State <i>KS</i> Zip Code <i>67801</i>
Date of Incorporation <i>1947</i>		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name		Phone No. <i>620.227.8188</i>	
Residence Street Address		City <i>Dodge City</i>	State <i>KS</i> Zip Code <i>67801</i>

<b>SECTION 3 – LICENSED PREMISE</b>			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name <i>Boot Hill Museum</i>		Name	
Business Location Address <i>500 W. Wyatt Earp</i>		Address	
City <i>Dodge City</i>	State <i>KS</i>	City	State Zip <i>KS 67801</i>
Business Phone No. <i>620.227.8188</i>		<input type="checkbox"/> Applicant owns the proposed business or special event location. <input type="checkbox"/> Applicant does not own the proposed business or event location.	
Business Location Owner Name(s)			

<b>SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK</b>			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name <i>Lara Bruhm</i>		Position <i>Director</i>	Date of Birth <i>5-1-62</i>
Residence Street Address <i>575 Annette St.</i>		City <i>Dodge City</i>	State <i>KS</i> Zip Code <i>67801</i>
Spouse Name		Position	Date of Birth
Residence Street Address		City	State Zip Code
Name		Position	Date of Birth
Residence Street Address		City	State Zip Code
Spouse Name		Position	Age
Residence Street Address		City	State Zip Code
Name		Position	Date of Birth
Residence Street Address		City	State Zip Code
Spouse Name		Position	Age
Residence Street Address		City	State Zip Code

attached

# Memorandum

*To: City Manager  
Assistant City Manager  
City Commissioners*

*From: Ray Slattery,  
Director of Engineering  
Services*

*Date: August 24, 2017*

*Subject: Central Avenue  
Improvements- Phase 2  
ST1506*

*Agenda Item: Consent Calendar*

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**Recommendation:** Approve change order 1 of Central Avenue Improvements-Phase 2

**Background:** Central Avenue Improvements-Phase 2 was approved by City Manager on September 6, 2016

**Justification:** Unclassified Excavation – The additional 517 C.Y. was due to a wet area found once the street and driveway was removed. The contractor removed this material to find a stable base. Crushed concrete was used to fill the void.

Concrete Pavement (6'')(PCC) – The deletion of 365 S.Y. of pavement represent a savings from not having to remove as replace as much pavement in the business parking lots along the project and converting one drive to 7'' pavement.

Concrete Pavement (7'')(PCC)(NRDJ) – The addition of 47 S.Y. represents changing a drive to 7'' concrete pavement.

Concrete Pavement (8'')(PCC)(NRDJ) – The addition of 12 S.Y. represents actual field measurements of the project. The limits of the project were extended slightly to provide a better transition between the new pavement and existing asphalt.

Curb & Gutter, Combined (30'') – The addition of 412 L.F. represents actual field measurements. Curb & Gutter was placed where indicated on the plans, a new island was also constructed, and maybe a few additional feet at the limits of construction.

Concrete Flume – the deletion of 5 S.Y. was due to the fact that the contractor did not have to remove as much of the existing flume as originally shown in the design.

Sanitary Sewer Encasement (24"x24") – The existing infrastructure was such that not all of the encasement was required. This resulted in a decrease of 78 L.F. of this item.

Sod – the additional 169 S.Y. was a result of an additional island being constructed in the project and some areas being larger than calculated in design.

Installation of Tuff Curb & Tubular Makers - This item was added to the project to prevent vehicles leaving the Gibson mall from the Right-In/right-Out drive trying to make left turns on to Central Ave. and jumping the drive island and having conflicting movements in the left turn land of Central Ave. for San Jose Dr.

Sub-Grade Repair – this item was removed from this portion of the contract because no unsuitable material was found during excavation.

Concrete Pavement (7")(PCC)(NRDJ) – The addition of 9 S.Y. represents actual field measurements. The limits of the project were extended slightly to provide a better transition between the new pavement and existing asphalt.

**Financial Considerations:** Change Order 1 is for an increase of \$5,161.49

**Purpose/Mission:** To provide a safe passage for the community to travel on.

**Legal Considerations:** N/A

**Attachments:** Change Order 1 and Change Order 1 description



## CHANGE ORDER #1

### Central Ave. Improvements – Phase 2 ST 1506

#### ITEM:

#### DESCRIPTION:

**Unclassified Excavation** – The additional 517 C.Y. was due to a wet area found once the street and driveway was removed. The contractor removed this material to find a stable base. Crushed concrete was used to fill the void.

**Concrete Pavement (6")(PCC)** – The deletion of 365 S.Y. of pavement represent a savings from not having to remove as replace as much pavement in the business parking lots along the project and converting one drive to 7" pavement.

**Concrete Pavement (7")(PCC)(NRDJ)** – The addition of 47 S.Y. represents changing a drive to 7" concrete pavement.

**Concrete Pavement (8")(PCC)(NRDJ)** – The addition of 12 S.Y. represents actual field measurements of the project. The limits of the project were extended slightly to provide a better transition between the new pavement and existing asphalt.

**Curb & Gutter, Combined (30")** – The addition of 412 L.F. represents actual field measurements. Curb & Gutter was placed where indicated on the plans, a new island was also constructed, and maybe a few additional feet at the limits of construction.

**Concrete Flume** – the deletion of 5 S.Y. was due to the fact that the contractor did not have to remove as much of the existing flume as originally shown in the design.

**Sanitary Sewer Encasement (24"x24")** – The existing infrastructure was such that not all of the encasement was required. This resulted in a decrease of 78 L.F. of this item.

**Sod** – the additional 169 S.Y. was a result of an additional island being constructed in the project and some areas being larger than calculated in design.

**Installation of Tuff Curb & Tubular Makers** - This item was added to the project to prevent vehicles leaving the Gibson mall from the Right-In/right-Out drive trying to make left turns on to Central Ave. and jumping the drive island and having conflicting movements in the left turn land of Central Ave. for San Jose Dr.

**Sub-Grade Repair** – this item was removed from this portion of the contract because no unsuitable material was found during excavation.

**Concrete Pavement (7")(PCC)(NRDJ)** – The addition of 9 S.Y. represents actual field measurements. The limits of the project were extended slightly to provide a better transition between the new pavement and existing asphalt.

# *Memorandum*

*To: City Manager  
City Commissioners*

*From: Melissa McCoy*

*Date: September 5, 2017*

*Subject: Vacation of Right-of-Way  
Ordinance No. 3674*

*Agenda Item: Ordinances and Resolutions*

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**Recommendation:** City staff recommends approval of this vacation ordinance.

**Background:** The applicant, Lee Cole, requested the vacation of the eastern most portion of Robin Road Right-of-Way to allow for residential development. This portion of Robin Road dead ends into a Summerlon retention pond.

**Justification:** The City has no plans to extend Robin Road in this area. All of the utility companies have been notified and they have no objection to this easement being vacated.

**Financial Considerations:** None

**Purpose/Mission:**

**Legal Considerations:** None

**Attachments:** Petition, Vacation Ordinance and Map

ORDINANCE NO. 3674

AN ORDINANCE VACATING A PORTION OF ROBIN ROAD STREET RIGHT-OF-WAY FROM THE EASTERN RIGHT-OF-WAY LINE OF ROGER DRIVE, AS PLATTED, TO ITS EASTERN TERMINUS, OF ROLLIEDEE HILLS SUBDIVISION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY:

SECTION 1: A tract of land located South of Lot 22, Block 12, Rolliedee Hills Subdivision of Dodge City, Ford County, Kansas, being more particularly described as follows: Beginning at a found 4" by 4" Brezina concrete monument on the South side of Robin Road which is the point of a curve to the left having a radius of 763.33 feet from which the radius point bears South 23°52'58" East, thence right along said curve for an arc length of 158.48 feet, said curve having a chord bearing of North 72°03'55" East for 158.20 feet; thence North 00°49'20" East for 66.05 feet; thence South 72°03'55" West for 27.61 feet; thence to the beginning point of a curve to the right having a radius of 703.33 feet from which the radius point bears North 25°00'31" West, thence right along said curve for an arc length of 145.50 feet, said curve having a chord bearing of South 70°55'04" West for 145.24 feet; thence South 11°36'02" East for 60.00 feet, to the True Point of Beginning. Said right-of-way contains 10,200 square feet, more or less.

SECTION 2: This vacation is granted pursuant to Section 12-504 K.S.A. and is made subject to the existing rights of all present public or private utilities or uses located under, on, upon or over said property.

SECTION 3: No protest to the vacation has been filed, as provided by law.

SECTION 4: This ordinance shall take effect, from and following its publication in the official paper, as provided by law.

SECTION 5: The City Clerk shall file a certified copy of this ordinance in the offices of the County Register of Deeds and County Clerk for Ford County, Kansas.

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR SESSION,  
AND APPROVED BY THE MAYOR, THIS FIFTH DAY OF SEPTEMBER, 2017.

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RICK SOWERS, MAYOR

ATTEST:

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NANNETTE POGUE, CITY CLERK

Before the Commission of The City of Dodge City, Kansas

In the Matter of the  
Application for the  
Vacation of a Platted Right-of-Way

Requested for Vacation of a Platted Street Right of Way

Come now Lee Cole, owner of a tract more fully \_\_\_\_\_

lot 22 Block 12 Rollie Dee Hills Dodge City, Kansas

Addition (numeric address), Dodge City, Kansas, and pursuant to the provisions of

K.S.A. 12-504 requests that the City proceed, pursuant to the provisions of said statute,

to cause a vacation of the (described property to be vacated)

(see attached)  
lot 22 Block 12 Rollie Dee Hills, Dodge City, Kansas a  
subdivision of part of the North east Quarter of Section 24 Township  
26 South, Range 25 west of The 6th P.M., Ford County Kansas

The vacation of such portion of the platted Street Right of Way is necessary for  
the petitioner to

to fully develop the lot

Respectfully Submitted,

Lee Cole

Name typed, petitioner

6/4/17

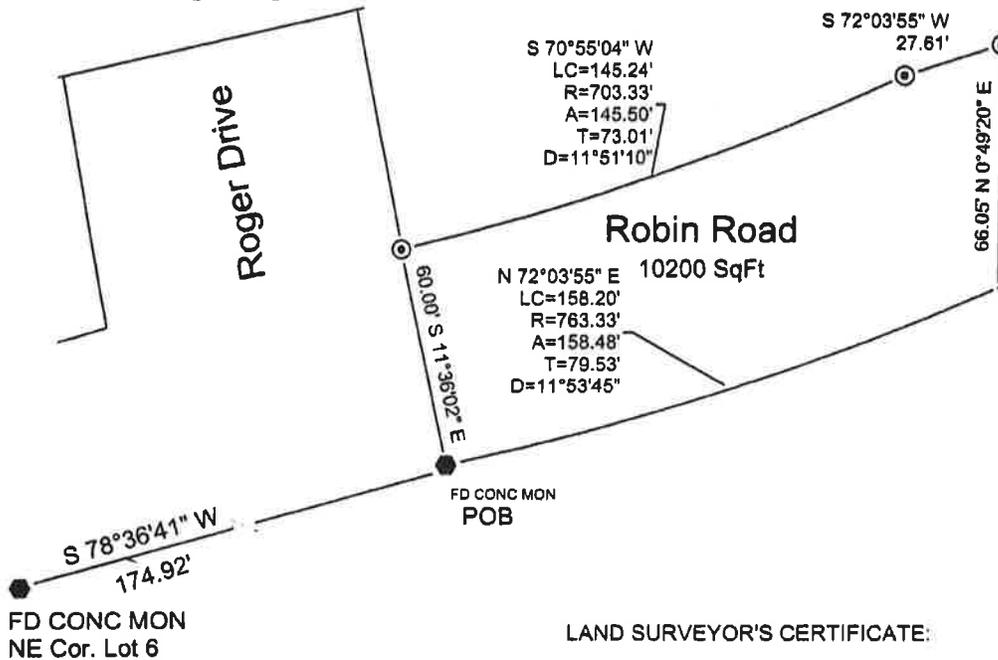
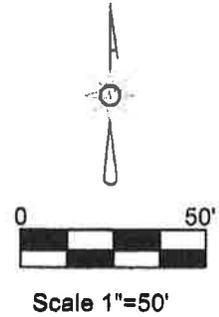
Date

Lee Cole

Signature

# Survey for Vacation of Robin Road East of Roger Drive

Robin Road Vacation Legal Description  
 Beginning at a found 4" by 4" Brezina concrete monument on the South side of Robin Road which is the point of a curve to the left having a radius of 763.33 from which the radius point bears South 23° 52' 58" East, thence right along said curve for an arc length of 158.48, said curve having a chord bearing of North 72° 03' 55" East for 158.20; thence North 00° 49' 20" East for 66.05 ; thence South 72° 03' 55" West for 27.61 ; thence to the beginning point of a curve to the right having a radius of 703.33 from which the radius point bears North 25° 00' 31" West, thence right along said curve for an arc length of 145.50, said curve having a chord bearing of South 70° 55' 04" West for 145.24; thence South 11° 36' 02" East for 60.00 , to the True Point of Beginning.



- ⊙ Iron Pipe will be set When Lot Split
- Found pin

**LAND SURVEYOR'S CERTIFICATE:**

I, Edward W. Elam, a Licensed Surveyor in the State of Kansas, hereby CERTIFY that I have personally surveyed the tract as shown and that the property corners have not been set until lot split is completed. Building setbacks, easements and improvements are not shown. Field completion date June 20, 2017.

Edward W. Elam, P.L.S. (Kansas P.L.S. No. 684)  
 11161 Quaker Road, Dodge City, KS 67801  
 620-39-9707



**Proposed Vacation**

Plat Layer	
	BLOCK
	LOT
	EASEMENT
	SECTION

# Memorandum

*To: City Manager  
Assistant City Manager  
City Commissioners*

*From: Ray Slattery,   
Director of Engineering  
Services*

*Date: August 25, 2017*

*Subject: 4<sup>th</sup> Ave. Reconstruction-  
Phase 2 ST1507*

*Agenda Item: New Business*

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**Recommendation:** Approve change order #1 of 4<sup>th</sup> Ave. Reconstruction-Phase 2.

**Background:** 4<sup>th</sup> Ave. Reconstruction-Phase 2 was approved by City Manager on February 6, 2017.

**Justification:** Unclassified Excavation (Inc. Pavement Removal) – The additional 172 S.Y. was necessary to remove some existing parking along the new hotel site to better meet grades. Originally this parking was to be removed, but just prior to the project being bid it was decided to leave the parking since parking in this area can be limited and it was hopeful that more parking would be needed as the Heritage Area see more development.

Removal of Structures – The two existing inlet boxes were to remain and new Pre-cast lids be installed. Once the existing lids were removed it was determined the existing inlets walls had deteriorated beyond repair and totally new inlets needed to be constructed. The addition of two items to this bid item represents the removal of the inlets.

Embankment – This item was removed from the contract and was not needed.

6" Sub-Grade Compaction – The addition of 172 S.Y. represents the existing parking area that had to be removed and reconstructed. The existing sub-grade had to be lowered and compacted.

6” PCC Pavement – The additional 172 S.Y. of pavement represents the existing parking area that was removed and replaced.

30” Valley Gutter – The additional 4 L.F. is from actual as-built measurements. The west curb line had to be adjusted a bit because of the parking issue.

30” Standard Curb & Gutter - The additional 3 L.F. is from actual as-built measurements. The west curb line had to be adjusted a bit because of the parking issue.

30” Reverse Curb & Gutter - The additional 8 L.F. is from actual as-built measurements.

6” Barrier Curb – This item was removed from the Contract and was not needed.

Cast In-Place Inlet Box – the addition of this item was to replace the two existing inlets that had to be replaced.

4” Sidewalk w/6x6W2.9xW2.9 WWM – This item was added to the project to complete the walk along the west side of 4th Ave. in front of the hotel. This item added 266 S.Y. of 8’ sidewalk to the project. This sidewalk was outlined in the Heritage District Plan.

Add 6x6W2.9xW2.9 WWM to the 6” PCC Pavement – This item was added to project to reinforce the pavement of the parking area. It was decided that reinforcement was needed because we could not guarantee the type of vehicles that could park on the pavement. There may be large truck traffic parking on the pavement. With that in mind we felt it was good insurance to reinforce the concrete.

Deduct Wide Sawcut from Pavement – With the additions to the project, staff and the contractor looked for anyway to save on the project. It was decided to delete the wide sawcutting of the joints. The initial sawcut joints were sealed.

**Financial Considerations:** Change Order 1 is for an increase of \$29,844.36

**Purpose/Mission:** To provide a safe passage for the community to travel on.

**Legal Considerations:** N/A

**Attachments:** Change Order 1 and Change Order 1 description



## CHANGE ORDER #1

### 4<sup>th</sup> Ave. Reconstruction (Old Maple St. to Wright Park) ST 1507

#### ITEM:

#### DESCRIPTION:

**Unclassified Excavation (Inc. Pavement Removal)** – The additional 172 S.Y. was necessary to remove some existing parking along the new hotel site to better meet grades. Originally this parking was to be removed, but just prior to the project being bid it was decided to leave the parking since parking in this area can be limited and it was hopeful that more parking would be needed as the Heritage Area see more development.

**Removal of Structures** – The two existing inlet boxes were to remain and new Pre-cast lids be installed. Once the existing lids were removed it was determined the existing inlets walls had deteriorated beyond repair and totally new inlets needed to be constructed. The addition of two items to this bid item represents the removal of the inlets.

**Embankment** – This item was removed from the contract and was not needed.

**6" Sub-Grade Compaction** – The addition of 172 S.Y. represents the existing parking area that had to be removed and reconstructed. The existing sub-grade had to be lowered and compacted.

**6" PCC Pavement** – The additional 172 S.Y. of pavement represents the existing parking area that was removed and replace.

**30" Valley Gutter** – The additional 4 L.F. is from actual as-built measurements. The west curb line had to be adjusted a bit because of the parking issue.

**30" Standard Curb & Gutter** - The additional 3 L.F. is from actual as-built measurements. The west curb line had to be adjusted a bit because of the parking issue.

**30" Reverse Curb & Gutter** - The additional 8 L.F. is from actual as-built measurements.

**6" Barrier Curb** – This item was removed from the Contract and was not needed.

**Cast In-Place Inlet Box** – the addition of this item was to replace the two existing inlets that had to be replaced.

**4" Sidewalk w/6x6W2.9xW2.9 WWM** – This item was added to the project to complete the walk along the west side of 4<sup>th</sup> Ave. in front of the hotel. This item added 266 S.Y. of 8' sidewalk to the project. This sidewalk was outlined in the Heritage District Plan.

**Add 6x6W2.9xW2.9 WWM to the 6" PCC Pavement** – This item was added to project to reinforce the pavement of the parking area. It was decided that reinforcement was needed because we could not guarantee the type of vehicles that could park on the pavement. The may be large truck traffic parking on the pavement. With that in mind we felt it was good insurance to reinforce the concrete.

**Deduct Wide Sawcut from Pavement** – With the additions to the project, staff and the contractor looked for anyway to save on the project. It was decided to delete the wide sawcutting of the joints. The initial sawcut joints were sealed.

## *Memorandum*

*To: City Commissioners  
City Manager*

*From: Brad Ralph, City Attorney*

*Date: September 5, 2017*

*Subject: Consulting Agreement for Biogas  
Facility (Weaver)*

*Agenda Item: New Business*

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**Recommendation:** Approve consulting services Agreement with Weaver & Tidwell, LLP, subject to final review of Client Service Agreement.

**Background:** As Dodge City pursues bringing its Biogas Facility online, part of the process will entail registration, reporting and regulatory reporting to the EPA. These services are necessary and have been anticipated as part of the verification process.

**Justification:** Compliance with EPA regulations are required in order to successfully market the environmental attributes related to the biogas production. Weaver will provide the necessary services to accomplish this task.

**Financial Considerations:** The consulting services will be billed at any agreed hourly rate for services actually provided.

**Purpose/Mission:** The completion of this project will enable the City to sell the upgraded biogas generated at the South WWTP for another income source to the City.

**Legal Considerations:** The City is entering into a contract with Weaver and will be bound by the terms of that contract.

**Attachments:** The Agreement with Weaver is attached.



August 23, 2017

**PRIVATE**

Mr. Brad Ralph  
Dodge City, KS  
806 N Second Ave  
Dodge City, KS 67801

Dear Mr. Ralph,

Pursuant to our recent conversation, the purpose of this letter is to outline the terms of the engagement of Weaver and Tidwell, L.L.P. (hereinafter referred to as "Weaver" or the "Firm") to provide technical support and regulatory consulting services to Dodge City, KS (hereinafter referred to as "Dodge City" or the "Company") in their role as a renewable fuels producer and marketer in the US.

**Scope of Work**

The initial scope of work will be to provide Dodge City consulting services related to registration, reporting and compliance with the US Environmental Protection Agency's Renewable Fuel Standard ("RFS") program, specifically related to the waste water treatment plant anaerobic digester project located in Dodge City, KS. Weaver is also available to assist the Company with all facets of fuels compliance on an ongoing basis, as requested by you, including:

- Advance notice of new regulations and how they may impact your business;
- Registrations with federal and state agencies;
- Assistance with reporting related to various fuels programs;
- EPA Moderated Transaction System ("EMTS") account administration, related to RINs;
- Conducting training sessions related to various fuels programs; and
- Other accounting and consulting services.

Weaver is well known to the industry and to the EPA. We are members of the American Fuel & Petrochemical Manufacturers, and are involved with the regulatory process through our active participation in their Fuels Advisory Subcommittee. We are also members of the Advanced Biofuels Association and the Renewable Natural Gas Coalition.

This agreement is exclusive of any other agreement related to attestation or QAP engagements, in association with the EPA's Code of Federal Regulations, Title 40, Part 80. The Company is responsible for evaluating the adequacy and results of the services performed under this agreement, and accepting responsibility for such services. Services performed under this agreement shall be in accordance with applicable professional standards, including the Statements on Standards for Consulting Services issued by the American Institute of Certified Public Accountants.

Mr. Brad Ralph  
Dodge City, KS  
August 23, 2017

Page 2

This agreement shall be evergreen until and unless cancelled by either party on 30 days written notice. The commercial terms of our agreement shall be as described in the attached Client Service Agreement, which includes an agreement regarding Confidentiality.

Mr. Greg Staiti is the engagement partner and is responsible for supervising the engagement on behalf of Weaver and Tidwell, L.L.P.

### **Professional Fees**

Our philosophy is to provide professional services of the highest quality at a reasonable fee. Our clients are entitled and should expect us to perform our engagements in an effective and efficient manner. We believe satisfactory arrangements with respect to fees are in the best interests of our client, as well as ourselves.

The cost for doing this work will be billable by the hour, and the hourly rates for the employees involved in doing this work are shown in the fee schedule below. These rates are subject to periodic review and may change in the event that our regular billing rates are increased. No work will be performed without your approval and cost estimates will be provided for any specific project work.

<b>Level</b>	<b>Rate Per Hour</b>
Partner	\$450
Director	\$390
Senior Manager	\$350
Manager	\$245
Senior Associate	\$200
Associate	\$170

Direct expenses related to travel, reproduction services, drafting, postage and shipping, laboratory testing, and other such vendor services, supplies, or equipment will be billed at our invoice cost. Time required for domestic travel is invoiced at half of standard fee rates. Time required for international travel is invoiced at standard fee rates. Consultants will use travel time as productively as possible to client's benefit.

We will invoice monthly for fees and expenses, and payment will be due upon receipt. For bills not paid within 60 days of the billing date, a late charge will be added to the outstanding balance. The late charge will be assessed at 0.5% on the unpaid balance per month. It is understood that neither our fees nor the payment thereof will be contingent upon the results of our services.

Mr. Brad Ralph  
Dodge City, KS  
August 23, 2017

Page 3

**Other**

In the unlikely event that circumstances occur which we in our sole discretion believe could create a conflict with either the ethical standards of our firm or the ethical standards of our profession, we may suspend our services until a satisfactory resolution can be achieved or we may resign from the engagement. We will notify you of such conflict as soon as practicable, and will discuss with you any possible means of resolving them prior to suspending our services.

Both of us agree that any dispute between you and Weaver arising from the engagement, this agreement, or the breach of it, may, if negotiations and other discussions fail, be first submitted to mediation in accordance with the provisions of the Commercial Mediation Rules of the American Arbitration Association ("AAA") then in effect. Both of us agree to conduct any mediation in good faith and make reasonable efforts to resolve any dispute by mediation. We agree to conduct the mediation in Houston, Texas, or another mutually agreed upon location.

If any term of this agreement is declared illegal, unenforceable, or unconscionable, that term shall be severed and the remaining terms of the agreement shall remain in force. Both of us agree that the Court should modify any term declared to be illegal, unenforceable, or unconscionable in a manner that will retain the intended meaning of the term as closely as possible. If a dispute arising from the engagement or from this agreement or any term of it or any alleged breach of it is submitted to a Court for interpretation or adjudication, both of us irrevocably waive the right to trial by jury and agree that the jury waiver and provisions of this agreement regarding damages, attorneys' fees, and expenses shall be applied and enforced by the Court.

**Closing Remarks**

We would be pleased to discuss this engagement letter with you at any time. If the preceding engagement letter meets with your approval, please sign and return one copy of this letter as project authorization. We look forward to working with you on this important assignment and appreciate the opportunity to offer this engagement letter for professional services.

*Weaver and Tidwell, L.L.P.*

WEAVER AND TIDWELL, L.L.P.

Greg Staiti  
Partner, Energy Compliance  
(832) 320-3430

**ACCEPTED:**

Dodge City, KS

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

## CLIENT SERVICE AGREEMENT

### **Standard of Care**

Weaver will perform work for the Company (hereinafter referred to as "Services") utilizing reasonable care and skill. This is the sole and exclusive standard of care which will be utilized to measure performance of Services. Any and all implied warranties arising out of Services or the relationship between the Firm and the Company are hereby expressly disclaimed and negated, in particular, but not by way of limitation, no implied warranty of merchantability or fitness for a particular purpose shall apply. The Firm does not provide legal advice or services, and Company should refer to appropriate counsel for advice or services of that nature. The Firm's recommendations and conclusions will be made to the best of its knowledge and belief based on data and information made available to the Firm at the time the Services are performed, and upon a number of factors, which include but are not limited to: federal, state, and local laws, rules, codes, regulations, and ordinances, market conditions, energy costs, wage rates, and political climate. Changes in factors upon which the Services are based could affect the results. To the extent that the Firm may rely on third-party and Company information in conducting its Services, the Firm does not accept liability for inaccuracies in the information provided to the Firm.

The Services to be performed by the Firm under this Agreement are solely for the benefit of the Company. It is the intent of the Firm and the Company that there are no third-party beneficiaries to this Agreement. The Company shall not provide reports or materials to third parties who have not signed these terms and conditions. Our work product is mutually confidential unless released by the other party.

### **Limitation of Rights and Remedies**

Each of the following provisions applies, even if it results in the Firm being released in whole or in part from the consequences of its sole or concurrent negligence or other fault.

- The Firm shall not be liable for the failure to discover any condition, pursuant to the standard of care, which could not reasonably be discovered as a result of the Services provided.
- Each of Company and the Firm agree that neither shall be entitled to recover from the other for any indirect, special, or consequential damages as a result of their actions or inactions under this Agreement.
- The Firm's liability to Company for compensable damage arising from work done under this Agreement will be limited to a sum not to exceed the amount paid by client to the Firm for consulting Services directly relating to the alleged damage, excluding reimbursable expenses, with respect to Services provided under this Agreement, whether such liability is based on principles of contract law, tort law, or otherwise.
- Company will look only to the Firm's corporate entity for satisfaction of any claim or cause of action arising from the Firm's Services. In no event will the Firm's directors, officers, or employees be liable to Company for any liability, damages, expenses, or losses of any nature, caused by or resulting from the Services or use of the Firm's work product.
- The Firm shall not be liable to Company for consequences of events that are beyond the reasonable control of the Firm, including but not limited to, interference by third parties, changed conditions, labor strikes, fires, thefts, or other losses, or acts of God.

Mr. Brad Ralph  
Dodge City, KS  
August 23, 2017

Page 5

### **Demobilization Expenses**

In the event of early termination of this Agreement by Company without cause, the Firm shall discontinue its Services and shall proceed to cancel promptly all existing orders, contracts, and subcontracts insofar as such orders, contracts, or subcontracts are chargeable to the Company under this Agreement, but, in such event, the Firm shall be entitled to payment for its reasonable and necessary time and expenses incurred in demobilizing its own personnel and incurred by the Firm in canceling such orders, contracts, and subcontracts, in addition to payment for services and expenses to the date of termination.

### **Attorney's Fees and Costs**

In the event of a dispute under this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorney's fees and costs incurred in connection with such dispute.

If in the future the Firm is requested by Company to provide assistance, give testimony, review documents or the like in connection with claims, disputes, investigations or litigation involving the project or facilities to which this Agreement pertains, or the conduct of Company causes the Firm to be subpoenaed or otherwise required by law to provide testimony or produce documents in connection with investigations or litigation involving the project or facilities to which this Agreement pertains, then Company shall compensate the Firm for time (at standard hourly rates) and expenses (including reasonable and necessary attorney's fees) incurred by the Firm in connection with such activities.

### **Confidentiality**

Company may disclose to the Firm information that is deemed proprietary, confidential, or privileged. All such information shall be deemed "Confidential Information." The Firm agrees that it shall maintain such Confidential Information in confidence and will not disclose such information to a third party without the prior consent of Company except as otherwise set forth in this Contract. The Firm shall employ at least the same standard of care it uses to protect its own proprietary and confidential information of like importance. The foregoing obligations of the Firm shall not apply (and such information will not be deemed Confidential Information) to any information that: (1) is or becomes publicly known through no wrongful act or omission of the Firm; or (2) is received by the Firm from another party without similar restrictions and without breach of this Contract; or (3) is known by the Firm prior to such disclosure by Company; or (4) is at any time developed by the Firm independently without the use of the Confidential Information disclosed hereunder; or (5) the Firm consents to an injunction to prevent its disclosure or use of Confidential Information upon application by Company. The Firm may make disclosure pursuant to requirements of a governmental agency or disclosure required by operation of law, provided that the Firm shall give Company reasonable advance notice to contest such requirement of disclosure.

### **Applicable Law**

This Agreement is governed by, and will be construed in accordance with the laws of the State of Texas.