

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

Tuesday, September 4, 2018

7:00 p.m.

MEETING #5106

## **CALL TO ORDER**

## **ROLL CALL**

**INVOCATION BY** Elder Owens, Hannah Memorial Church of God & Christ

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC HEARING**

1. Special Assessment for Candletree #8
2. Special Assessment for McDonalds Wyatt Earp

## **PETITIONS & PROCLAMATIONS**

Walk to End Alzheimer's Month Proclamation

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

## **CONSENT CALENDAR**

1. Approval of City Commission Work Session Minutes, August 20, 2018;
2. Approval of City Commission Meeting Minutes, August 20, 2018;
3. Appropriation Ordinance No.17, September 4, 2018;
4. Approval of Change Order #1 for Iron Road Waterline Extension.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3693:** An Ordinance Regulating Traffic within The Corporate Limits of the City of Dodge City, Kansas; Incorporating by Reference the "Standard Traffic Ordinance for Kansas

Cities, Edition 2018” and Repealing Ordinance No. 3670. Report by Finance Director/City Clerk, Nannette Pogue.

**Ordinance No. 3694:** An Ordinance Regulating Public Offenses within the Corporate Limits of the City of Dodge City, Kansas; Incorporating by Reference the “Uniform Public Offense Code for Kansas Cities, Edition 2018” and Repealing Ordinance No. 3671. Report by Finance Director/City Clerk, Nannette Pogue.

**Ordinance No. 3695:** An Ordinance Levying Special Assessments on Certain Property to Pay the Costs of Internal Improvements in the City of Dodge City, Kansas, as Heretofore Authorized by Resolution No. 2016-20 of the City; and Providing for the Collection of Such Special Assessments (Candletree #8 Subdivision). Report by Finance Director/City Clerk, Nannette Pogue.

**Ordinance No. 3696:** An Ordinance Levying Special Assessments on Certain Property to Pay the Costs of Internal Improvements in the City of Dodge City, Kansas, as Heretofore Authorized by Resolution No. 2016-20 of the City; and Providing for the Collection of Such Special Assessments (McDonalds Wyatt Earp). Report by Finance Director/City Clerk, Nannette Pogue.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. Approval of Professional Services Agreement for Trail Street Traffic Assessment. Report by Director of Engineering, Ray Slattery.
2. Approval of Bid for refurbishing the two Infields at Thurow Softball Complex. Report by Parks and Recreation Facilities Director, Troy Brown.
3. Approval of Bids for Three Vehicles for Different Divisions in the Parks Department. Report by Director of Administration, Ryan Reid.

## **OTHER BUSINESS**

## **ADJOURNMENT**

***WALK TO END ALZHEIMER'S MONTH PROCLAMATION***

***WHEREAS***, 53,000 Kansans have Alzheimer's disease; and 5.7 million people in the United States have Alzheimer's disease; and

***WHEREAS***, every 65 seconds someone is diagnosed with Alzheimer's disease; and

***WHEREAS***, from 2000-2015 deaths from Alzheimer's disease increased more than 123 percent; and

***WHEREAS***, the direct and indirect cost of Alzheimer's and other dementias amount to more than \$277 billion annually; and

***WHEREAS***, the U.S. Senate has just passed a \$425 million increase for Alzheimer's and dementia research funding at the National Institutes of Health (NIH) for fiscal year 2019.

***WHEREAS***, this effort by the U.S. Senate marks the fourth consecutive year Congress is taking historic action to address the growing Alzheimer's crisis through research.

***WHEREAS***, the State of Kansas and the City of Dodge City are supportive of individuals and their families who struggle daily with this disease and encourage continued education, dissemination of information, and research to find a cure and help them through the disease;

***WHEREAS***, the local Alzheimer's Association will be hosting a Walk to End Alzheimer's on the morning of Saturday, September 29th at Wright Park; and

***NOW, THEREFORE***, on this date, I, KENT SMOLL, MAYOR OF DODGE CITY, KANSAS, do hereby recognize September 2018 as

***Walk to End Alzheimer's Month***

*and call this observance to the attention of all of our citizens.*

*Dated this September 4, 2018*

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*E. Kent Smoll, Mayor  
City of Dodge City*

# **CITY COMMISSION MEETING WORK SESSION MINUTES**

Fire Training Center and City Hall Commission Chambers

Monday, August 20, 2018

5:30 p.m.

## **CALL TO ORDER**

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

1. The City Commission and staff was given a tour of the Fire Training Center located at 2103 1<sup>st</sup> Avenue by Fire Chief Robert Heinz

The Commission then returned to the City Hall Commission Chambers.

2. The City Commission discussed panhandling, more specifically solicitations and signage. Brad Ralph presented some topics of discussion.

Shirley Tieperman, Manager of Little Ceasars, spoke on the subject.

The City Commission directed staff to bring back to the City Commission some sample ordinances that other communities were using.

3. The discussion of alcohol ordinances was delayed until a future meeting.

## **ADJOURNMENT**

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

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Mayor

ATTEST:

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City Clerk, Nannette Pogue

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

Monday, August 20, 2018

7:00 p.m.

MEETING #5105

## **CALL TO ORDER**

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

**INVOCATION** by Pastor Josh Smith, Youth Pastor of First Assembly of God

## **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, August 6, 2018;
2. Approval of City Commission Meeting, August 6, 2018;
3. Appropriation Ordinance No.16, August 20, 2018;
4. Cereal Malt Beverage License:
  - a. Panadaria La Tapatia;
5. Approval of Quit Claim Deed to Community Housing Association of Dodge City, Inc. for 1501 and 1505 Avenue E;
6. Approval of Change Order No. # 2 for an increase of \$3,454.31 for Morgan Boulevard Pavement Markings.

Commissioner Jan Scoggins moved to approve the consent calendar as presented. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3692:** An Ordinance of the City of Dodge Kansas Amending the Official Zoning Map of the City, changing the described property of 2.54 Acres from C-O Commercial Office to R-3 Residential Higher Density was approved on a motion by Commissioner Brian Delzeit. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

**Resolution No. 2018-15:** A Resolution determining the advisability of the making of certain internal improvements in the City of Dodge City, Kansas; making certain findings with respect thereto; and authorizing and providing for the making of the improvements in accordance with such findings (Various Internal Improvements/Wagon Wheel Addition, Unit 2) was approved on a motion by Commissioner Joyce Warshaw. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

**Resolution No. 2018-16:** A Resolution in support of an application for funding through the Moderate Income Housing Program offered through the Kansas Housing Resources Corporation to be utilized for the Abandoned Housing Program in Dodge City, Kansas was approved on a motion by Commissioner Brian Delzeit. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

#### **NEW BUSINESS**

1. Commissioner Rick Sowers moved to appoint Commissioner Joyce Warshaw, Commissioner Kent Smoll, Commissioner Jan Scoggins and City Manager Cherise Tieben as Voting Delegates and Melissa McCoy and Ray Slattery as Alternate Delegates for the annual League of Kansas Municipalities Conference. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.
2. Commissioner Jan Scoggins moved to approve the bid from KGT in the amount of \$35,200 for a Jacobsen Eclipse 322 Hybrid Mower for Mariah Hills Golf Course. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.
3. Commissioner Brian Delzeit moved to approve the Special Assessment Proceedings documents for Candletree Unit 8 and set the public hearing for the Special Assessments in Candletree Unit 8 for September 4, 2018. Commissioner Rick Sowers seconded the motion. The motion carried unanimously.
4. Commissioner Brian Delzeit moved to approve the Special Assessment Proceedings documents for McDonalds Wyatt Earp and set the public hearing for the Special Assessments for the McDonalds Wyatt Earp project for September 4, 2018. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

#### **OTHER BUSINESS**

City Manager Cherise Tieben

- Reminder, next Wednesday will be the SKC meeting in Garden City.
- September 13, there will be a meeting with Black Hills at 6:00 at the United Wireless Arena.
- I have reviewed the new logo for the Police Department vehicles. I will have them proceed with this if the Commissioners are on board.

- Wants to bring the ordinance for solicitation and signage to the Commission meetings a couple of times so that the public has an opportunity to weigh in.

Commissioner Rick Sowers

Commissioner Jan Scoggins

- The August 18<sup>th</sup> edition of the Hutchinson News has an article that speaks of a book entitled "Our Town" and Dodge City is portrayed.

Commissioner Joyce Warshaw

Commissioner Brian Delzeit

Mayor Kent Smoll

- He took a trip to Washington DC and the first announcement was that he was 1 out of 25 Mayors in Kansas going. In actuality, it was the first group of cities, also with Nebraska and counties from Kansas and Nebraska. His general comments were that if we were asked to go again, it was possible to go and come back the same day. The dinner was sponsored by SPRINT and it was a good chance to talk amongst other attendees about issues. There was a breakfast sponsored by Senator Jerry Moran. Senator Pat Roberts co-sponsored a bill to save the South West Chief for 1 year. This will take some work, and it will come down to congress telling Amtrak they would have to continue service in areas that are not profitable. He left a list of items of interest for Dodge City with Moran and Roberts. He took a tour of the White House, but it was not a private tour, he was in line with everyone else. He attended a meeting with White House staff; Ben Carson, Kelly Ann Conway, Vice President Pence and others. There was 8 presenters in 3 hours. He then met with Pat Roberts.
- In the past, Commissioner Sowers had mentioned having a City Commission travel policy.

**ADJOURNMENT**

The meeting was adjourned on a motion by Commissioner Joyce Warshaw, Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

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Mayor

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City Clerk

# Memorandum

*To: City Manager  
City Commissioners*  
*From: Ray Slattery, P.E.  
Director of Engineering Services*  
*Date: August 24, 2018*  
*Subject: Iron Rd. Waterline Extension, WL 1801*  
*Agenda Item: Consent Calendar*

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**Recommendation:** Approve Change Order #1 for Nowak Construction Company, Inc. for additional quantities on the Iron Road Waterline Extension in the amount of \$3,086.00.

**Background:** At the commission meeting on July 11<sup>th</sup>, the bid for the Iron Rd. waterline Extension from Nowak construction Company, Inc. was approved.

**Justification:** The following bid items and quantities were changed as a result of the construction of the project;

22" Steel Casing by Boring – The additional 10 LF represent actual casing installed in the field. The reason for this was to maintain a safe distance from some power pole anchors.

12" RJ Waterline – The additional 20 LF represents actual installed quantity of the RJ waterline. Again this was due to the power pole anchors and need to use a standard length of the RJ waterline.

12" C900 Waterline (PVC) – The decrease of 20 LF is due to the increase of RJ waterline.

**Financial Considerations:** Change Order #1 is for an increase of \$3,086.00.

**Purpose/Mission:** The completion of this project will adhere to our core value of 'Safety' and 'Ongoing Improvement' by maintaining our street infrastructure in an acceptable condition.

**Legal Considerations:** By approving this change order to Nowak construction Company, Inc. contract, the City will be responsible for the additional payments for the completed work.

**Attachments:** The Change Order #1 sheet for the Iron Road Waterline Extension.

# CITY OF DODGE CITY

## Change Order

CONTRACT FOR: Iron Rd. Waterline Extension

PROJECT NUMBER: WL 1801

CONTRACTOR: NOWAK Construction Company, Inc.

REQUEST NUMBER: 1

ITEM DESCRIPTION	UNIT	CONTRACT OR PREVIOUS QUANTITY	ADJUSTED QUANTITY	AMOUNT OF OVERRUN OR <span style="color: red;">UNDERRUN</span>	CONTRACT UNIT PRICE	NEW UNIT PRICE	DOLLAR AMOUNT OF CHANGE
22" Steel Casing by Boring	LF	100	110	10	\$250.00		\$ 2,500.00
12" RJ Waterline	LF	100	120	20	\$62.00		\$ 1,240.00
12" C900 Waterline (PVC)	LF	1317	1297.00	-20	\$32.70		\$ (654.00)
<b>NET INCREASE</b>							<b>\$ 3,086.00</b>

RECOMMENDED FOR APPROVAL:

This is to affirm that I have inspected this change in plans and construction and hereby agree to the quantities, unit prices, and amounts shown above.

\_\_\_\_\_  
Ray Slattery  
Director of Engineering Services

Contractor: NOWAK Construction Company, Inc.

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

\_\_\_\_\_  
Mayor or City Manager

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

## Memorandum

*To: Cherise Tieben, City Manager*  
*From: Nannette Pogue*  
*Date: August 29, 2018*  
*Subject: Ordinance No. 3693 and Ordinance No. 3694*  
*Agenda Item: Ordinances and Resolutions*

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**Recommendation:** I recommend the approval of Ordinance No. 3693 and 3694

**Background:** **Ordinance No. 3693** adopts the “2018 Edition of the Standard Traffic Ordinance” by reference. The changes made to this code during the 2018 legislature include the following:

- Section 1. Definitions. Added Waste Collection Vehicle
- Section 30. Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties (amended by H. Sub SB 374 and HB 2439)
- Section 30.1 Driving a Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties. (Amended by H. Sub. SB 374 and HB 2439)
- Section 40.1 Passing a Stationary Waste Collection Vehicle. (New Section created by SB 272)
- Section 112.1 Littering from a Motor Vehicle. (Added by Editor)
- Section 114.4(c) Unlawful Operator of a Golf Cart. (Amended by Sub SB 272)
- Section 174. Horns and Warning Devices. (New subsection (f) in response to new section 40.1)
- Section 194. Driving While License Canceled Suspended or Revoked; Penalty. (Amended by HB2439)

**Ordinance No. 3694** adopts the “2018 Edition of the Uniform Public Offense Code” by reference. The changes made to the Uniform Public Offense Code during the 2018 legislative session include the following:

- Section 3.2 Battery Against a law Enforcement Officer (Amended by 2458)

- Section 3.3 Assault and Assault of a Law Enforcement Officer (Amended by HB 2458)
- Section 6.8 Criminal Littering (Added by Editor)
- Section 9.7 Making An Unlawful Request for Emergency Service Assistance (New name for the crime of giving a false alarm amended)
- Section 9.9.1 Unlawful Possession of Marijuana and Tetrahydrocannabinols. (Added by Editor)
- Section 9.9.2 Unlawful Possession of Drug Paraphernalia and Simulated Controlled Substances. (Added by Editor)
- Section 10.1 Criminal Use of Weapons. (Amended by HB 2145)
- Section 10.27 Illegal Operator of an Amusement Ride (Amended by SB 310)

**Justification:** Each year the State Legislature passes numerous laws that affect the laws of the State as well as those of the individual cities. The League of Kansas Municipalities compiles a small booklet which incorporates all of the laws in Kansas that deal with public offenses and traffic offenses. These are the “Uniform Public Offense Code” and the “Standard Traffic Ordinance”. Cities are allowed to adopt these codes by reference, so the entire code is not included in the adopting ordinance. Each employee that deals with any of these codes or ordinances is furnished a book to reference when necessary, to cite persons with violations of the ordinances.

**Financial Considerations:** The cost of the booklets for the pertinent employees’ use is approximately \$1,000.

**Purpose/Mission:** Ensure the City is up to date on all of the laws passed in the State of Kansas as well as make sure all employees have easy access to these laws.

**Legal Considerations:** None

**Attachments:** Ordinance Nos. 3693 and 3694. The Standard Traffic Ordinance and Uniform Public Offense Code booklets are available in my office if any one would like to review them.

**ORDINANCE NO. 3693**

**AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; INCORPORATING BY REFERENCE THE "STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, EDITION 2018" AND REPEALING ORDINANCE NO. 3670**

Be it Ordained by the Governing Body of the City of Dodge City:

**Section 1: INCORPORATING STANDARD TRAFFIC ORDINANCE.** There is hereby incorporated by Reference for the purpose of regulating traffic within the corporate limits of the City of Dodge City, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities, Edition of 2018", prepared and published in book form by the League of Kansas Municipalities, Topeka Kansas. One copy of said Standard Traffic Ordinance shall be marked or stamped "Official Copy as Adopted by Ordinance No. 3693" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

**Section 2: TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.**

- (a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.
- (b) All traffic violations which are included within this ordinance, and which are not ordinance traffic infractions, as defined in subsection (a) of this section shall be considered traffic offenses.

**Section 3: REPEAL.** Ordinance No. 3670 is hereby repealed.

**Section 4: EFFECTIVE DATE.** This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the governing body of the City of Dodge City, Kansas, and approved by the Mayor this 4th day of September, 2018.

\_\_\_\_\_  
Kent Smoll, MAYOR

**ATTEST:**

\_\_\_\_\_  
Nannette Pogue, CITY CLERK

**ORDINANCE NO. 3694**

**AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, EDITION 2018" AND REPEALING ORDINANCE NO. 3671**

Be it Ordained by the Governing Body of the City of Dodge City:

**Section 1: INCORPORATING UNIFORM PUBLIC OFFENSE CODE.** There is hereby incorporated by Reference for the purpose of regulating public offenses within the corporate limits of the City of Dodge City, Kansas, that certain code known as the "Uniform Public Offense Code, Edition of 2018", prepared and published in book form by the League of Kansas Municipalities, Topeka Kansas. One official copy of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 3694" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

**Section 2: REPEAL.** Ordinance No. 3671 is hereby repealed.

**Section 3: EFFECTIVE DATE.** This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the governing body of the City of Dodge City, Kansas, and approved by the Mayor this 4th day of September, 2018.

\_\_\_\_\_  
Kent Smoll, MAYOR

ATTEST

\_\_\_\_\_  
Nannette Pogue, CITY CLERK

## *Memorandum*

*To: Cherise Tieben, City Manager*  
*From: Nannette Pogue*  
*Date: August 29, 2018*  
*Subject: Ordinance No. 3695*  
*Agenda Item: Ordinances and Resolutions*

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**Recommendation:** Approve Ordinance No. 3695.

**Background:** At the August 20 City Commission meeting, the City Commission approved special assessment process for special assessments in Candletree #8 Subdivision. The Public hearing will be held at Tuesday's meeting prior to considering Ordinance No. 3695. Based upon the notices sent and barring any objections during the public hearing, this ordinance will approve the levying of assessments for property in Candletree #8 Subdivision at the amounts listed in the ordinance. This addition is in an RHID District, so the increment property tax will pay the amount of the special assessments. The property owners have been sent notice and will be sent another notice after this meeting. However, since the amounts collected by the increment tax will pay for the special assessments, the amounts assessed will not show up on the tax bill. The amounts will be assessed for 15 years and the interest rate used will be the amount we sell the General Obligation bond for that will be issued later in the year.

**Justification:** In order to levy special assessments on property, this ordinance will need to be approved.

**Financial Considerations:** none

**Purpose/Mission:** We strive for high service standards

**Legal Considerations:** All legal requirements of the bond procedures are met.

**Attachments:** Ordinance No. 3695.

**ORDINANCE NO. 3695**

**AN ORDINANCE LEVYING SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF DODGE CITY, KANSAS, AS HERETOFORE AUTHORIZED BY RESOLUTION NO. 2016-20 OF THE CITY; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS. (Candletree, #8 Subdivision)**

**WHEREAS**, the City Commission of the City of Dodge City, Kansas (the "City") has heretofore authorized certain internal improvements (the "Improvements") to be constructed pursuant to K.S.A. 12-6a01 *et seq.* (the "Act"); and

**WHEREAS**, the City Commission has heretofore conducted a public hearing in accordance with the Act and desires to levy assessments on certain property benefited by the construction of the Improvements.

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

**SECTION 1. Levy of Assessments.** For the purpose of paying the costs of the following described improvements:

**Candletree #8 Subdivision – Streets, Water and Sewer, Drainage**

**Resolution No. 2016-20**

The design, inspection, and construction of the sanitary sewer manholes, gravity sanitary sewer main, water main, water valves, fire hydrants, streets and curbs as necessary to serve the future Candletree Addition, Unit 7, an addition to the City of Dodge City, Ford County, Kansas. (now platted at Candletree #8 Subdivision)

A tract of land in the Northeast Quarter of Section 14, Township 26 South, Range 25 West of the Sixth Principal Meridian, Ford County, Kansas described as follows:

Beginning at the Northwest Corner Lot 1, Block 3, Candletree Addition, Unit 5, City of Dodge City, Ford County, Kansas; thence S00 26'13"W 301.14 feet to the Westerly Corner of Lot 4, Candletree Addition, Unit 5, City of Dodge City, Ford County, Kansas; thence S27 23'20"E 203.98 feet to the Southwest Corner of Lot 6, Candletree Addition, Unit 5 and the North Line of Candletree Addition #4, City of Dodge City, Ford County Kansas; thence N88 40'58"W 1002.23 feet along the North Line of Candletree Addition #4 to the West Line of the Northeast Quarter of said Section 14; thence N00 36'03"E 742.06 feet; thence S88 40'58"E 367.02 feet; thence S01 090'11"W 160.00 feet; thence S88 40'58"E 539.86 feet; thence S00 26'13"W 101.00 feet to the point of beginning, containing 13.65 acres. To be known as the future Candletree Addition, Unit 7, an addition to the City of Dodge City, Ford County, Kansas. (Currently platted as Candletree #8 Subdivision)

There are hereby levied and assessed the amounts (with such clerical or administrative amendments thereto as may be approved by the City Attorney) against the property described on *Exhibit A* attached hereto.

**SECTION 2. Payment of Assessments.** The amounts so levied and assessed in *Section 1* of this Ordinance shall be due and payable from and after the date of publication of this Ordinance. Such amounts may be paid in whole or in part not later than October 15, 2018.

**SECTION 3. Notification.** The City Clerk shall notify the owners of the properties described in *Exhibit A* attached hereto insofar as known to said City Clerk, of the amounts of their respective assessments; and, said notice shall further state that unless such assessments are paid by October 15, 2018, bonds will be issued therefor, and the amount of such assessment will be collected in installments with interest.

**SECTION 4. Certification.** Any amount of special assessments not paid within the time prescribed in *Section 2* hereof shall be certified by the City Clerk to the Clerk of Ford County, Kansas, in the same manner and at the same time as other taxes are certified and will be collected in fifteen (15) annual installments, together with interest on such amounts at a rate not exceeding the maximum rate therefor as prescribed by the Act. Interest on the assessed amount remaining unpaid between the effective date of this Ordinance and the date the first installment is payable, but not less than the amount of interest due during the coming year on any outstanding bonds issued to finance the Improvements, shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid.

**SECTION 5. Effective Date.** This Ordinance shall take effect and be in force from and after its passage, approval and publication once in the official City newspaper.

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**PASSED** by the governing body of the City on September 4, 2018. and signed by the Mayor.

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Kent Smoll, Mayor

(SEAL)

ATTEST:

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City Clerk

**EXHIBIT A**

Lot 1	Block 1	Candletree #8 Subdivision	39,526.61
Lot 2	Block 1	Candletree #8 Subdivision	39,526.61
Lot 3	Block 1	Candletree #8 Subdivision	39,526.61
Lot 4	Block 1	Candletree #8 Subdivision	39,526.61
Lot 5	Block 1	Candletree #8 Subdivision	39,526.61
Lot 6	Block 1	Candletree #8 Subdivision	39,526.61
Lot 7	Block 1	Candletree #8 Subdivision	39,526.61
Lot 1	Block 2	Candletree #8 Subdivision	39,526.61
Lot 2	Block 2	Candletree #8 Subdivision	39,526.61
Lot 3	Block 2	Candletree #8 Subdivision	39,526.61
Lot 4	Block 2	Candletree #8 Subdivision	39,526.61
Lot 5	Block 2	Candletree #8 Subdivision	39,526.61
Lot 6	Block 2	Candletree #8 Subdivision	39,526.61
Lot 7	Block 2	Candletree #8 Subdivision	39,526.61
Lot 8	Block 2	Candletree #8 Subdivision	39,526.61
Lot 9	Block 2	Candletree #8 Subdivision	39,526.61
Lot 10	Block 2	Candletree #8 Subdivision	39,526.61
Lot 11	Block 2	Candletree #8 Subdivision	39,526.61
Lot 1	Block 3	Candletree #8 Subdivision	39,526.61
Lot 2	Block 3	Candletree #8 Subdivision	39,526.61
Lot 3	Block 3	Candletree #8 Subdivision	39,526.61
Lot 4	Block 3	Candletree #8 Subdivision	39,526.61
Lot 5	Block 3	Candletree #8 Subdivision	39,526.61
Lot 6	Block 3	Candletree #8 Subdivision	39,526.61
Lot 7	Block 3	Candletree #8 Subdivision	39,526.61
Lot 8	Block 3	Candletree #8 Subdivision	39,526.61
Lot 8	Block 5	Candletree #8 Subdivision	39,526.61
Lot 9	Block 5	Candletree #8 Subdivision	39,526.61
<b>Total</b>			<b>1,106,745</b>

## *Memorandum*

*To: Cherise Tieben, City Manager*  
*From: Nannette Pogue*  
*Date: August 29, 2018*  
*Subject: Ordinance No. 3696*  
*Agenda Item: Ordinances and Resolutions*

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**Recommendation:** Approve Ordinance No. 3696.

**Background:** At the August 20 City Commission meeting, the City Commission approved special assessment process for special assessments in McDonalds Wyatt Earp. The Public hearing will be held at Tuesday's meeting prior to considering Ordinance No. 3696. Based upon the notices sent and barring any objections during the public hearing, this ordinance will approve the levying of assessments for property for McDonalds, Wyatt Earp location at the amount listed in the ordinance. This addition is in a CID District, so the CID tax being collected will pay the amount of the special assessments. The property owners have been sent notice and will be sent another notice after this meeting. However, since the amounts collected by the CID sales tax will pay for the special assessments, the amounts assessed will not show up on the tax bill. The amounts will be assessed for 15 years and the interest rate used will be the amount we sell the General Obligation bond for that will be issued later in the year.

**Justification:** In order to levy special assessments on property, this ordinance will need to be approved.

**Financial Considerations:** none

**Purpose/Mission:** We strive for high service standards

**Legal Considerations:** All legal requirements of the bond procedures are met.

**Attachments:** Ordinance No. 3696.

**ORDINANCE NO. 3696**

**AN ORDINANCE LEVYING SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF DODGE CITY, KANSAS, AS HERETOFORE AUTHORIZED BY RESOLUTION NO. 2017-22 OF THE CITY; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS. (McDonalds Wyatt Earp)**

**WHEREAS**, the City Commission of the City of Dodge City, Kansas (the "City") has heretofore authorized certain internal improvements (the "Improvements") to be constructed pursuant to K.S.A. 12-6a01 *et seq.* (the "Act"); and

**WHEREAS**, the City Commission has heretofore conducted a public hearing in accordance with the Act and desires to levy assessments on certain property benefited by the construction of the Improvements.

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

**SECTION 1. Levy of Assessments.** For the purpose of paying the costs of the following described improvements:

**McDonalds Wyatt Earp – Streets, Water and Sewer, Drainage**

McDonalds Wyatt Earp, Resolution No. 2017-22, construct road and curb and gutters, water improvements, sewer improvements, drainage improvements, associated engineering and design costs serving Lots 1 and 2, Block 2, in Centennial Addition, an addition to the City of Dodge City, Ford County, Kansas.

There are hereby levied and assessed the amounts (with such clerical or administrative amendments thereto as may be approved by the City Attorney) against the property described on *Exhibit A* attached hereto.

**SECTION 2. Payment of Assessments.** The amounts so levied and assessed in *Section 1* of this Ordinance shall be due and payable from and after the date of publication of this Ordinance. Such amounts may be paid in whole or in part not later than October 15, 2018.

**SECTION 3. Notification.** The City Clerk shall notify the owners of the properties described in *Exhibit A* attached hereto insofar as known to said City Clerk, of the amounts of their respective assessments; and, said notice shall further state that unless such assessments are paid by October 15, 2018, bonds will be issued therefor, and the amount of such assessment will be collected in installments with interest.

**SECTION 4. Certification.** Any amount of special assessments not paid within the time prescribed in *Section 2* hereof shall be certified by the City Clerk to the Clerk of Ford County, Kansas, in the same manner and at the same time as other taxes are certified and will be collected in fifteen (15) annual installments, together with interest on such amounts at a rate not exceeding the maximum rate therefor as prescribed by the Act. Interest on the assessed amount

remaining unpaid between the effective date of this Ordinance and the date the first installment is payable, but not less than the amount of interest due during the coming year on any outstanding bonds issued to finance the Improvements, shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid.

**SECTION 5. Effective Date.** This Ordinance shall take effect and be in force from and after its passage, approval and publication once in the official City newspaper.

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**PASSED** by the governing body of the City on September 4, 2018. and signed by the Mayor.

---

Kent Smoll, Mayor

(SEAL)

ATTEST:

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City Clerk

**EXHIBIT A**

Lots 1 & 2	Block 2	Centennial Addition, an addition to the City of Dodge City, Ford County, Kansas	320,465.00
<b>Total</b>			<b>320,465.00</b>

## Memorandum

*To: City Manager  
City Commissioners*

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

*Date: August 21, 2018*

*Subject: Professional Services Agreement for  
Trail St. Traffic Assessment, ST 1804*

*Agenda Item: New Business*

---

**Recommendation:** Approve Professional Services Agreement with Olsson Associates pending review by City Attorney.

**Background:** City Staff had budgeted funds to perform street work near the truck drive to National Beef Processors (NBP). In speaking with representatives of NBP they are planning some future expansion along with the possibility of a new business across the street from NBP. All of this would mean adding to or shifting the traffic patterns of the semis in the area. Staff felt before doing any improvements that a traffic assessment study should be done to determine what kind of improvements should be made. Staff requested RFQ's for this study. Four firms submitted an RFQ, the selection team reviewed each submittal and selected Olsson Associates for the assessment. The traffic assessment will consist of traffic counts, turning movements on two intersections and 4 major driveways, along with meeting with representatives of the City and NBP. Once all the data is compiled, Olsson Associates will provide a concept or two of possible improvements. These concepts can be used for budgeting purposes and any partnering with NBP.

**Justification:** The assessment will indicate where and how to best use funds to improve East Trail St. for better and safer traffic movement in the area. It will also look at future development of the corridor and determine how improvements will affect traffic flow.

**Financial Considerations:** The contract with Olsson Associates is for a not to exceed amount of \$25,800.00. This is project was budgetted in the 2018 Street Program. There was \$20,000 budgetted in the Street Program, there is monies avaialabe in the fund to cover the overage.

**Purpose/Mission:** The completion of this project will meet the core values of Ongoing Improvements and Safety.

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

**Attachments:** The Professional Services Agreement for the Trail St. Traffic Assessment with Olsson Associates.



## LETTER AGREEMENT FOR PROFESSIONAL SERVICES

August 17, 2018

City of Dodge City  
Attn: Ray Slattery, P.E.  
806 2<sup>nd</sup> Avenue, PO Box 880  
Dodge City, Kansas 67801

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**  
Trail Street Traffic Assessment (the "Project")

Dear Mr. Slattery:

It is our understanding that the City of Dodge City ("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: September 2018  
Anticipated Completion Date: December 2018

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 Twenty Five Thousand Eight Hundred Dollars (\$25,800.00). 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.

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.  
Vice President

By \_\_\_\_\_  
Brad Sonner, PLA, LEED AP  
Vice President

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

## **SCOPE OF SERVICES**

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated August 17, 2018 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: Trail Street, Dodge City Kansas

Project Description: Trail Street Traffic Assessment

### **SCOPE OF SERVICES**

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

#### **PHASE 100 - PROJECT MANAGEMENT & COORDINATION**

Project manager is responsible for coordination of the various people that are involved in the project, tracking of work completion, scheduling meetings and project management.

#### **PHASE 200 – TRAFFIC STUDY**

##### **Task 201 – Traffic Counts**

A 24-Hour traffic count will be taken at one location along Trail Street within the study corridor to determine the most current daily traffic by direction and when the peak periods on the roadway occur. This approach will capture the peak hours a typical weekday as well as the commercial business shift change peaks. The count data will be reviewed to determine to peak hour periods within the Trail Street corridor. The counts will be monitored to determine what time the peak occurs along the corridor and that peak used in the study.

Once the two highest peak times are established, turning movement traffic volume counts separating out trucks by axle type will be collected for a typical weekday for a two-hour window during the AM & PM peak period at the following study intersections:

- Trail Street @ US400
- Trail Street @ Commercial Entrance #1, Loves
- Trail Street @ Commercial Entrance #2, Truck Entrance
- Trail Street @ Commercial Entrance #6, East Employee
- Trail Street @ Commercial Entrance #8, West Employee
- Trail Street @ Underpass Road

##### **Task 202 – Site Investigation**

Olsson Associates will investigate the roadway system surrounding the proposed development to determine existing conditions such as intersection geometrics, intersection and driveway spacing, existing traffic control using Google Imagery.

### **Task 203 – Trip Generation/Distribution**

Trip generation will be estimated for typical daily, AM and PM peak hour traffic based on the Institute of Transportation Engineering (ITE) Trip Generation Manual, most recent edition.

### **Task 204 – Capacity Analysis**

Olsson Associates will conduct capacity and queuing analysis of the proposed development for the typical weekday AM and PM peak hour for the following scenarios:

- Existing Conditions
- Existing Conditions Plus Development (National Beef Expansion)
- Future 2038 Conditions

Capacity analysis will provide the basis for determining appropriate traffic control and geometric improvements. Queuing analysis will provide the basis for determining the needed length of any auxiliary lanes. Capacity and queuing analysis will be conducted for the study intersection listed in Task 1 including new site drives.

### **Task 205 – Crash History**

Olsson Associates will analyze the last 3-5 years of crash history for the Trail Street @ US400 study intersection to determine if there is a crash pattern that is correctable and an accident rate. Olsson Associates will work with KDOT to acquire a copy of the full accident reports. Assumes that accident diagrams will not be required as a part of this task.

### **Task 206 – Traffic Impact Analysis Report**

A report will be prepared to address the roadway impact from the proposed development. Recommendations pertaining to street improvements that are due to the proposed project will be made. All recommendations will be based on KDOT's 2013 Access Management Policy and crash history.

### **Task 207 – Concept**

Olsson will develop concept level drawings to depict existing plus recommended intersection and corridor improvements. The concepts will show how access management implementation and revised roadway geometry will affect traffic flow and access to property along the corridor. Truck turning templates can be displayed to show how the intersection geometry was derived. Proposed improvements will be shown overlaid onto an aerial map in order to see how the new design concept relates to the existing conditions. The improvements will label lane widths for existing and proposed lanes, entrance widths, and depict turn lane tapers. If GIS property owner information is available, an assessment of potential right of way needs can be made from the concept drawings to help decide potential project costs.

It is anticipated to provide one concept for consideration based on the findings of the traffic study.

## **Phase 300 – Project Meetings and Expenses**

### **Task 301 - Project Meetings and Expense**

Attendance by Olsson representatives with City staff, National Beef and City Commission presentation. It is anticipated one trip to Dodge City to present findings and concepts to City staff and National Beef and another to present to the City Commission.

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.

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated August 17, 2018 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 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, Olsson may terminate this Agreement and Olsson shall 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 Whenever, in its sole discretion, Olsson determines 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 without waiting for specific instructions 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 the 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 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

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.

3.8.4 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. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the

fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

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.

#### **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 "Opinion of Probable Cost": 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 seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) 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, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **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 or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either 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 Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

### **6.3 Certification of Merit**

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

## **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, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### **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. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### **7.3 Opinion of Probable Cost**

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 Opinion of Probable Cost 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 Opinion of Probable Cost. 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 Opinion of Probable Cost 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 Opinion of Probable Cost 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 Opinion of Probable Cost, 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 Opinion of Probable Cost.

#### **7.4 Prevailing Wages**

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was 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 strive to 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) shall not be considered a breach of this Agreement and the time required for performance shall 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 Equal Employment Opportunity**

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### **7.9 Confidentiality**

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 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.

7.9.2 Prior to the start of construction on the Project, 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.

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

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

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

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

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

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

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information to 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.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 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.

7.9.7 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 shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

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

## **7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination**

7.10.1 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.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as 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.

7.10.3 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.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 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:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from 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.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

#### **7.11 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 Nebraska. 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 a court of competent jurisdiction in Nebraska.

#### **7.12 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.

#### **7.13 Assignment**

7.13.1 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.

7.13.2 Neither Client nor Olsson shall 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.

7.13.3 Nothing under this Agreement shall 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.

#### **7.14 Indemnity**

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

#### **7.15 Limitation on Damages**

7.15.1 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.

7.15.2 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 shall be liable to the other or shall 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 shall 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).

7.15.3 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 not exceed the amount of Olsson's fee earned 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.

#### **7.16 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.



# City of Dodge City

## PARKS AND FACILITIES

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

### *Memorandum*

To: Cherise Tieben, City Manager  
City Commissioners  
From: Troy Brown, Parks and Facilities Director  
Date: August 22, 2018  
Subject: Thurow Softball Infields  
Agenda Item: New Business

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**Recommendation:** Staff recommends approving the low bid provided by Midwest Laser Leveling in the amount of \$28,000.00 for refurbishing the two infields at the Thurow Softball Complex.

**Background:** RFP's were opened on, Thursday August 16<sup>th</sup> for the refurbishment of the infields. Two contractors submitted RFP's for the project and a tabulation of those bids is included with this memo.

This project removes current infield material, lowers and replaces the grass arcs with fescue sod, and then laser grades new infield material to provide a smooth and safe playing surface with proper drainage.

**Justification:** This project is included in the sales tax fund and funded for 2018. The current infields and archs are in very poor shape due to years of dragging the infields and moving infield material into the outfield. This project would correct the problem and provide nice playable infields for softball games and practices.

**Financial Considerations:** The City's cost for this project is funded in the 2018 sales tax fund in the amount of \$33,000. Parks and Facilities staff will transport the current material off-site and will also transport the new infield material from Legends to the infields at Thurow.

**Purpose/Mission:** This project meets the City's core value of providing ongoing improvements for the citizens of this community.

**Legal Considerations:** N.A.

**Attachments:** Bid Tabulation

**City of Dodge City  
Parks and Facilities  
Thurrow Softball Infield Reconstruction Bids  
16-Aug-18**

Contractor		Total Amount
Midwest Laser Leveling	Topeka, KS	\$28,000.00
Brown Midwest Commercial Construction	Lenexa, KS	\$85,854.00

## Memorandum

*To: City Manager  
City Commissioners*  
*From: Ryan Reid*  
*Date: August 28<sup>th</sup>, 2018*  
*Subject: Three (3) Pickup trucks*  
*Agenda Item: New Business*

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**Recommendation:** On August 15th, bids were received and opened for three (3) new pickup trucks. Each of the trucks was for a different division in Parks.

Based on the review of the bids received, staff would recommend purchasing the vehicles from the low bidders as follows:

Parks Truck (1 ton Dually): **\$27,979** from Lewis Chevrolet (plus **\$7275** dump bed from Cofer Sales (total **\$35,254**).

Forestry Truck (Full Size Regular Cab Long Bed 2WD): **\$25,503** from Lewis Chevrolet

Athletic Field Maintenance (AFM) Truck (3/4 Ton Long Bed 4WD): **\$30,756** from G&G.

Note: Lopp motors notified me that they intended to bid but due to some issues on their side were not able to. They usually do participate in our bidding process especially for trucks.

Bid tabulation is attached for your review.

### **Background:**

The new Parks truck will be used to move equipment and supplies , pull trailers, haul sand, and assist Parks in their daily duties.

The Parks truck will be replacing a 2001 1 ton flatbed truck which will be shifted for use in Forestry for use in watering trees and hauling water. This will in turn replace an older yet water truck that Forestry has that will be sold at Purple Wave.

The Forestry truck will be used primarily by the Horticulturist for daily operations. It will carry tools, haul equipment, set up work zones in high traffic areas, check assigned grounds, and make supply rounds as needed.

The new Forestry truck will replace a 2004 Chevy ½ ton that the Horticulturist currently uses. The 2004 will be kept in the department to be used by seasonal employees.

The Athletic Field Maintenance (AFM) truck will be used by the AFM supervisor. He will use the vehicle to check facilities, haul equipment, pull trailers, get supplies, etc. It will also be equipped with a snow blade and used to move snow as needed.

This AFM truck will replace the current supervisor truck which is a 1996 Ford F250. This older vehicle has transmission and engine issues and will be sold at auction.

**Justification:** All of the bidders met specs adequately. Staff is recommending low bids as indicated above.

**Financial Considerations:**

This is a budgeted purchase.

**Attachments:** Bid Tabulation

Bids opened: August 8th, 2017

<b>Bid Tabs (Parks Truck)</b>		Budgetd Amount	1 Ton Regular Cab Dually
		\$ 40,000.00	
<u>Vendor</u>	<u>Total</u>		<u>Notes</u>
G&G	\$39,235		
Lewis Chevrolet	\$27,979		Low bid, meets specs
<b>Dump-Bed for 1 Ton Dually</b>			
Cofer Sales	\$7,275		Low bid. Staff recommends.
B S Trailer Sales	\$9,335		
			<b>Total recommended (Lewis + Cofer)</b>
			<b>\$35,254</b>



Example of Chevrolet 3500 before adding dump bed

<b>Bid Tabs (Forestry)</b>		Budgeted Amount	Full Size Regular Cab Long Bed 2wd
		\$ 23,000.00	
<u>Vendor</u>	<u>Total</u>		<u>Notes</u>
G&G	\$28,503		
Lewis Chevrolet	\$25,503		Low bid. Staff recommends Chevrolet Silverado 1500



Example of Silverado 1500

<b>Bid Tabs (Athletic Field Maintenance (AFM))</b>		Budgeted Amount	3/4 Ton Long Bed 4WD Truck
		\$ 40,000.00	
<u>Vendor</u>	<u>Total</u>		<u>Notes</u>
Lewis Chevrolet	\$32,250		
G&G	\$30,765		GMC Sierra 2500 HD. Low bid. Staff recommends.



Example of GMC Sierra 2500