

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, March 18, 2019

7:00 p.m.

MEETING #5122

CALL TO ORDER

ROLL CALL

INVOCATION BY

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PETITIONS & PROCLAMATIONS

Women's History Month

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).

Great Plains Development Report

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, March 18, 2019;
2. Appropriation Ordinance No.7 April 1, 2019;
3. Cereal Malt Beverage License:
 - a. El Korita Restaurant, 2001 W. Wyatt Earp Blvd.;
 - b. Kwik Shop, Inc. #703, 1500 W. Wyatt Earp Blvd.;
 - c. Kwik Shop, Inc. #762, 1811 Central Avenue.
4. Change Order #1 for Light Cleaning & TV Inspection of National Beef Gravity Sewer Project.

ORDINANCES & RESOLUTIONS

Ordinance No. 3708: An Ordinance Regulating the Sale of Cereal Malt Beverage and Beer containing not more than 6% Alcohol by Volume within the City of Dodge City, Kansas and amending Chapter 3, Article 2, Sections 3-201 to 3-215 of the Code of the City of Dodge City, Amending Ordinance No. 3704 and Section 3-101 of the Code of Dodge City and repealing any Ordinance of the Code of the City of Dodge City in conflict with this Ordinance. Report by Nannette Pogue, Finance Director/City Clerk.

Ordinance No. 3709: An Ordinance Amending Chapter V. Business Regulations, Article 6. Temporary Licenses/Permits. Report by Nannette Pogue, Finance Director/City Clerk

Ordinance No. 3710: An Ordinance annexing to the City of Dodge City the described property of 2601 East Trail Street, in accordance with K.S.A. 12-520 Et. Seq; and providing for the zoning thereof. Report by Nathan Littrell,

Ordinance No. 3711: An Ordinance vacating a portion of Ash Street right-of-way adjacent to Avenue P as platted in Haggard Addition. Report by Nathan Littrell.

Ordinance No. 3712: An Ordinance annexing to the City of Dodge City the described properties as part of the Shared Road Agreement between the City of Dodge City and Ford County, in accordance with K.S.A. 12-520 Et Seq; and providing for the zoning thereof. Report by Nathan Littrell.

Ordinance No. 3713: An Ordinance establishing a maximum speed limit on streets listed in the Ordinance within the city limits and repealing conflicting Ordinances or parts of Ordinances along with establishing no parking on certain streets per this Ordinance and providing penalties for violations of the provisions of this Ordinance. Report by Ray Slattery, Director of Engineering Services.

Resolution No. 2019-09: A Resolution certifying Legal Authority to apply for and administer the 2019 Rural Business Enterprise Grant from the United States Department of Agriculture Rural Development. Report by Joann Knight, Economic Development Director.

Resolution No. 2019-10: A Resolution setting fees for various beverage licenses and amending Appendix A. Fees of the Code of the City of Dodge City. Report by Nannette Pogue, Finance Director/City Clerk.

Ordinance No. 3714: An Ordinance providing for adoption of the small cell aesthetic standards for the City of Dodge City. Report by Ray Slattery, Director of Engineering Services.

Resolution No. 2019-11: A Resolution to establish fees for applications to install wireless facilities in the City of Dodge City, Kansas, pursuant to Ordinance No. 3714. Report by Ray Slattery, Director of Engineering.

NEW BUSINESS

1. Approval of the Development Agreement between United Wireless Communications and City of Dodge City. Report by City Manager, Cherise Tieben.

2. Approval of Bids for the 2019 Asphalt Street Sealing Program. Report by Tanner Rutschman, City Engineer.
3. Approval of the bid for the Application of Mastic Crack Sealant. Report by Tanner Rutschman, City Engineer.
4. Approval of Agreement with KDOT for the Gary and US 50 Intersection Improvement.. Report by Ray Slattery, Director of Engineering Services.
5. Approval of Rib Crib Development Agreement. Report by Cherise Tieben, City Manager.

OTHER BUSINESS

ADJOURNMENT

WOMEN'S HISTORY MONTH PROCLAMATION

Whereas American women of every race, class, and ethnic background have made historic contributions to the growth and strength of our Nation in countless recorded and unrecorded ways;

Whereas American women have played and continue to play a critical economic, cultural, and social role in every sphere of the life of the Nation by constituting a significant portion of the labor force working inside and outside of the home;

Whereas American women have played a unique role throughout the history of the Nation by providing the majority of the volunteer labor force of the Nation;

Whereas American women were particularly important in the establishment of early charitable, philanthropic, and cultural institutions in our Nation;

Whereas American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement;

Whereas American women have served our country courageously in the military;
Whereas American women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and other movements, especially the peace movement, which create a more fair and just society for all; and

Whereas despite these contributions, the role of American women in history has been consistently overlooked and undervalued, in the literature, teaching, and study of American history;

Whereas on a local level in 1959, eight women of the Dodge City community joined together when unable to join the Area Chamber of Commerce to create the Dodge City Area Women's Chamber of Commerce, and have been serving and Supporting Dodge City and the Surrounding Areas ever since, and

Whereas the Dodge City Area Women's Chamber of Commerce has awarded over \$75,000 in college scholarships, community service grants, and awards, along with supporting the beautification of our community and supporting and tending to the Memorial-Commemorative Rose Garden at Dodge City Community College since 1986; and

Now, therefore, be it resolved, I, Brian Delzeit, Mayor of Dodge City, do hereby proclaim the month of March as

Women's History Month.

And call upon the people of the Dodge City to observe this month and celebrate with appropriate programs, ceremonies, and activities that honor the history, accomplishments, and contributions of American women.

Attest:

Mayor

City Clerk



100 Military Avenue • Suite 128
P.O. Box 1116
Dodge City, KS 67801-1116
620-227-6406 • fax 620-225-6051
gpd@gpdionline.com • www.gpdionline.com

An EDA Economic Development District/Business Loans and Municipal Grants Services Agency

... YOUR ECONOMIC DEVELOPMENT PARTNER FOR DODGE CITY ...

THANK YOU for being an active partner! Great Plains Development, Inc. (GPDI) is proud to help you **create jobs** and **assist new and existing businesses**. As your Certified Development Company (CDC) and federal Economic Development District (EDD), we provide loan administration, grant programs and business services. Here's a summary:

See your **project list (and JOBS)** and our entire GPDI Portfolio of Approved Loans/Grants in this report.

Current loan applications. We continue working with prospects and borrowers in Dodge City: Preparing loan applications, loan review services, closing documents and local loan servicing. As always, we have been very busy! In 2018, we had 17 inquiries/applications and we closed on three. We currently have 22 active loans in the county. To date, we have four active applications for 2019, including one for Spearville and perhaps one out in the county.

Community Development Block Grants – Community Improvement (CDBG-CI). We assist cities and counties with CDBG applications and administration. **We recommend you quickly begin the application process. Deadlines for this year are September and October.** Based on your needs we can help *s-t-r-e-t-c-h* local dollars with CDBG funds (the Compass Behavioral Health building is a great example). And, **USDA Rural Development** can be a partner.

Kansas Department of Commerce (KDOC) Community Development Block Grant Economic Development (CDBG/ED). We help prepare and administrate Small CDBG/ED loans from Kansas Department of Commerce.

City Community Development Block Grant Revolving Loan Fund (CDBG/ED/RLF). A CDBG economic development loan program, GPDI prepares applications and administers this fund for you.

Entrepreneurship Community (E-Community). Through Dodge City/Ford County Economic Development, E-Community loans are Network Kansas, locally-raised funds to business start-ups and business expansion/retention. There is a minimum 40% match required from banks or public sources. \$75,000 cap—largest in Southwest Kansas.

StartUp Kansas. Network Kansas, \$45,000.00 cap, minimum 40% match to public business loan funds.

Kansas Multiplier. Network Kansas, \$100,000 cap, match up to 9% of business loan funds.

NEW--Community Investment Fund. NetWork Kansas, \$250,000 cap, match up to 15% of business loan funds. Can be not-for-profit and government. Targeted at community development.

GPDI Revolving Loan Funds. Four in-house revolving business loan funds.

We continue to represent YOU at regular Topeka meetings of the Kansas Association of Certified Development Companies (KACDC) and Kansas Association of Regional Organizational Development Organizations (KARDO), meeting with our USDA, SBA, EDA and KDH&E and Kansas Department of Commerce (KDOC) partners.

We are ALWAYS grateful for your assistance, cooperation, and support. Together, we'll continue to make your area one of Western Kansas's most exciting places to grow business!

Most sincerely,

Robert J. Wetmore,
GPDI Co-Director

Faye Trent,
GPDI Co-Director

Paul Olsen,
Field Service Representative

BUSINESS, GROWTH AND REAL JOBS IN SOUTHWEST KANSAS

Serving counties of Barber, Barton, Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Lane, Meade, Morton, Ness, Pawnee, Pratt, Rush, Scott, Seward, Stafford, Stanton, Stevens, Wichita. *An equal opportunity lender, provider and employer.*

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, March 4, 2019

7:00 p.m.

MEETING #5120

CALL TO ORDER

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

INVOCATION by Pastor Steve Ormond, First Baptist Church

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

Mayor Brian Delzeit opened the public hearing to consider a Tax Exemption for National Beef Packing Company LLC. Joann Knight, Economic Development Director, presented the project and stated that a Cost Benefit Analysis had been completed. Representatives of National Beef Packing Company were present to answer questions. No other members of the public were present to comment.

Mayor Delzeit closed the Public Hearing.

Mayor Brian Delzeit opened the public hearing to consider the establishment of a Rural Housing Incentive District and adoption of a Development Plan for Candletree 8, Phase II. Mollea Wainscott, Housing Director, presented the plan. No other members of the public were present to comment.

Mayor Delzeit closed the Public Hearing.

PETITIONS & PROCLAMATIONS

Amy Falcon representing the Southwest Kansas Gambling Task Force read the Problem Gambling Awareness Proclamation. Debbie Snapp, Chairman of the Task Force presented additional information to the City Commission. Mayor Brien Delzeit proclaimed the month of March as Problem Gambling Awareness Month.

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

Commissioner Kent Smoll moved to add the CMB License for Tacos Jalisco to the Consent Calendar. Commissioner Jan Scoggins seconded the motion. The motion carried 4-0.

1. Approval of City Commission Meeting Minutes, February 18, 2019;
2. Appropriation Ordinance No.5 March 4, 2019;
3. Cereal Malt Beverage License:
 - a. Tacos Jalisco

Commissioner Kent Smoll moved to approve the Consent Calendar as presented. Commissioner Jan Scoggins seconded the motion. The motion carried 4-0.

Brian Delzeit moved and Rick Sowers seconded the motion to add an Executive Session to the end of the meeting. The motion carried 4-0.

ORDINANCES & RESOLUTIONS

Ordinance No. 3707: An Ordinance of the Governing Body of the City of Dodge City, Kansas, Establishing a Rural Housing Incentive District within the City, Adopting a Plan for the Development of Housing and Public Facilities in Such District, and Making Certain Findings in Conjunction Therewith (Candletree 8, Phase II) was approved on a motion by Commissioner Rick Sowers. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

Resolution No. 2019-04: A Resolution Establishing Fees and Rates for Water Utility Service for the City of Dodge City was approved on a motion by Commissioner Kent Smoll. Commissioner Rick Sowers seconded the motion. The motion carried 4-0.

Resolution No. 2019-05: A Resolution Establishing Fees and Rates for Sanitary Sewer Service for the City of Dodge City was approved on a motion by Commissioner Kent Smoll. Commissioner Rick Sowers seconded the motion. The motion carried 4-0.

Resolution No. 2019-06: A Resolution Establishing Fees and Rates for Solid Waste Collection Service in the City of Dodge City was approved on a motion by Commissioner Kent Smoll. Commissioner Rick Sowers seconded the motion. The motion carried 4-0.

Resolution No. 2019-07: A Resolution Establishing Fees and Rates for Storm Water Utility Service for the City of Dodge City was approved on a motion by Commissioner Kent Smoll. Commissioner Rick Sowers seconded the motion. The motion carried 4-0.

Resolution No. 2019-08: A Resolution Providing for Advalorem Property Tax Exemption Under Section 13, Article II of the Constitution of the State of Kansas for National Beef Packing Company, LLC of Dodge City, Kansas for a 10 year declining schedule was approved on a motion by Commissioner Jan Scoggins. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

NEW BUSINESS

1. Commissioner Rick Sowers moved to approve the Consulting Agreement with Kirkham, Michael and Associates, Inc. for US 50 and Gary Avenue Intersection Design in an amount not to exceed \$74,925.00. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

OTHER BUSINESS

Commissioner Jan Scoggins asked the City Commission to direct staff to look at changing the elections in Dodge City to having 3 City Commissioners elected by District and 2 elected at-large, and to also consider term limits. The City Commission discussed this and staff was directed to get some information for further discussion.

EXECUTIVE SESSION

At 7:57 p.m. Commissioner Jan Scoggins moved to recess into Executive Session pursuant to the preliminary discussion related to the acquisition of real property found in K.S.A. 75-4319(b)(6). The justification for closing the meeting is to protect the City's position in the negotiations. The open meeting will resume in 10 minutes at 8:07 p.m. The Commission will not take action upon returning to the open session and prior to adjournment. The executive session will include Cherise Tieben, Brad Ralph and Nannette Pogue. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

The regular meeting was reconvened at 8:07 p.m.

ADJOURNMENT

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

Mayor

City Clerk

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

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

City or County of Dodge City

SECTION 1 - LICENSE TYPE			
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit			
Check One: <input checked="" type="checkbox"/> License to sell cereal malt beverages for consumption on the premises. <input type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licenses premises.			
SECTION 2 - APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required):			
I have registered as an Alcohol Dealer with the TTB. <input checked="" type="checkbox"/> Yes (required for new application)			
Name <u>MONICA GUADALUPE HERNANDEZ</u>	Phone No. <u>(620) 253-5528</u>	Date of Birth <u>4-9-81</u>	
Residence Street Address <u>1604 AVE A</u>	City <u>DODGE CITY KS</u>	Zip Code <u>67801</u>	
Applicant Spousal Information			
Spouse Name	Phone No.	Date of Birth	
Residence Street Address	City	Zip Code	
SECTION 3 - LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name <u>EL KORITA RESTAURANT</u>	Name		
Business Location Address <u>2001 W WYATT EARP</u>	Address		
City <u>DODGE CITY</u> State <u>KS</u> Zip <u>67801</u>	City	State	Zip
Business Phone No. <u>(620) 371-6008</u>	<input checked="" type="checkbox"/> I own the proposed business location. <input type="checkbox"/> I do not own the proposed business location.		
Business Location Owner Name(s) <u>MONICA GUADALUPE HERNANDEZ</u>			
SECTION 4 - APPLICANT QUALIFICATION			
I am a U.S. Citizen			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of Kansas for at least one year prior to application.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have resided within the state of Kansas for <u>19</u> years.			
I am at least 21 years old.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of this county for at least 6 months.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Within 2 years immediately preceding the date of this application, neither I nor my spouse* have been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.			<input type="checkbox"/> Yes Have <input checked="" type="checkbox"/> No Have Not
My spouse has previously held a CMB license.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
My spouse has never been convicted of one of the crimes mentioned above while licensed.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

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

City or County of Dodge City

SECTION 1 – LICENSE TYPE

Check One: New License Renew License Special Event Permit

Check One:

- License to sell cereal malt beverages for consumption on the premises.
 License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.

SECTION 2 – APPLICANT INFORMATION

Kansas Sales Tax Registration Number (required): 004486112339F01

I have registered as an Alcohol Dealer with the TTB. Yes (required for new application)

Name of Corporation Kwik Shop, Inc. #703		Principal Place of Business 1500 West Wyatt Earp, Dodge City, KS 67801	
Corporation Street Address 302 W. Third Street, Suite 300		Corporation City Cincinnati	State OH
		Zip Code 45202	
Date of Incorporation 4/1/1960 in the state of Kansas		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name CSC		Phone No. 513.562.5738	
Residence Street Address 2900 SW Wanamaker Dr.		City Topeka	State KS
		Zip Code 66614	

SECTION 3 – LICENSED PREMISE

Licensed Premise (Business Location or Location of Special Event)	Mailing Address (If different from business address)
DBA Name Kwik Shop	Name Kwik Shop, Inc.
Business Location Address	Address 302 W. Third Street
City State Zip	City State Zip Cincinnati OH 45202
Business Phone No.	<input type="checkbox"/> Applicant owns the proposed business location. <input type="checkbox"/> Applicant does not own the proposed business location.
Business Location Owner Name(s) Jarmel Leggett	

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK

List each person and their spouse*, if applicable. Attach additional pages if necessary.

Name EG Retail (America) LLC	Position 100% Shareholder	Date of Birth 9/12/2018
Residence Street Address 302 W. Third Street, Suite 300	City State Cincinnati OH	Zip Code 45202
Spouse Name n/a	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Age
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Age
Residence Street Address	City State	Zip Code

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

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

City or County of Dodge City

SECTION 1 – LICENSE TYPE			
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit			
Check One: <input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises. <input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.			
SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): 004486112339F01			
I have registered as an Alcohol Dealer with the TTB. <input checked="" type="checkbox"/> Yes (required for new application)			
Name of Corporation Kwik Shop, Inc. #762	Principal Place of Business 1811 Central, Dodge City, KS 67801		
Corporation Street Address 302 W. Third Street, Suite 300	Corporation City Cincinnati	State OH	Zip Code 45202
Date of Incorporation 4/1/1960 in the state of Kansas	Articles of Incorporation are on file with the Secretary of State.		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Resident Agent Name CSC	Phone No. 513.562.5738		
Residence Street Address 2900 SW Wanamaker Dr.	City Topeka	State KS	Zip Code 66614
SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Kwik Shop		Name Kwik Shop, Inc.	
Business Location Address		Address 302 W. Third Street	
City	State	City	State
	Zip	Cincinnati	OH
Business Phone No.		<input type="checkbox"/> Applicant owns the proposed business location. <input type="checkbox"/> Applicant does not own the proposed business location.	
Business Location Owner Name(s) Jarmel Leggett			
SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse*, if applicable. Attach additional pages if necessary.			
Name EG Retail (America) LLC	Position 100% Shareholder		Date of Birth 9/12/2018
Residence Street Address 302 W. Third Street, Suite 300	City Cincinnati	State OH	Zip Code 45202
Spouse Name n/a	Position		Date of Birth
Residence Street Address	City	State	Zip Code
Name	Position		Date of Birth
Residence Street Address	City	State	Zip Code
Spouse Name	Position		Age
Residence Street Address	City	State	Zip Code
Name	Position		Date of Birth
Residence Street Address	City	State	Zip Code
Spouse Name	Position		Age
Residence Street Address	City	State	Zip Code

Memorandum

*To: City Manager
City Commissioners*

From: Ray Slattery, Director of Engineering Services DS

Date: March 11, 2019

*Subject: Light Cleaning & TV Inspection of NBP
12" Gravity Sewer by Mayer Specialty
Services, LLC part of SS 1701*

Agenda Item: Consent Calendar

Recommendation: Approve Change Order No. 1 for Light Cleaning & TV Inspection of NBP 12" Gravity Sewer by Mayer Specialty Services, LLC, part of SS 1701.

Background: This part of the NBP Sampling Basin and Forcemain project was approved in January 2018. PO 3333 was issued for this work in the amount of \$7,150.

Justification: Light Cleaning & TV Inspection of NBP 12" Gravity Sewer; There was an increase of 493.4 L.F. over the amount of line used for the quote estimate. This resulted in an increase of \$1,356.85. There was also an adjustment in the L.F. price due to work having to be completed on the weekend, so the NBP did not have to shut down production during the week. This \$1.00 per L.F. increase resulted in an increase of \$3,093.40. Mayer Specialty Services, LLC was scheduled to start the cleaning and TV inspection on Saturday, January 26th, but when they were ready to start, NBP has performing some maintenance work in the plant. As a result there were high flows in the gravity sewer line and Mayer couldn't perform the necessary work. After some phone calls and discussions, it was determined it was best for Mayer to wait until the maintenance operations were complete. This resulted in the 4 hours of downtime at \$500 per hour for a total of \$2,000.

Financial Considerations: Change Order No. 1 is for an increase of \$6,450.25.

Purpose/Mission: One of the City's core values in Ongoing Improvements. With the construction of these improvements the City is preparing for the community's future and providing new possibilities for current and future citizens of our community.

Legal Considerations: N/A

Attachments: Change Order No. 1

Memorandum

To: Cherise Tieben City Manager
From: Nannette Pogue
Date: March 13, 2019
Subject: Ordinance Regulating the sale of CMB and Beer
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the City Commission approve Ordinance No. 3708

Background: In 2017 the Kansas Legislature amended the cereal malt beverage (CMB) laws to allow retailers with a CMB license to also sell beer containing not more than 6% alcohol by volume. The businesses will still apply to the City for a CMB license but, beginning April 1, 2019, the CMB license issued by the city will allow the businesses to sell CMB and beer containing not more than 6% alcohol by volume.

The Ordinance as proposed is from a sample that the League of Kansas Municipalities drafted. This ordinance was initially the same ordinance that the City has in place currently, but updates the definition of CMB to include the enhanced CMB and updates the references throughout the ordinance referring to Enhanced CMB. The regulations and requirements for qualifying for a CMB license have not changed. The only thing that has changed is what can be sold by a business with a CMB license.

The section in this proposed that is different, is Section 3-210. The City's current ordinance outlines what the Governing Body shall do when a violation occurs regarding the suspension/revocation of the license. The proposed ordinance states that the Governing Body shall permanently revoke or cause to suspend a license for a period of not more than 30 days. There has been no action by the Governing Body in a number of years regarding suspension. If the Commission is interested in a more structured suspension in the future that can be changed.

Justification: The ordinance as presented will update the City to the changes that the Legislature made in 2017.

Financial Considerations: None

Purpose/Mission: We strive to achieve high service standards

Legal Considerations: Ordinance complies with the State changes

Attachments: Ordinance No. 3708

ORDINANCE NO. 3708

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF DODGE CITY, KANSAS AND AMENDING CHAPTER 3 – ARTICLE 2, SECTIONS 3-201 TO 3-215 OF THE CODE OF THE CITY OF DODGE CITY, AMENDING ORDINANCE NO. 3704 AND SECTION 3-101 OF THE CODE OF THE CITY OF DODGE CITY AND REPEALING ANY ORDINANCES OF THE CITY OF DODGE CITY IN CONFLICT WITH THIS ORDINANCE.

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

Section 1: Section 3-101 of the Code of the City of Dodge City is hereby amended to read as follows by amending subsection (d):

3-101. DEFINITIONS. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purposes of this Chapter, have the meanings indicated in this section.

(d) Enhanced Cereal Malt Beverage means cereal malt beverage as that term is defined in K.S.A. 41-2701

Section 2: Chapter 3 – Article 2, Sections 3-201 to 3-215 of the Code of the City of Dodge City shall be deleted and replaced with the following:

3-201. LICENSE ISSUED BY CITY. The “Cereal Malt Beverage License” issued by the city of Dodge City pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage as defined in section 1, by those retailers in compliance with this ordinance and other laws and regulations that may apply.

3-202. LICENSE REQUIRED OF RETAILER.

(a) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without a license for each place of business where enhanced cereal malt beverages are to be sold at retail.

(b) It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any enhanced cereal malt beverage in any other manner.

3-203. APPLICATION. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain:

(a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;

(b) The particular place for which a license is desired;
(c) The name of the owner of the premises upon which the place of business is located;
(d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.

(e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;

(f) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he or she has inspected the premises to be licensed and it complies with the provision of the City zoning, building and property maintenance laws.

(g) Each application for a general retailer's license must be accompanied by a certificate from the city Fire Chief or his representative certifying that he or she has inspected the premises to be licensed and it complies with the current Fire Code adopted in Chapter 7, Article 2 of this code.

Each application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the city for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The chief shall report to the City Clerk not later than five working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.

3-204. LICENSE APPLICATION PROCEDURES.

(a) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.

(b) The city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.

(c) The clerk's office shall provide copies of all applications to the police department, to the fire department, and to the Development Services Department, when they are received. The police department will run a record check on all applicants and the fire department and health department will inspect the premises. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.

(d) The governing body will not consider any application for a new or renewed license that has not been submitted 10 days in advance and been reviewed by the above city departments.

(e) An applicant who has not had an enhanced cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

3-205. LICENSE GRANTED; DENIED.

- (a) The journal of the governing body shall show the action taken on the application.
- (b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.
- (c) No license shall be transferred to another licensee.
- (d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

3-206. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

3-207. LICENSE, DISQUALIFICATION. No license shall be issued to:

- (a) A person who has not been a resident in good faith of the state of Kansas for at least one year immediately preceding application and a resident of Ford County for at least six months prior to filing of such application.
- (b) A person who is not a citizen of the United States.
- (c) A person who is not of good character and reputation in the community in which he or she resides.
- (d) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.
- (e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.
- (f) A corporation if any manager, officer or director thereof or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than non-residence within the city or county.
- (g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.
- (h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.
- (i) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, retailer residency requirements or age, except that this subsection (i) shall not apply in determining eligibility for a renewal license.

3-208. RESTRICTION UPON LOCATION

- (a) No license shall be issued for the sale at retail of any enhanced cereal malt beverage on premises which are located in areas not zoned for such purpose.

3-209. LICENSE FEE. Applications for a license to sell Enhanced Cereal Malt Beverages shall be accompanied by a fee outlined in Appendix A. Fees of the Code of the City of Dodge City.

Fees shall be for:

- (a) General Retailer – for each place of business selling enhanced cereal malt beverages at retail.
- (b) Limited Retailer – for each place of business selling only at retail enhanced cereal malt beverages in original and unopened containers and not for consumption on the premises.

3-210. LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY. The governing body of the city, upon five days' written notice, to a person holding a license to sell enhanced cereal malt beverages shall permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:

- (a) If a licensee has fraudulently obtained the license by giving false information in the application therefor;
- (b) If the licensee has violated any of the provisions of this section or has become ineligible to obtain a license under this section;
- (c) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling enhanced cereal malt beverages;
- (d) The sale of enhanced cereal malt beverages to any person under 21 years of age;
- (e) For permitting any gambling in or upon any premises licensed;
- (f) For permitting any person to mix drinks with materials purchased in any premises licensed or brought into the premises for this purpose;
- (g) For the employment of any person under the age established by the State of Kansas for employment involving dispensing enhanced cereal malt beverages;
- (h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;
- (i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed;
- (j) The nonpayment of any license fees;
- (k) If the licensee has become ineligible to obtain a license;
- (l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.

3-211. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Ford County and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken shall not suspend the order of revocation of the license of any licensee, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

3-212. CHANGE OF LOCATION. If a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee of \$25.00. If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business

are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee.

3-213. WHOLESALERS AND/OR DISTRIBUTORS. It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver enhanced cereal malt beverages within the city, to persons authorized to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales.

3-214. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations.

(a) The place of business licensed, and operating shall at all times have a front and rear exit unlocked when open for business.

(b) The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to the inspection of the police and health officers of the city, county and state.

(c) Except as provided by subsection (d), no enhanced cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:30 a.m., and 6:00 a.m., or on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30 percent of its gross receipts from the sale of food for consumption on the licensed premises; closing hours for clubs shall conform to K.S.A. 41-2614 and amendments thereto.

(d) Enhanced cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2601, et seq. and amendments thereto, and licensed as a club by the State Director of Alcoholic Beverage Control.

(e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police and not to the public.

(f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

(g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.

(h) No licensee or agent or employee of the licensee shall sell or permit the sale of enhanced cereal malt beverage to any person under 21 years of age.

(i) No licensee or agent or employee of the licensee shall permit any gambling in the place of business for which such license has been issued.

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

(k) No licensee or agent or employee of the licensee shall employ any person under 18 years of age in dispensing enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

3-215. SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex

easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee.

Section 3. This ordinance shall be published one time in the official city newspaper.

Section 4. This ordinance shall take effect and be in force from and after April 1, 2019.

PASSED AND APPROVED this 18th day of March, 2019.

Mayor

ATTEST:

City Clerk

[SEAL]

Memorandum

To: Cherise Tieben City Manager
From: Nannette Pogue
Date: March 13, 2019
Subject: Ordinance Regulating Temporary Business Licenses
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the City Commission approve Ordinance No. 3709

Background: The ordinance that we currently have regarding Temporary Business Licenses in Dodge City does not allow for door to door sales. Over the years, several people/business that have come into Dodge City to sell door to door have challenged our prohibition and we have been advised that it is probably unconstitutional not to allow them. So, we have been allowing them, obtaining a copy of a driver's license for each of the individuals that are working door to door. With the license information we conduct a background check. We have no provision in the current code to require a license or to charge for the license and the back ground check. The Ordinance as presented repeals the section of the code that prohibits door to door sales; adds definitions to the code regarding Itinerant business and merchants; and adds a fee for the license at \$200 per calendar year for a local merchant and \$100 per day for a nonlocal merchant, plus \$55.00 per individual to conduct the background check. The Police Department no longer runs back ground checks. We will use the same company Human Resources. The fees to use this service are 52.50 each, so the fees we charge will cover that cost.

Justification: To pass an Ordinance that reflects what we are doing in practice for door to door merchants and adding a fee for the licensing and background checks.

Financial Considerations: Fees to covers background checks, plus a license fee for the merchant.

Purpose/Mission: Together we work honestly and with integrity while respecting the rights of others

Legal Considerations: No additional

Attachments: Ordinance No. 3709

ORDINANCE NO. 3709

**AN ORDINANCE AMENDING CHAPTER V. BUSINESS REGULATIONS, ARTICLE 6
TEMPORARY BUSINESS LICENSE/PERMITS.**

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

Section 1. Section 5-602 of the Code of the City of Dodge City is hereby repealed.

Section 2. Section 5-601. Definitions of the Code of the City of Dodge City shall be amended by adding subsection (k)

(k) **Itinerant business** means any person or business engaging temporarily in the retail sale of goods, wares, merchandise, or services within the city, including any person who for the purpose of conducting such business, rents, leases or occupies any room, building, hotel, motel, structure, parking lot, vacant lot, or motor vehicle of any kind, to sell goods, wares, merchandise, or services or sell goods, wares, merchandise, or services house to house, door to door, or place to place.

(l) Local Itinerant Merchant is an Itinerant Merchant who resides permanently in the City of Dodge City or Ford County.

(m) Non Local Itinerant Merchant is an Itinerant Merchant who are not permanent residents of Dodge City or Ford County.

Section 3. Section 5-607 of the Code of the City of Dodge City shall be amended as follows:

Local Itinerant Merchant License: \$200 per calendar year

Non Local Itinerant Merchant License: \$100.00 per day

In addition to the above, each applicant shall pay \$55.00 per individual who is acting in behalf of the Itinerant Merchant for the City to conduct a background check.

Section 4. This ordinance shall be effective on March 18, 2019, and following the publication of the summary ordinance once in the official city newspaper.

Mayor

Attest:

Nannette Pogue, City Clerk

Memorandum

*To: City Manager
City Commissioners*
From: Nathan Littrell
Date: March 18, 2019
*Subject: Annexation of Property –
2601 E. Trail St.*
Agenda Item: Ordinance No. 3710

Recommendation: City staff recommends approval of this annexation ordinance.

Background: WB, LLC, owner of the property located at 2601 E. Trail St., has petitioned the City to be annexed. This property is occupied by the Midlands Carrier Transicold (MCT).

Justification: This is a petitioned annexation. This property is adjacent to the existing City Limits and City services are available to the property.

Financial Considerations: None

Purpose/Mission: None

Legal Considerations: None

Attachments: Ordinance No. 3710, Petition, & Map

**BEFORE THE CITY COMMISSION OF THE CITY OF DODGE CITY, KANSAS
PETITION FOR ANNEXATION OF CERTAIN REAL ESTATE**

COMES NOW William Willett, hereby petitions the City Commission of the City of Dodge City, Kansas to annex into the City of Dodge City, Kansas certain real estate located at 2601 East Trail Street, more specifically described herein, and respectfully allege and state as follows:

1. That I am the record owner of the following described real estate located in Ford County, Kansas: Commencing at the Southwest Corner of the Northwest Corner of Section 32, Township 26 South, Range 24 West of 6th P.M., Ford County, Kansas, Thence bearing S89°09'47"E a distance of 114.07' to a ½" round x 30" long re-bar and cap #662, on the East R.O.W. line of U.S. Hwy 283/56 Bypass and the Point of Beginning; Thence N0°27'20"E a distance of 668.88' along said R.O.W.; Thence S69°49'48"E a distance of 498.17'; Thence S0°25'49"E a distance of 504.06'; Thence N89°09'47"W a distance of 476.78' to the Point of Beginning. Containing approx. 6.36 acres.
2. The above-described real estate adjoins the City of Dodge City, as is shown on the map attached hereto and incorporated herein by reference;
3. That I respectfully request that the above-described real estate be annexed and incorporated to the City of Dodge City, Kansas, and do hereby consent to such annexation.

Respectfully submitted, .

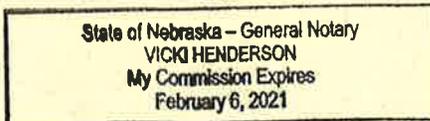
WBLLC by William Willett
William Willett

3422 Golden Eagle Circle
Address

Blair NE 68008
City, State, Zip Code

402 - 960 - 2200
Phone

BE IT REMEMBERED, That on this 11 day of February 2019, before me, a notary public in and said county and state, came the above mentioned landowner to me personally known to be the persons who executed the foregoing instrument of writing, and who duly acknowledged the execution of same, in testimony whereof, I have set my hand and affixed my notarial seal the day and year above written.



Vicki Henderson
Signature: Notary Public

Vicki Henderson
Print Name: Notary Public

My commission expires: 2.6.21



E. Trail St.

Hwy. 56/283

U.S. Hwy. 400

Hwy. 56/283/400



**Proposed
Annexation**
-
2601 E. Trail St.



ORDINANCE NO. 3710

AN ORDINANCE ANNEXING TO THE CITY OF DODGE CITY THE DESCRIBED PROPERTY OF 2601 EAST TRAIL STREET, IN ACCORDANCE WITH K.S.A. 12-520 ET. SEQ; AND PROVIDING FOR THE ZONING THEROF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CIY, KANSAS:

SECTION 1: By the virtue of the authority granted by K.S.A. 12-520 and by one or more of the conditions listed therein being fulfilled, the following described real property located in Ford County, Kansas is hereby annexed to, and made part of the City of Dodge City:

A tract of land in the Northwest Quarter of Section 32, Township 26 South, Range 24 West of the Sixth Principal Meridian, Ford County, Kansas more particularly described as:

Commencing at the Southwest Corner of the Northwest Quarter of Section 32, Township 26 South, Range 24 West of 6th P.M., Ford County, Kansas, Thence bearing S89°09'47"E a distance of 114.07' to a ½" round x 30" long re-bar and cap #662, on the East R.O.W. line of U.S. Hwy 283/56 Bypass and the Point of Beginning; Thence N0° 27' 20" E a distance of 668.88' along said R.O.W.; Thence S69° 49' 48" E a distance of 498.17'; Thence S0° 25' 49" E a distance of 504.06'; Thence N89° 09' 47" W a distance of 476.78' to the Point of Beginning. Containing approx. 6.36 acres.

SECTION 2: The property will be designated I-2, Heavy Industrial upon annexation.

SECTION 3: The City Clerk shall file a certified copy of this ordinance with the County Clerk and Register of Deeds of Ford County, pursuant to K.S.A 12-522.

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

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR SESSION AND APPROVED BY THE MAYOR, THIS EIGHTEENTH DAY OF MARCH, 2019.

BRIAN DELZEIT, MAYOR

ATTEST:

NANNETTE POGUE, CITY CLERK

Memorandum

*To: City Manager
City Commissioners*
From: Nathan Littrell
Date: March 18, 2019
Subject: Vacation of Ash St.
Agenda Item: Ordinance #3711

Recommendation: City staff recommends approval of this vacation ordinance.

Background: The applicant, Frances Deaver, requested the vacation of Ash Street Right-Of-Way from Ave. P to approximately 300 feet to the West where this portion of platted Ash St. dead-ends.

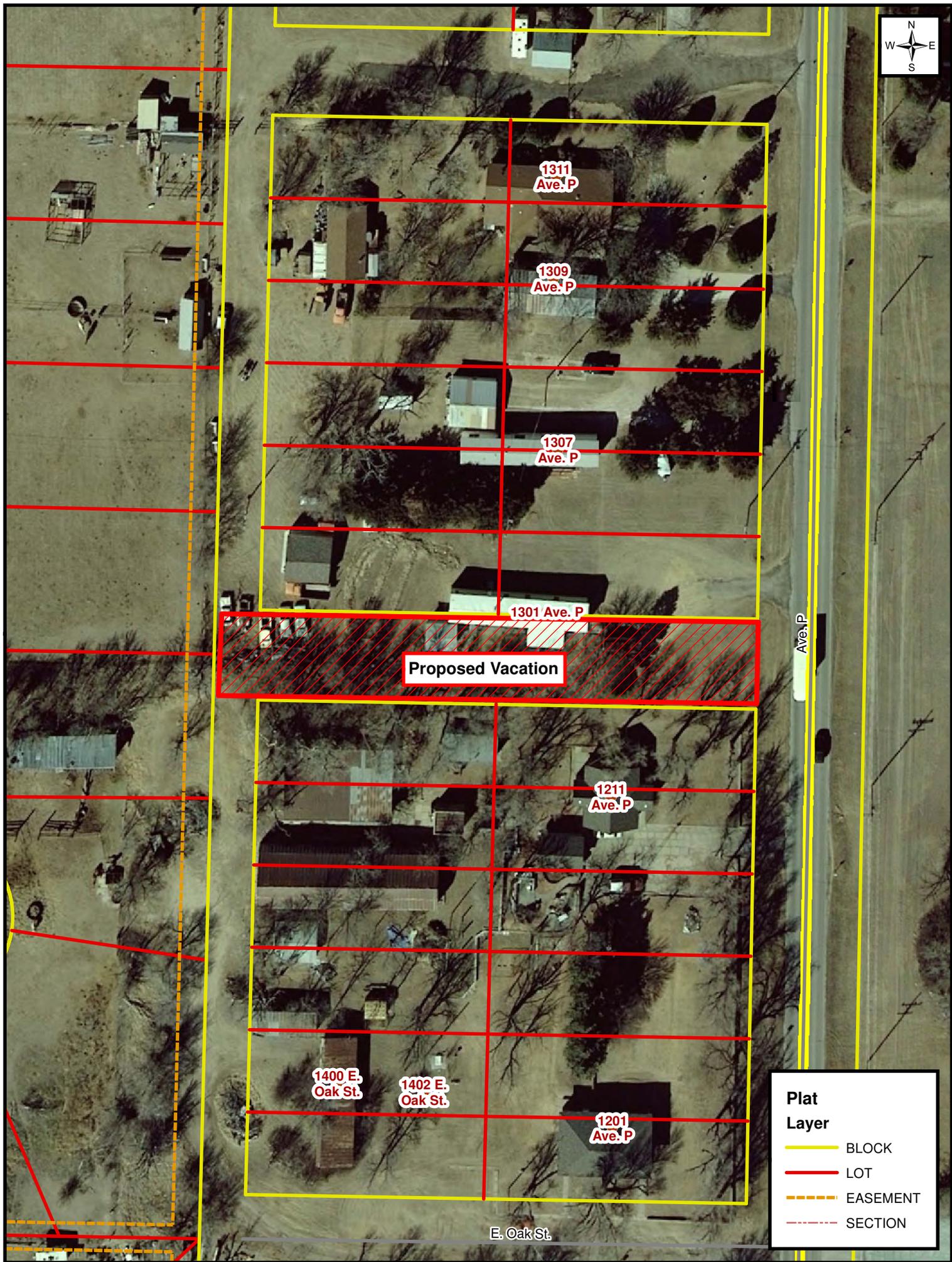
Justification: This vacation would clean up some issues of property boundary locations intersecting existing structures. The City has no plans of constructing a road in this Right-Of-Way. All of the utility companies have been notified and they have no objection to this Right-Of-Way being vacated. City staff has not received any objections from adjacent property owners.

Financial Considerations: None

Purpose/Mission: None

Legal Considerations: None

Attachments: Ordinance #3711, Map



Proposed Vacation

1311
Ave. P

1309
Ave. P

1307
Ave. P

1301 Ave. P

1211
Ave. P

1400 E.
Oak St.

1402 E.
Oak St.

1201
Ave. P

E. Oak St.

Ave. P

Plat Layer	
	BLOCK
	LOT
	EASEMENT
	SECTION

ORDINANCE NO. 3711

AN ORDINANCE VACATING A PORTION OF ASH STREET RIGHT-OF-WAY
ADJACENT TO AVENUE P, AS PLATTED IN HAGGARD ADDITION.

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

SECTION 1: The following described property in Dodge City, Ford County, Kansas is hereby vacated: Ash Street Right-Of-Way, from the East line of Block 12 of Haggard Addition Replat to the West line of Avenue P, Dodge City, Ford County, Kansas.

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

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

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

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

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR SESSION,
AND APPROVED BY THE MAYOR, THIS EIGHTEENTH DAY OF MARCH, 2019.

BRIAN DELZEIT, MAYOR

ATTEST:

NANNETTE POGUE, CITY CLERK

Memorandum

*To: City Manager
City Commissioners*
From: Nathan Littrell
Date: March 18, 2019
*Subject: Annexation of Property –
Shared Roads*
Agenda Item: Ordinance No. 3712

Recommendation: City staff recommends approval of this annexation ordinance.

Background: As part of the Shared Road Agreement between the City of Dodge City and Ford County, these roads are to be annexed into the City.

Justification: These roads are adjacent to the existing City Limits.

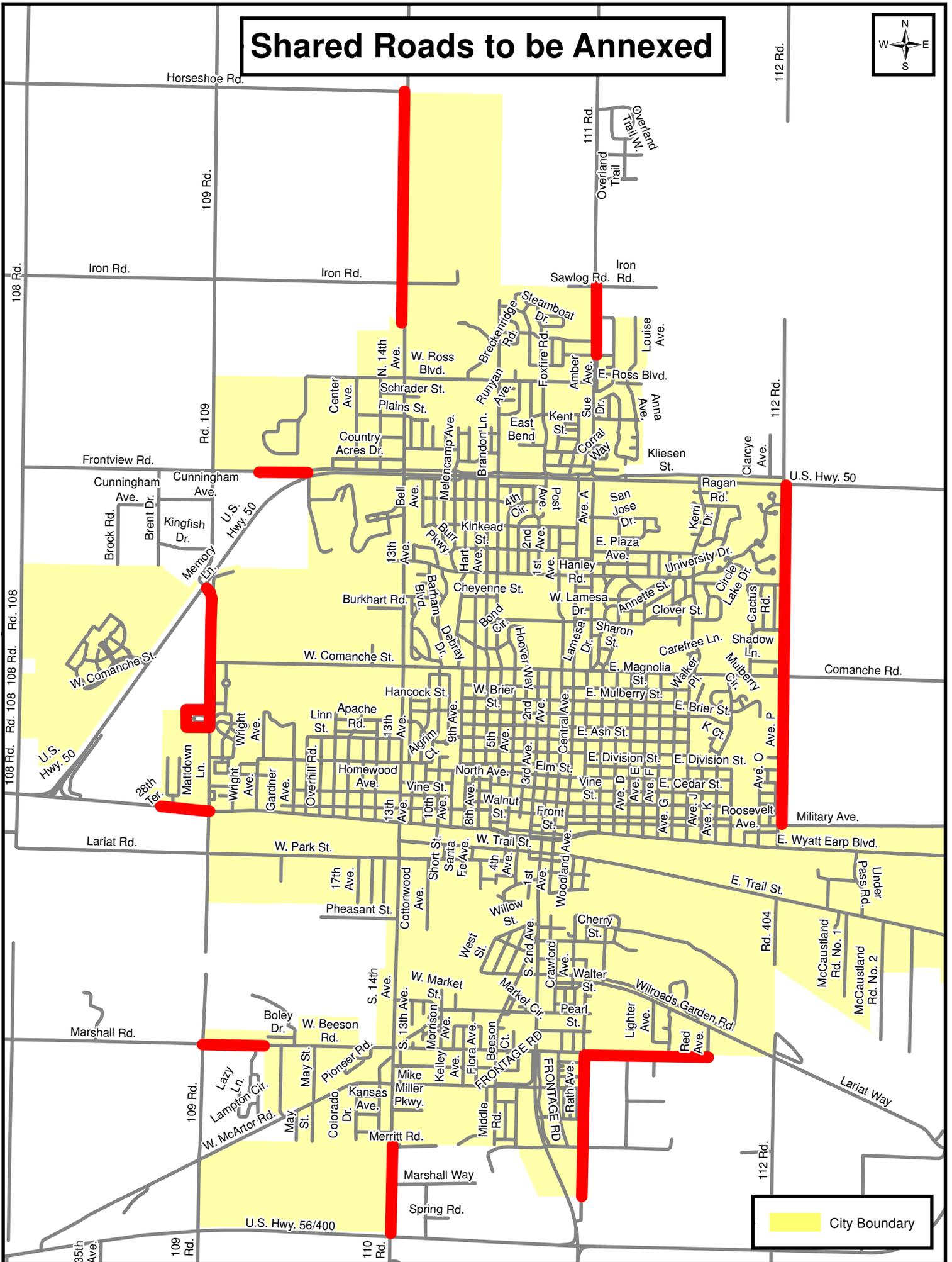
Financial Considerations: None

Purpose/Mission: None

Legal Considerations: None

Attachments: Ordinance No. 3712 & Map

Shared Roads to be Annexed



 City Boundary

ORDINANCE NO. 3712

AN ORDINANCE ANNEXING TO THE CITY OF DODGE CITY THE DESCRIBED PROPERTIES AS PART OF THE SHARED ROAD AGREEMENT BETWEEN THE CITY OF DODGE CITY AND FORD COUNTY, IN ACCORDANCE WITH K.S.A. 12-520 ET. SEQ; AND PROVIDING FOR THE ZONING THEROF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CIY, KANSAS:

SECTION 1: By the virtue of the authority granted by K.S.A. 12-520 and by one or more of the conditions listed therein being fulfilled, the following described real property located in Ford County, Kansas is hereby annexed to, and made part of the City of Dodge City:

Minneola Rd. and East Beeson Rd.

Beginning at the intersection of the north line of Section 2, Township 27 South, Range 25 West of the 6th P.M. and the west right-of-way line of Minneola Road; thence South along the west right-of-way line of Minneola Road to the southeast corner of Lot 3, Broce #1 Subdivision; thence East along the extended south line of said Lot 3 to the east right-of-way line of Minneola Road; thence North along the east right-of-way line of Minneola Road to the south right-of-way line of Beeson Road; thence East along the south right-of-way line of Beeson Road the extended east right-of-way line of Red Road; thence North along the east right-of-way line of Red Road to the north line of Section 1, Township 27 South, Range 25 West; thence West along the north line of said Section 1 and said Section 2 to the Point of Beginning.

Avenue P

Beginning at the intersection of the south right-of-way line of Military Avenue and the east right-of-way line of Avenue P; thence West along the extended south right-of-way line of Military Avenue to the west line of Section 30, Township 26 South, Range 24 West of the 6th P.M.; thence North along the west line of Section 30, and the west line of Section 19, Township 26 South, Range 24 West to the south right-of-way line of U.S. Highway 50; thence East along the south right-of-way line of U.S. Highway 50 to the east right-of-way line of Avenue P; thence South along the east right-of-way line of Avenue P to the Point of Beginning.

Avenue A

Beginning at the intersection of the north right-of-way line of Canterbury Road and the east right-of-way line of Avenue A; thence North along the east right-of-way line of Avenue A to the north line of Section 13, Township 26 South, Range 25 West of the 6th P.M., thence West along the north line of said Section 13 to the northwest corner thereof; thence South along the west line of said Section 13 to the north right-of-way line of Canterbury Road; thence East along said north right-of-way line to the Point of Beginning.

North 14th Avenue

Beginning at the northeast corner of Lot 1, block 2, Church Subdivision; thence East along the extended north line of said Lot 1 to the east line of Section 15, Township 26 South, Range 25

West of the 6th P.M.; thence North along the east line of said Section 15 and the east line of Section 10, Township 26 South, Range 25 West to the northeast corner thereof; thence West along the north line of said Section 10 to the west right-of-way line of North 14th Avenue (also known as 110 Road); thence South along the west right-of-way line of North 14th Avenue to the Point of Beginning.

Frontview Road

Beginning at the northeast corner of the Northwest Quarter, Section 22, Township 26 South, Range 25 West of the 6th P.M.; thence West along the north line of said Northwest Quarter, Section 22 a distance of 1,385 feet; thence South and perpendicular to the north line of said Northwest Quarter Section 22 to the south right-of-way line of Frontview Road (also known as Jewell Road); thence East along the south right-of-way line of Frontview Road extended to the east line of said Northwest Quarter, Section 22; thence North along the east line of said Northwest Quarter, Section 22 to the Point of Beginning.

Matt Down Lane and Maple Grove West

Beginning at the southwest corner of Lot 7, Block 1, G.M.G. Subdivision; thence North along the west line of Block 1, G.M.G. Subdivision to the south right-of-way line of U.S. Highway 50; thence Southwest along the south right-of-way line of U.S. Highway 50 to the west right-of-way line of Matt Down Lane; thence Southerly along the west right-of-way line of Matt Down Lane to the northeast corner of Green Crest Memorial Gardens (also known as Maple Grove West); thence West along the north line of Green Crest Memorial Gardens to the northeast corner of Lot 2, block 7, Glenridge Estates; thence South along the east line of Lots 23 through 29, Block 7, Glenridge Estates the southeast corner of lot 23, Block 7, Glenridge Estates; thence East along the north line of Lots 12 through 20, Block 7, Glenridge Estates extended to the east right-of-way line of Matt Down Lane; thence North along the east right-of-way line of Matt Down Lane to the southwest corner of Lot 7, Block 1, G.M.G. Subdivision and Point of Beginning.

Wyatt Earp Blvd. and Matt Down Lane.

Beginning at the southwest corner of Lot 4, block 1, West Hwy. 50 Addition; thence easterly along the south line of West Hwy 50 Addition, the south line of Glenridge Estates, and the south line of Allphin Addition No. Two extended to the east right-of-way line of Matt Down Lane; thence South along the east right-of-way line of Matt Down Lane to the south right-of-way line of Park Street; thence West along the south right-of-way line of Park Street to the west right-of-way line of Matt Down Lane; thence North along the west right-of-way line of Matt Down Lane to the south right-of-way line of Wyatt Earp Blvd.; thence West along the south right-of-way line of Wyatt Earp Blvd. to the extended west line of Lot 4, Block 1, West Hwy. 50 Addition; thence North along the extended west line of said Lot 1 to the southwest corner thereof and the Point of Beginning.

West Beeson Road

Beginning at a point on the west line of Lewis Addition Number Two and the south right-of-way line of Beeson Road; thence West along the south right-of-way line of Beeson Road to the west line of Section 3, Township 27 South, Range 25 West of the 6th P.M.; thence North along the west line of said Section 3 to the northwest corner thereof; Thence East along the north line of said Section 3 to the extended west line of Lewis Addition Number Two; thence South along the extended west line of Lewis Addition Number Two to the Point of Beginning.

South 14th Avenue

Beginning at the intersection of the south right-of-way line of Merritt Road and the east right-of-way line of South 14th Avenue; thence West along the extended south right-of-way line Merritt Road to the west line of Section 2, Township 27 South, Range 25 West of the 6th P.M.; thence South along the west line of said Section 2 to the extended south line of Dodge City Business Park Unit One; thence East along the extended south line of Dodge City Business Park Unit One to the east right-of-way line of South 14th Avenue; thence North along the east right-of-way line of South 14th Avenue to the Point of Beginning.

SECTION 2: The annexed properties will be zoned according to the adjacent zoned properties.

SECTION 3: The City Clerk shall file a certified copy of this ordinance with the County Clerk and Register of Deeds of Ford County, pursuant to K.S.A 12-522.

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

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR SESSION
AND APPROVED BY THE MAYOR, THIS EIGHTEENTH DAY OF MARCH, 2019.

BRIAN DELZEIT, MAYOR

ATTEST:

NANNETTE POGUE, CITY CLERK

Memorandum

*To: City Manager
City Commissioners*

*From: Ray Slattery,
Director of Engineering
Services*

Date: March 14, 2019

*Subject: Ordinance 3713
Speed limit and No Parking on
Streets Annexed per the Shared
Road Agreement with Ford County*

Agenda Item: Ordinances and Resolutions

Recommendation: Approve Ordinance No. 3713

Background: In order to simplify traffic enforcement and maintenance issues the City and County entered into a Shared Road Agreement in October of 2018. In order to make enforcement of the speed limits and No Parking on the shared Roads Annexed into the City, a City Ordinance needs to be established.

Justification: This Ordinance will give the City the authority to enforce the speed limits and No Parking on the newly annexed roads.

Financial Considerations: Cost of signage installation

Purpose/Mission: One of the City's core values in Safety. The new speed limits will help ensure the safety of the traveling public and allow the City Police to enforce the new limits.

Legal Considerations: N/A

Attachments: Ordinance 3713

ORDINANCE NO. 3713

AN ORDINANCE ESTABLISHING A MAXIMUM SPEED LIMIT ON STREETS LISTED IN THE ORDINANCE WITHIN THE CITY LIMITS AND REPEALING CONFLICTING ORDINANCES OR PARTS OF ORDINANCES ALONG WITH ESTABLISHING NO PARKING ON CERTAIN STREETS PER THIS ORDINANCE AND PROVIDING PENALTIES FOR VIOLATIONS OF THE PROVISIONS OF THIS ORDINACNES.

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

Section 1: Repeal any conflicting Ordinances.

Section 2: The maximum speed limit on the following streets within the city limits of the City of Dodge City shall be established as follows;

Minneola Rd. – Beeson Rd. south to the South City Limits –	30 mph
Beeson Rd. – Minneola Rd. to Red Ave. –	30 mph
Beeson Rd. – 14 th Ave. to Virginia St. - Virginia St. to EZ Ave. - EZ Ave. to West City Limits -	30 mph 35 mph 45 mph
Avenue P – Wyatt Earp Blvd. to 175 feet north of the Comanche St. - 175 feet north of the Comanche St. to US 50 -	35 mph 45 mph
Avenue A – from Canterbury Rd. to William St. - from William St. to North City Limits -	30 mph 40 mph
14 th Avenue – Ross Blvd. to 1,145 feet north of Ross Blvd. - 1,145 feet north of Ross Blvd. to Iron Rd. - Iron Rd. to North City Limits -	35 mph 45 mph 55 mph
14 th Avenue – McArtor Rd. to South City Limits	35 mph

Frontview Rd. – Loretta Ave. west 1,385 feet -	30 mph
Mattdown Rd. – Park St. to US 50	40 mph
Wyatt Earp Blvd. – Mattdown Rd. to West City Limits -	55 mph

Section 3: Any person convicted of the violation of the provisions of this ordinance shall be subject to penalties provided by Chapter I, Section 1-116 of the Code of the City of Dodge City.

Section 4: Standing, stopping or parking shall be prohibited at the following locations;

Frontview Rd. from Loretta Ave. west 1,385 feet.

14th Avenue from McArtor Rd. to South City Limits

Section 5: Any person convicted of the violation of the provisions of this ordinance shall be subject to penalties in accordance with the provisions of Article 20, of the Standard Traffic Ordinance for Kansas cities, prepared and published by the League of Kansas Municipalities Edition 2016, and adopted by the Governing Body of the City of Dodge City, and as set out in Section 14.101 of the Code of the City of Dodge City.

Section 6: This ordinance shall take effect following its publication in the official City newspaper as provided by law, and after the posting of appropriate signs advising the motoring public of the provisions of this ordinance.

Passed by the Governing Body of the City of Dodge City and approved by the Mayor, this 18th day of March, 2019.

Brian Delzeit, Mayor

ATTEST:

Nannette Pogue, City Clerk



101 E. Wyatt Exp Blvd. • P.O. Box 818 • Dodge City, KS 67801-0818 • (620) 227-9501 • FAX (620) 227-2957 • 1-800-381-3690
www.dodgedev.org • email: jknight@dodgedev.org

Memorandum

To: Cherise Tieben, City Manager
From: Joann Knight
Date: March 18, 2019
Subject: Resolution No. 2019-09

Agenda Item: Ordinances and Resolutions

Recommendation: Staff recommends the approval of Resolution No. 2019-09 allowing the City of Dodge City to apply for funding from the United States Department of Agriculture Rural Business Opportunity Grant and to administer the funds if awarded.

Background: Staff has been collaborating with the Kansas Health Foundation, Community Foundation of Southwest Kansas – Scroggins Foundation Grant, NetWork Kansas and the Western Kansas Rural Economic Development Alliance to pull together coalitions throughout the region to identify potential students and aid the community colleges and universities in promoting their programs that they can offer in the region in a blended format so that we can meet their student numbers by working together. The purpose of this initiative is to encourage high school students and working adults to obtain their two-year degrees from our area community colleges and work to obtain their bachelor’s degrees thru the University Center.

In addition, the Kansas Board of Regents has directed Fort Hays State University to put a plan together to present to them by April 1st. The plan is to determine logistics and technology needs to begin offering a blended mix option for a Bachelor of Nursing and a Bachelor of Social Work program starting in August of this year. Staff’s responsibility will be to help them with logistics, clinical sites and recruiting students.

However, the long-term solution for success of providing access to education for Southwest Kansas is to form a new 501c3 – Rural Education and Workforce Alliance (REWA). The plans are to operate the organization in a similar fashion to the

Community Housing Association of Dodge City (CHAD). A REWA Board of Directors has been appointed, we have filed our Articles of Incorporation and will be applying for the 501c3 once we have the Articles back from the State.

Justification: This application for funding from the USDA will provide funds to hire the full-time coordinator to build the coalitions, recruit students and facilitate the additional locations with the universities. This Funding will also aid in providing renovations at the former Saint Mary's of the Plains College (Hennessey Hall) building to provide classrooms, technology and offices to house the program and a variety of training options to meet the workforce needs of the region.

Financial Considerations: The Dodge City/Ford County Development Corporation will provide funding to this project for the match needed and work on obtaining additional grant funds for the project. Development Corporation and City staff time will be eligible for in-kind match for the funds. The City Commission previously approved \$10,000 from the City's 2019 Budget as part of the match commitment as well as office space and equipment. The grant time frame for budget will run August 2019– July 2020. Administration of the grant funds, if awarded, will be provided by the City and Economic Development staff.

Purpose/Mission: To improve the health care and education opportunities for this region.

Legal Considerations: None

Attachments: Resolution No. 2019-09

RESOLUTION NO. 2019-09

**A RESOLUTION CERTIFYING LEGAL AUTHORITY
TO APPLY FOR AND ADMINISTER THE 2019 RURAL BUSINESS
ENTERPRISE GRANT
FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT**

WHEREAS, City of Dodge City, is a legal governmental entity as provided by the STATE OF KANSAS, and

WHEREAS, City of Dodge City, desires to obtain financial assistance from Rural Development, United States Department of Agriculture for the purpose of providing funding to coordinate feasibility and planning for the potential to bring mid-level healthcare training opportunities to Dodge City to serve the Southwest Kansas Region, and

WHEREAS, City of Dodge City, authorized Cherise Tieben, City Manager, as approved by the Kansas Department of Agriculture, to act as the applicant's official representative in signing and submitting the application for the 2019 RURAL BUSINESS OPPORTUNITY GRANT.

ADOPTED by the Governing Body of the City of Dodge City, Kansas, on March 18, 2019.

DATE: March 18, 2019

Brian Delzeit, Mayor

ATTEST:

Nannette Pogue, City Clerk

Memorandum

To: Cherise Tieben City Manager
From: Nannette Pogue
Date: March 13, 2019
Subject: Resolution setting fees for Various Beverage Licenses
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the City Commission approve Resolution No. 2019-09

Background: In February, the City approved an Ordinance to amend the Alcohol Ordinances. In several instances, the ordinance changed the licensing period for alcohol licenses that mirrored the State licensing period. This resolution states the new fees for the licenses for a biennial period.

Justification: To update the fees for alcohol licenses

Financial Considerations: The fees will be collected every two years instead of every year, so the fees have doubled.

Purpose/Mission: Together we strive to achieve high service standards.

Legal Considerations: None

Attachments: Resolution No. 2019-09.

Resolution No. 2019-10

A RESOLUTION SETTING FEES FOR VARIOUS BEVERAGE LICENSES AND
AMENDING APPENDIX A. FEES OF THE CODE OF THE CITY OF DODGE CITY.

The following fees are being amended in Appendix A. Fees of the Code of the City of Dodge City:

BEVERAGE FEES:

- Alcoholic liquor distributor's license - \$1,200.00 biennial
- Beer Distributor's license (wholesale) - \$75.00
- Retailer's license of alcoholic liquors – \$600.00 biennial
- Drinking Establishment License - \$500.00 biennial
- Class A and Class B private club license - \$500.00 biennial
- General Retailer of CMB—on premises consumption—(\$200 + \$25 State Fee) = \$225.00
- Limited Retailer of CMB—off premise consumption in original container—(\$50 + \$25 State Fee) = \$75.00

This Resolution shall take effect and be in force from and after its adoption.

Adopted by the Governing Body this 18th day of March, 2019.

Brian Delzeit, Mayor

ATTEST:

Nannette Pogue, City Clerk

Small Cell Aesthetic Standards

City of Dodge City, Ks



March 2019

Small Cell Antenna Aesthetic Standards

This document applies to all small cell antenna applications for placement of new small cell antennas on City-owned and non-City-owned poles in the public right-of-way. Applications that conform to these standards will be reviewed by the Department of Developmental Services and/or Engineering Department. Any application that does not conform to these guidelines would require a variance and need to receive approval from the Dodge City Planning Commission prior to final approval.

Principles

This document applies to all small cell antenna applications for placement of new or replacement of small cell antennas on City-owned public right-of-way. Applications that conform to these standards will be reviewed by the Department of Developmental Services and/or Engineering Department. Any application that does not conform to these guidelines would require a variance and need to receive approval from the Dodge City Planning Commission prior to final approval. It is intended to create a simplified and streamlined aesthetic review process by the City, establishing a clear and consistent aesthetic standard for placement in the City. For small cell antenna structures installed in the public right-of-way, these guidelines seek:

1. to establish a clear, defined aesthetic standard for use throughout the city.
2. to establish a menu of design options for providers to select from when applying for new or replacement small cell antenna placement throughout the city.
3. to minimize unnecessary quantities of new poles by encouraging co-location of small cell facilities.
4. to require, in situations where new poles will be placed, that equipment be placed on new, pre-designed and approved stealth poles, such that all equipment, including any wiring, can be concealed inside the pole.
5. to require, in situations where attachments will be made to existing poles, that equipment, cabling, and conduit be concealed through the use of approved shrouding or camouflaging equipment.
6. to require, easy ownership recognition of the small cell antenna, pole, and equipment by requiring the owners name and phone number stenciled on the pole or equipment.

Section 1. Application Requirements

The City may develop new or additional permit application forms, checklists, updated aesthetic standards, and other related materials as required to optimally meet the goals of Dodge City, its citizens, and its leadership. To avoid unnecessary delay in application processing, applicants are strongly encouraged to check the City website at www.dodgecity.org before submitting an application in order to confirm that the applicant is completing and following the most up-to-date application and requirements.

Site Plans and Structural Calculations: The applicant must submit fully-dimensioned site plans, elevation drawing and structural calculations prepared, sealed, stamped and signed by a Professional

Engineer licensed and registered by the State of Kansas. Drawings must depict any existing wireless facilities, with all existing transmission equipment identified; other improvements; the proposed facility, with all proposed transmission equipment and other improvements; site triangle, if the new or replacement antenna is near the intersection of any two streets, street and driveway, street and alley; and the boundaries of the area surrounding the proposed facility and any associated access or utility easements and setbacks.

1. **Photo Simulations:** For all applications, photo simulations from at least three reasonable line-of-site locations near the proposed project site. The photo sims must be taken from the viewpoints of the greatest pedestrian or vehicular traffic. Angle of photo sim separation must be at least 90 degrees or greater and provide a full profile depiction. Photo simulations must be included in the application packet.
2. **Equipment Specifications:** For all equipment depicted on the plans, the applicant must include:
 - a. the manufacturer's name and model number;
 - b. physical dimensions including, without limitation, height, width, depth, volume and weight with mounts and other necessary hardware;
 - c. Technical rendering of all external components, including enclosures and all attachment hardware; and
 - d. which selection(s) from the approved aesthetic standards match the desired design.

Section 2. General Design and Construction Standards

Dodge City desires to promote safe, cleanly organized and aesthetically acceptable facilities using the smallest and least intrusive means available to provide wireless services to the community. All wireless facilities in the public right-of-way must comply with all applicable provisions in this section. If any other law, regulation or code requires any more restrictive structural design and/or construction requirements, the most restrictive requirement will control.

Collocation: Dodge City desires and encourages collocations between limited numbers of multiple separate wireless service providers on the same support structure whenever feasible. If the applicant chooses to not collocate when options appear available, demonstrative proof must be provided as to why collocation is not feasible.

Antennas: The antenna must be top-mounted and concealed within a radome that also conceals the cable connections, antenna mount and other hardware. GPS antennas must be placed within the radome or directly above the radome not to exceed six inches. The radome or side-mounted antenna and GPS antenna must be non-reflective and painted or otherwise colored to match the existing pole.

Pole-Mounted Equipment Cages/Shrouds: When pole-mounted equipment is either permitted or required, all equipment other than the antenna(s), electric meter and disconnect switch must be concealed within an equipment shroud not to exceed eleven (11ft³) cubic feet in total volume. The equipment must be installed no lower than ten (10') feet above ground level. The equipment shroud must be non-reflective and painted, wrapped or otherwise colored to match the proposed pole. It is

preferred that equipment shrouds be mounted flush to the pole, subject to the pole owner's approval. Standoff mounts are permitted for the equipment shroud, but may not exceed six (6")

inches and must include metal flaps (or “wings”) to conceal the space between the shroud and the pole.

Poles with additional features: New poles should be black in color, using Gloss Black #17038 per Federal Color Standard 595, and designed to include blank connections (handholds and J-hooks) for city permitted uses, such as: cameras, food truck connections, wi-fi, and wayfinding signage or banners.

Ground-Mounted Equipment: Ground-mounted equipment is allowed when placed in conjunction with a new stealth pole and concealed in a ground mounted cabinet. The maximum acceptable dimensions of ground-mounted cabinet will be thirty (30”) inches wide by thirty (30”) inches deep by four (4’) feet high and must be square in shape. Ground mounted cabinets must be installed flush to the ground and will be black in color, using Gloss Black #17038 per Federal Standard 595. Ground mounted equipment typically will not be installed on sidewalks. However if the need arises, ground mounted equipment and there is no other location for the equipment, the equipment must not interfere with the flow of pedestrian traffic and must conform to the American’s with Disabilities Act (ADA) in regards to appropriate sidewalk spacing.

Concealment: Dodge City requires the applicant to incorporate concealment elements into the proposed design. Concealment will include approved camouflage or shrouding techniques.

Utility Lines: New service lines must be undergrounded whenever possible to avoid additional overhead lines. For metal poles, undergrounded cables and wires must transition directly into the pole base without any external junction box.

Lights: Unless otherwise required for compliance with FAA or FCC regulations, the facility shall not include any permanently installed lights. Any lights associated with the electronic equipment shall be appropriately shielded from public view. This subsection is not meant to prohibit the installation of luminaires or additional street lighting on new poles when required by Dodge City.

Generally Applicable Health and Safety Regulations: All facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety standards, regulations, and laws, including without limitation all applicable regulations for human exposure to RF emissions.

Section 3. General Location Criteria

Obstructions: Any new pole and/or equipment and other improvements associated with a new pole or an existing pole must not obstruct any:

1. access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;
2. access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop (including, without limitation, bus stops and bike share stations);
3. access to above-ground or underground infrastructure owned or operated by any public or private utility agency;

4. fire hydrant access;
5. access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the right-of-way; and/or
6. access to any fire escape.
7. vehicular site triangles.

Section 4. New and Replacement Poles

Replacement of City-Owned Street Infrastructure in Right of Way: Any new locations must coincide with existing pole locations and the new structure must adhere to the aesthetic standards included in this document. Replacement pole height shall not exceed the height of the existing pole.

Smart Poles: The provider shall purchase the Smart Pole or Replacement Pole and shall be responsible for the maintenance of the Pole during the period of occupancy by the provider. Ownership of the Pole will be vested with the City. Poles will be designed to include LED luminaire(s) attached to match adjacent poles, if desired by the City, blank connections (handholds and J-hooks) for city permitted uses, such as: cameras, food truck connections, wi-fi, and wayfinding signage or banners. Smart Poles are considered to be a suitable replacement for both ornamental and wood poles where applicable.

Overall Height: New pole height may not exceed the height of surrounding utility poles or streetlights, whichever is greater. If no utility poles are present, the maximum height, including antennas or any other extensions, is limited to thirty-five (35') feet. Dodge City shall consider other poles in the vicinity of the proposed location, the built environment, the neighborhood character, the overall site appearance and the purposes, in connection with these Standards.

Lighting: Dodge City may require the applicant to install functional streetlights when technically feasible and the City determines that such additions will enhance the overall appearance and usefulness of the proposed facility.

Section 5. Menu of Options

Telecommunication Facilities Located Within the Public Right-of-Way: Any telecommunications facility installation on City owned poles within the public right of way shall conform to antenna and equipment volume or dimensional limitations set forth in these aesthetic standards and any other applicable guidelines in the City. The pictures and profile drawings below represent appropriate installation designs for a small cell antenna installations both on new poles and on existing poles in the right of way.

Existing Pole Replacement:

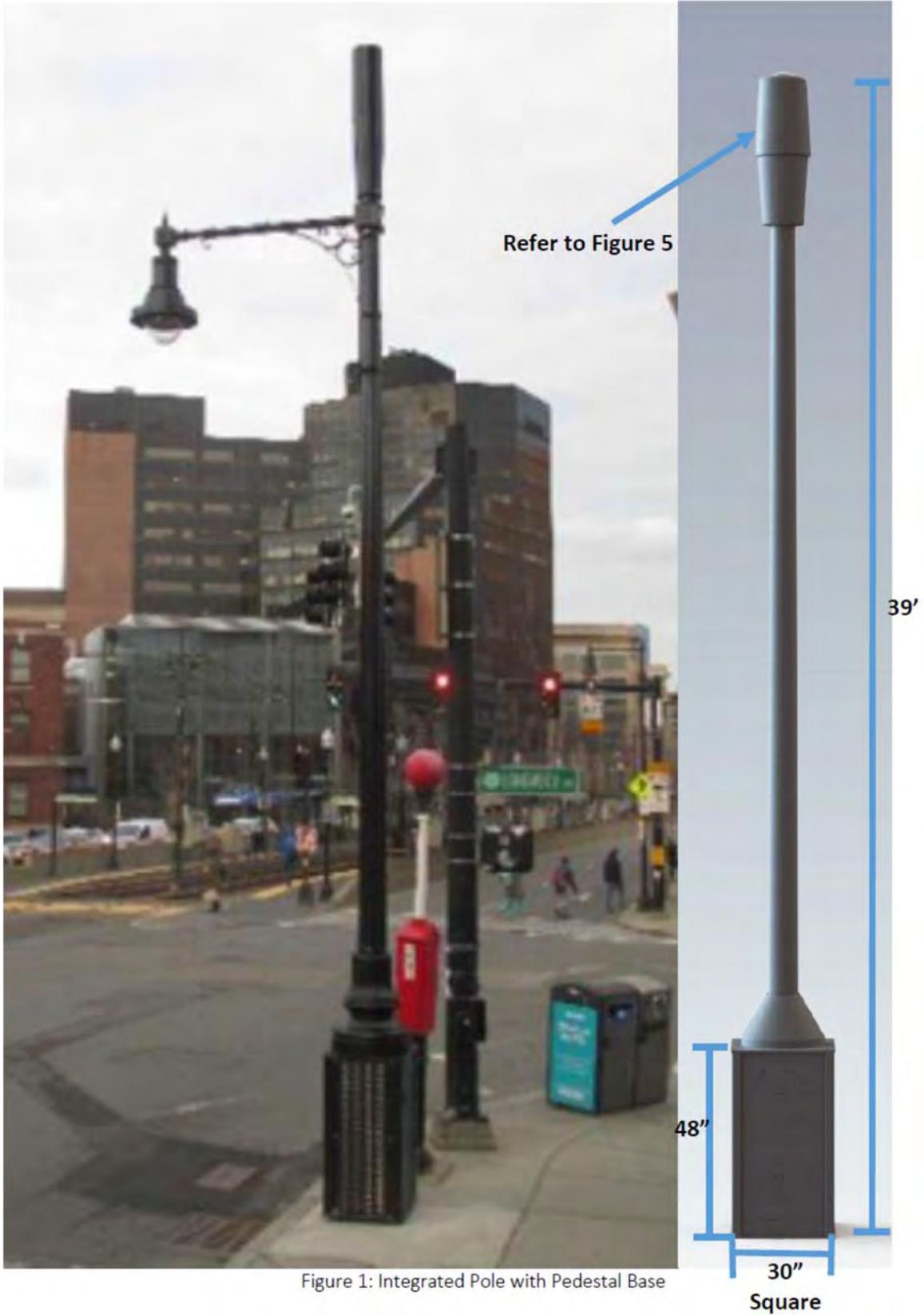
Existing poles in the right of way may be replaced with a Smart Pole where applicable. Replacement poles must match adjacent poles in style and form (round, octagonal, fluted, tapered, etc) Replacement poles must have LED luminaire(s) attached to match adjacent poles

Color Choices:

New poles placed during the installation of small cell antennas will be black in color, using Gloss Black #17038 per Federal Standard 595. Where existing poles are used, the color of all attachments associated with the small cell antenna will, as closely as possible, match the existing pole color.

**Pole Options for Drop and Swap and New Pole Placement in the Public Right-of-Way:
Integrated Pole with Pedestal Base:**

- Pedestal base shall be square in shape with design dimensions not to exceed thirty (30”) inches wide by thirty (30”) long by forty-eight (48”) inches in height.
- Total height of the pole shall not exceed thirty-nine (39’) feet, and the height shall match adjacent poles.
- Pole diameter shall not exceed twenty-four (24”) inches and must be octagonal, fluted, or round in shape dependent on matching adjacent city poles.
- Top mount antenna shroud dimensions shall not exceed twenty-four (24”) in diameter by sixty (60”) inches height.
- Poles must be constructed of aluminum, steel, or composite material.
- Attached luminaire(s) and luminaire arm(s) must match adjacent city lighting standard and must contain an LED fixture in accordance with Victory Electric’s specifications.
- All Drop and Swap and New Poles placed in the Public Right-of-Way shall be black in color using Gloss Black #17038 per Federal Color Standard 595.



Fully Integrated Poles:

- Pole diameter shall not exceed twenty-four (24") inches and must be octagonal, fluted, or round in shape dependent on matching adjacent city poles. The twenty-four (24") inches diameter radio storage section may rise to a maximum height of twenty (20') feet.
- Total height of the pole shall not exceed thirty-nine (39') feet, and the height shall match adjacent poles.
- Top mount antenna shroud dimensions shall not exceed twenty-four (24") in diameter by sixty (60") inches height.
- Poles must be constructed of aluminum, steel, or composite material.
- Attached luminaires and luminaire arm must match adjacent lighting standard and must contain an LED fixture in accordance with Victory Electric's specifications.
- All Drop and Swap and New Poles placed in the Public Right-of-Way shall be black in color using Gloss Black #17038 per Federal Color Standard 595.



Figure 2: Integrated Pole

Replacement Pole with Attached Radio Shroud and Antenna Shroud:

- May be used only when sidewalk space is limited to less than ten (10') feet from road edge.
- Pole diameter shall not exceed twelve (12") inches and must be octagonal, fluted, or round in shape dependent on matching adjacent city poles.
- Total height of the pole shall not exceed thirty-nine (39') feet, and the height shall match adjacent poles.
- Radio Shroud shall be mounted no lower than fifteen (15') feet above ground level (AGL)
- Radio shroud dimensions shall not exceed eleven (11ft³) cubic feet
- City preference is that the shroud be flush mounted to the pole; however, offset mount not to exceed six (6") inches is acceptable. If the offset mounting method is used, the offset must be concealed through the use of shrouding connecting the radio shroud to the pole.
- Top mount antenna shroud dimensions shall not exceed twenty-four (24") in diameter by sixty (60") inches height.
- All cabling must traverse the interior of the pole.
- Poles must be constructed of aluminum, steel, or composite material.
- Attached luminaires and luminaire arm must match adjacent lighting standard and must contain an LED fixture in accordance with Victory Electric's specifications.
- All Drop and Swap and New Poles placed in the Public Right-of-Way shall be black in color using Gloss Black #17038 per Federal Color Standard 595.



Figure 3: Replacement Pole with Attached Equipment Shrouded

Concealment Options for Placement on Existing City Poles:

Pole Mounted Radio Shroud:

- Radio Shroud shall be mounted no lower than fifteen (15') feet above ground level (AGL)
- Radio shroud dimensions shall not exceed eleven (11ft³) cubic feet
- City preference is that the shroud be flush mounted to the pole; however, offset mount not to exceed six (6") inches is acceptable. If the offset mounting method is used, the offset must be concealed through the use of shrouding connecting the radio shroud to the pole.
- Cabling entering and exiting the radio shroud must be adjacent to the pole.
- Cabling traversing the pole shall be covered using minimum two (2") inches in diameter U-guard of steel or aluminum construction.
- Color of shroud and mounting equipment shall be made to match the existing pole color.

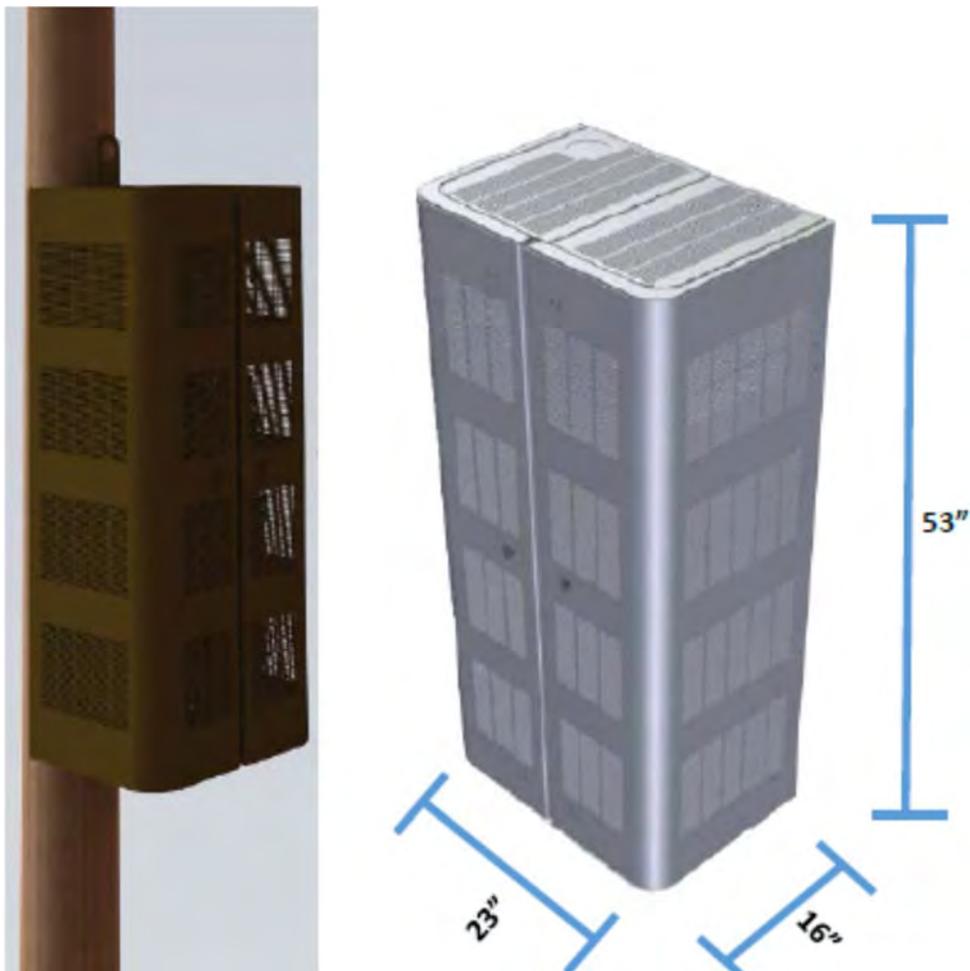


Figure 4: Pole Mount Radio Shroud

Top Mounted Antenna Shroud:

- Antenna shall be mounted at the top of the pole and shall not increase the height of the pole by more than five (5') feet.
- Diameter of the shroud shall not exceed twenty-four (24") inches.
- Mounting hardware shall be concealed by the inclusion of a tapered concealment shroud connecting the base of the radio shroud to the pole.
- Cabling traversing the pole shall be covered using minimum two (2") inches in diameter U-guard of steel or aluminum construction.
- Color of shroud and mounting equipment shall be made to match the existing pole color.

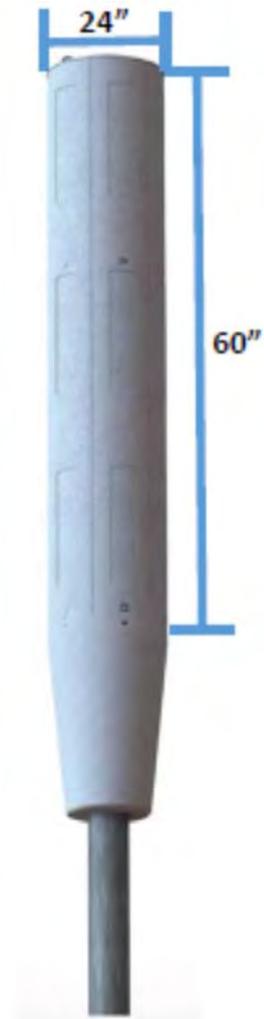


Figure 5: Top Mount Antenna Shroud

ORDINANCE NO. 3714

**AN ORDINANCE PROVIDING FOR ADOPTION OF THE
SMALL CELL AESTHETIC STANDARDS FOR THE CITY OF DODGE CITY, KANSAS.**

WHEREAS, the governing body of the City of Dodge City, Kansas finds it advisable to adopt clear and consistent aesthetic standards for placement of small cell antenna structures within the public right-of-way; and

WHEREAS, the governing body of the City of Dodge City, Kansas likewise finds it advisable to adopt a review process for applications submitted in accordance with the aesthetic standards for placement of small cell antenna structures; and

WHEREAS, the governing body of the City of Dodge City, Kansas likewise finds it advisable to adopt a fee schedule for applications submitted in accordance with the aesthetic standards for placement of small cell antenna structures.

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

- Section 1:** The aesthetic standards for placement of small cell antenna structures is hereby adopted and declared to be the Official Aesthetic Standards for the jurisdiction of the City.
- Section 2:** Said standards shall constitute the basis for determination of approval of applications submitted for placement of small sell antenna structures.
- Section 3:** Application fees shall be set by Resolution.
- Section 4:** Applications shall be subject to the following time limits:
- A.** Applications shall be reviewed for completeness and applicant shall be notified in writing if the application is unacceptable within 10 days of submission.
 - B.** Re-submitted applications reviewed for completeness and applicant shall be notified in writing if the application is unacceptable within 10 days of submission.
 - C.** An application to collocate a small wireless facility on an existing structure shall be acted on within 60 days of application.
 - D.** An application to request a non-substantial modification, including modifications to macro towers, shall be acted on within 60 days of application.
 - E.** An application to collocate a facility other than a small wireless facility using an existing structure shall be acted on within 90 days of application.
 - F.** An application for a small wireless facility using a new structure shall be acted on within 90 days of application.
 - G.** An application for a facility other than a small wireless facility using a new structure shall be acted on within 150 days of application.
 - H.** Notification to the applicant that the application is unacceptable in writing will toll the time limits.
- Section 5:** This ordinance shall take effect following its publication in the official City newspaper as provided by law

Passed by the Governing Body of the City of Dodge City and approved by the Mayor,
this 18th day of March, 2019.

Brian Delzeit, Mayor

Attest:

Nannette Pogue, City Clerk

RESOLUTION NO. 2019-11

A RESOLUTION TO ESTABLISH FEES FOR APPLICATIONS TO INSTALL WIRELESS FACILITIES IN THE CITY OF DODGE CITY, KANSAS PURSUANT TO ORDINANCE NO. 3714

WHEREAS, Ordinance No.3714, requires establishment of the fee schedule for applications by Resolution.

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

SECTION 1: The fee for applications for collocation that include up to five small wireless facilities is \$500. Each additional small wireless facility beyond five shall incur an application fee of \$100 each.

SECTION 2: The fee for an application to install a new pole (not a collocation) intended to support one or more small wireless facilities is \$1,000.

SECTION 3: The annual access fee, per small wireless facility, for right of way access is \$270.

SECTION 4: The annual lease fee, per small wireless facility, for attachment to a city owned structure is \$270.

ADOPTED BY THE GOVENERING BODY AND APPROVED BY THE MAYOR, this day of the 18th of March, 2019.

City of Dodge City

Brian Delzeit, Mayor

ATTEST:

Nannette Pogue, City Clerk

Memorandum

To: City Commissioners
From: Cherise Tieben
Date: March 7, 2019
Subject: United Wireless Plaza
Agenda Item: New Business

Recommendation: Staff recommends the approval of the development agreement between the City of Dodge City and United Wireless Communications, Inc.

Background: United Wireless Communications, Inc. approached us about the property located on the southeast corner of 14th Ave. and Soule St. and their desire to develop a retail strip center, United Wireless Plaza, at this location. United Wireless Plaza is composed of a six thousand three hundred square foot (6300 sf) retail development which will include an eighteen hundred square foot (1800 sf) Scooter's Coffee Shop that will be developed by Ric Marbeouf, Capital Development LLC. The total incentive is thirty thousand dollars (\$30,000) to assist with the infrastructure portion of the project. The project will contribute financially to the STAR Bond Project, as it is in the STAR Bond District and created an opportunity to increase our future commitment to the STAR Bond driven downtown revitalization project. As a result of Scooter's locating in this development, the City will collect an estimated five hundred thousand dollars (\$500,000) in STAR Bond proceeds from this project over the twenty (20) year term of this agreement. If the development fails to create this level of sales tax generation, the incentive would be repaid by the Developer. If at any time during the term of this agreement the eligible contributor's (entities currently not in existence in the community) exceed the projected collection of sales tax, the agreement will be considered substantially fulfilled.

Justification: The incentive offered is to assist this development which will ultimately aid the STAR Bond downtown revitalization project.

Financial Considerations: There is a thirty thousand dollar (\$30,000) financial consideration in this project. Since the bonds were substantially completed by the time that this project was ready to go, we committed to utilize the Growth & Development Fund as our funding source. Funds are readily available.

Purpose/Mission: Together, we serve to make Dodge City the best place to be.

Legal Considerations: The agreement has been developed by our STAR Bond legal counsel, Todd LaSala, and has been reviewed by the City Attorney.

Attachments: Development Agreement

UNITED WIRELESS DEVELOPMENT AGREEMENT

THIS UNITED WIRELESS DEVELOPMENT AGREEMENT (the "Agreement") is made as of the ____ day of _____, 2019 (the "Effective Date"), between the City of Dodge City, Kansas (the "City") and United Wireless Communications, Inc., a Kansas corporation ("Developer").

RECITALS:

A. Developer owns certain real property situated in Ford County, Kansas as shown on the map attached hereto as Exhibit A-1 and as legally described on Exhibit A-2 attached hereto (the "Site").

B. On March 19, 2012, pursuant to the STAR Bonds Financing Act, K.S.A. 12-17,160 *et seq.*, as amended (the "STAR Bond Act"), the City approved a STAR bond project district (the "Original STAR Bond District") by passage of Ordinance No. 3527 on March 19, 2012. The Original STAR Bond District did not include the Site.

C. The Original STAR Bond District has been amended three times since its inception: (i) on October 23, 2014, adding approximately twenty five (25) acres of real property to the eastern boundaries of the Original STAR Bond Project District by passage of Ordinance No. 3594 (as amended, the "2014 Amended District"); (ii) on February 3, 2017, adding approximately 219 acres of real property (the "Power Center Area") to the 2014 Amended District by passage of Ordinance No. 3650 (as amended, the "2017 Amended District"); and (iii) on April 23, 2018, removing approximately 184 acres of real property from the Power Center Area of the 2017 Amended District by passage of Ordinance No. 3684 (as amended, the "2018 Amended District"). More specifically, the 2018 Amended District contains three (3) separate non-contiguous areas totaling approximately 586 acres located within the City: (1) approximately 35 acres in the Power Center Area, (2) approximately 191 acres located in the historic downtown area of Dodge City, Kansas (the "Heritage Area"), and (3) approximately 360 acres generally located between U.S. Highway 50 and 108th Road, south of Frontview Road (the "Entertainment Area"). The Site is included within the Power Center Area of the 2018 Amended District.

D. In accordance with the terms and conditions set forth herein, Developer hereby proposes to design, construct, develop, complete and operate an approximately 6,300 square foot retail (and office) development to include an approximately 1,800 square foot Scooters Coffee store and the remaining 4,500 square feet to include a regional wireless carrier store and other retail/office users on the Site, all as more particularly described in Section 2.2 below (collectively, the "Project").

E. In order to pay for certain costs associated with the design, development and construction of the Project, Developer has requested public financing to help finance the Project and the City has agreed to contribute an amount equal to Thirty Thousand Dollars (\$30,000) to reimburse hard construction costs for the Project as more particularly set forth herein. Although the Project is located in a STAR bond project district (specifically, the 2018 Amended District), the Project will not be financed with the proceeds of any STAR bonds issued in connection with the 2018 Amended District.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1 Legal Representation of the Parties. This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

1.2 Definitions. All capitalized terms used in this Agreement shall have the meanings ascribed to them in Annex 1 attached hereto and made a part hereof, or as otherwise provided herein.

ARTICLE 2.

APPOINTMENT OF DEVELOPER AND DEVELOPMENT PLAN

2.1 Undertaking of Developer. Developer hereby agrees, subject to the terms and conditions provided in this Agreement, to develop, construct, complete, and operate the Project. The performance of all activities by Developer hereunder shall be as an independent contractor and not as an agent of the City, except as otherwise specifically provided herein.

2.2 Development Plan. The City and Developer hereby agree that the "Development Plan" for the Project shall be as described below and, for purposes of an illustrative example only, as set forth on the site plan attached as Exhibit B hereto and made a part hereof. Exhibit B may be updated by Developer from time to time by written notice to the City; provided, however, that all buildings, parking facilities and other improvements constituting the Project shall be developed, constructed, completed, and operated on the Site in substantial accordance and compliance with the terms and conditions of this Section 2.2 and the Development Plan. The parties further agree as follows:

(a) The Project shall be developed, designed and constructed to include, at minimum, the following improvements and amenities (the "Improvements"):

(i) Retail/Office. The design, development, construction and completion of an approximately 6,300 square foot retail development to include an approximately 1,800 square foot Scooters Coffee store and the remaining 4,500 square feet to include a United Wireless store and other users. The parties hereby understand and agree that the City has a preference for retail uses in the Project because it is located in the 2018 Amended District; accordingly, the parties hereby agree that the Project shall be marketed and leased primarily as a retail center, but nothing herein shall prevent Developer from leasing portions of the Project to office users.

(ii) Parking Lot, Drives and Lighting Improvements. The design, development and construction and completion of the parking lots, curbs and gutters for the Project, including parking lot signage and striping, lighting improvements for the parking lots, including light poles, fixtures and electrical service thereto (the "Parking Improvements"). The Parking Improvements shall include no less than the number of spaces required by the Applicable Laws and Requirements (as defined in Annex 1), but shall otherwise be constructed in a scope and manner reasonably necessary to support the Project in Developer's discretion.

(iii) Landscaping and Irrigation. The design, development and construction and completion of landscaping, green space and irrigation systems benefiting the Project in a scope and manner at Developer's discretion.

All of the foregoing Improvements will be subject to Applicable Laws and Requirements.

(b) Developer recognizes, stipulates and agrees that its signs, including any directional and way-finding signs, building signs and other signage shall be subject to all Applicable Laws and Requirements, and any special use permits granted by the City's Planning and Zoning Board.

(c) The Project may include the design, development and construction and completion of certain infrastructure improvements, including without limitation, sidewalks, drives and other pedestrian and vehicular thoroughfares as shown on the Development Plan.

(d) Developer's design, development and construction of the Improvements shall in all material respects comply with the Plans and Specifications (as defined in Section 4.1 below).

(e) Without the prior written approval of the City and any such other appropriate Government Authorities, there shall be no Material Changes (as defined in Annex 1) to the Development Plan subsequent to the initial approval.

ARTICLE 3. **FINANCING — SOURCE OF FUNDS**

3.1 Source of Funds. Attached as **Exhibit C** is a list of the estimated costs of the Project (the "Project Costs") and a budget for the Project (the "Project Budget"), which includes, without limitation, approximately \$30,000 for sanitary sewer work for the Project (the "Sewer Work"). All of the Project Costs will initially be paid by Developer's private debt and equity (the "Private Contribution"), which Developer shall be solely responsible for providing. Except as set forth in Section 3.4 below, the City will reimburse a portion of hard construction costs within the Project Costs up to Thirty Thousand Dollars (\$30,000) for the Sewer Work from the City's Development Growth Fund (the "Public Financing") subject to the terms and conditions set forth herein. The Project Costs shall be paid in accordance with the procedures and requirements set forth herein.

3.2 Certificates of Expenditure. The parties hereby agree as follows:

(a) Certificate of Expenditure. In order to receive reimbursement for a Thirty Thousand Dollar (\$30,000) portion of the Project Costs from the Public Financing, Developer shall submit a Certificate of Expenditure in the form attached hereto as **Exhibit D**, attesting to the expenditure of Project Costs in accordance with the procedure set forth below. Developer may submit a separate Certificate of Expenditure each month, but no more than one time per month. Developer shall require that no transferee, purchaser, or lessee of any portion of the Project provide Certificates of Expenditure to the City, except through Developer or except as otherwise approved by the City.

(b) Procedures for Certification of Expenditures. The City or a representative of the City shall review Certificates of Expenditure to be made in connection with the Project Costs for approval or denial of the same as follows:

(i) Developer shall submit to the City a Certificate of Expenditure setting forth the amount for which certification is sought. Developer shall certify to the City that it shall only use the Public Financing for the designated hard construction costs portion of the Project Costs described in the Certificate of Expenditure.

(ii) The Certificate of Expenditure shall be accompanied by such bills, contracts, invoices, lien waivers and such other evidence as the City shall reasonably require documenting appropriate payment.

(iii) The City reserves the right to have its engineer or other agents, consultants or employees inspect all the items set forth in subsection (ii) above as reasonably necessary to determine that the expenses therein are valid and properly incurred.

3.3 Conditions Precedent to Reimbursement from Public Financing. Developer hereby understands and agrees that it shall not receive any reimbursements for Project Costs from Public Financing, unless and until the conditions precedent set forth below have been fully satisfied as determined by the City in its sole reasonable discretion:

(a) In accordance with Section 3.2 above, the City has approved Certificates of Expenditure for at least Thirty Thousand Dollars (\$30,000) of hard construction costs for the Sewer Work (and any other infrastructure costs as described in Section 3.4(c) below);

(b) Developer shall be in full compliance with the terms and conditions of this Agreement and shall not be in default hereunder; and

(c) The Project shall be substantially completed, and the Scooters and United Wireless stores have opened, fully stocked and conducting business on the Site.

3.4 Alternative for Sewer Work. As an alternative to Developer's construction of the Sewer Work and reimbursement of up to \$30,000 from Public Financing as described above, Developer may request that the City let and contract for the Sewer Work instead. If and to the extent that Developer requests that the City let and contract for the Sewer Work, then the following terms and conditions shall apply:

(a) The City and Developer shall mutually agree on the scope and specifications of the Sewer Work in their respective sole discretion;

(b) After the parties have agreed to the scope and specifications of the Sewer Work, the City shall bid the same and/or otherwise select a contractor to perform the Sewer Work in the City's discretion;

(c) If the projected costs of the design, engineering and construction of the Sewer Work shall be less than or equal to the \$30,000 of Public Financing provided for herein, the City shall let the Sewer Work and complete the same; provided however that (i) if the actual costs of the Sewer Work are less than \$30,000, Developer may also submit Certificates of Expenditure for other public infrastructure improvements (e.g., water lines, access improvements, etc.), and (ii) if the actual costs of the Sewer Work shall exceed the \$30,000 of Public Financing, then Developer hereby agrees to pay and/or reimburse the City for any such cost over-runs within 10 days of written request from the City;

(d) If the projected costs of the design, engineering and construction of the Sewer Work shall be greater than the \$30,000 of Public Financing provided for herein, Developer shall deposit an amount equal to the difference between \$30,000 and the estimated costs of the Sewer Work (the "Deposit") before the City shall let the Sewer Work and complete the same; provided however that (i) if the actual costs of the Sewer Work are less than \$30,000 plus the Deposit, the

City shall return any unused portions of the Deposit to Developer after completion of the Sewer Work, and (ii) if the actual costs of the Sewer Work shall exceed the \$30,000 of Public Financing plus the Deposit, then Developer hereby agrees to pay and/or reimburse the City for any such cost over-runs within 10 days of written request from the City; and

(e) If the City completes the Sewer Work instead of Developer, the City will assign any warranties from its contractor for the Sewer Work to Developer (to the extent that the same are assignable), but Developer shall otherwise accept such work without any representations or warranties from the City of any kind whatsoever.

ARTICLE 4. CONSTRUCTION OF IMPROVEMENTS

4.1 Design and Plans and Specifications. Developer shall, as soon as practicable, provide the City with plans and specifications for the Improvements (the "Plans and Specifications"), the design of which is compatible with the Development Plan and all Applicable Laws and Requirements. Developer recognizes, stipulates and agrees that the Plans and Specifications will be presented to and subject to approval by the City and other appropriate Government Authorities to the extent required by Applicable Laws and Requirements. Without the prior written approval of the City and any such other appropriate Government Authorities, there shall be no Material Changes to the Plans and Specifications subsequent to the initial approval.

4.2 Permits and Reviews. Developer hereby recognizes, stipulates and agrees that in the design, construction, completion, use or operation of the Improvements, Developer shall procure and pay for any and all permits, licenses or other forms of authorizations that are required in accordance with Applicable Laws and Requirements.

4.3 Cost Verification. During construction of the Improvements, the City and Developer shall establish appropriate review procedures whereunder the City and/or its representatives can inspect and review (which may include an audit of) records to verify the costs which are incurred and paid in accordance with the Development Plan and to verify that construction is proceeding in accordance with the Development Plan, the Plans and Specifications and all Applicable Laws and Requirements. Developer will cooperate with the City in any such review.

4.4 Commencement and Completion of Construction. Developer hereby agrees that, subject only to Force Majeure, it shall commence construction of the Improvements within ninety (90) days after the Effective Date (the "Commencement Date") and shall Substantially Complete (as defined in Annex 1) the Project, with at least the Scooters and United Wireless stores open, fully stocked and staffed and conducting business within one (1) year after the Effective Date (the "Completion Date").

ARTICLE 5. USE AND OPERATION

5.1 Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon the earlier of (a) January 1, 2039, or (b) full satisfaction, amortization and/or termination of any STAR bonds issued for the Power Center Area (the "Term").

5.2 Use and Operation. Developer covenants that at all times following the Completion Date for the duration of the Term (or such lesser period as otherwise set forth in this Agreement), it will, at its expense:

(a) Use the Project only for the use and operation of a first class retail center, including without limitation, a coffee shop and a regional wireless store (the "Permitted Uses").

(b) Conduct its business at all times in a dignified quality manner and in conformity with the first class industry standards and in such manner as to help establish and maintain a high reputation for the Project.

(c) Cause the Project to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated retail developments in the Midwest, and will make all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations on the Site.

(d) Enter into an agreement with Capital Development, LLC, a Kansas limited liability company, to provide for the development and/or operation of the Scooters Coffee store during the Term, and provide the City with a copy of the same.

5.3 Compliance. Developer shall conduct its affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements.

5.4 Payment of Taxes and Other Charges. During the Term of this Agreement, Developer shall pay when due all real estate taxes and assessments on the property it owns within the City. In the event that Developer shall fail to pay all such applicable real estate taxes and assessments after any notice and cure periods set forth in Section 7.1 below, the parties understand and agree that, among other things, the City may suspend all reimbursements of Project Costs through Public Financing during any time that such real estate taxes and assessments on the property owned by Developer within the City remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit Developer from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that (i) each such party shall pay any and all amounts that are contested under protest while any such proceedings are pending, and (ii) the City shall suspend all reimbursements of Project Costs through Public Financing during any time that such proceedings are pending final resolution. Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of Developer's or such other owners' property within the Site.

5.5 Insurance. For the duration of the Term, Developer shall maintain or cause to be maintained insurance with respect to the Project and operations covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations (including but not limited to property and casualty, worker's compensation, general liability and employee dishonesty) and in such amounts as, in the reasonable judgment of the City, are adequate to protect Developer, the City and the Project, but in no event in an amount less than that required by the Insurance Specifications attached hereto as Exhibit E. Each policy or other contract for such insurance shall: (i) name the City as an additional insured with respect to liability insurance (but only in the amount of Five Hundred Thousand Dollars (\$500,000)), and (ii) contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least thirty (30) days after written notice of cancellation to Developer and each other insured, additional insured, loss payee and mortgage payee named therein.

5.6 Damage, Destruction or Condemnation.

(a) In the event of damage to or destruction of any portion of the Improvements resulting from fire or other Casualty during the Term, or in the event any portion of the Improvements is condemned or taken for public or quasi-public use or title thereto is found to be deficient during the Term, the net proceeds of any insurance relating to such damage or destruction, condemnation or taking or any realization on title insurance shall be paid into a construction escrow, and used in accordance with a construction escrow agreement to be mutually agreed upon by the City and Developer ("Casualty Escrow").

(b) If, at any time during the Term, the Improvements or any part thereof shall be damaged or destroyed by a Casualty (the "Damaged Facilities"), Developer, to the extent insurance proceeds are made available to Developer, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the Casualty and shall be entitled to draw upon the Casualty Escrow for payment of such costs.

(c) If at any time during the Term, title to the whole or substantially all of the Improvements shall be taken in condemnation proceedings or by right of eminent domain, Developer, at its sole discretion, may terminate this Agreement as of the date of such taking. For purposes of this Section 5.6(c), "substantially all of the Improvements" shall be deemed to have been taken if the City and Developer, each acting reasonably and in good faith, determine that the untaken portion of the Project, including the Parking Improvements, cannot be practically and economically used by Developer for the purposes and at the times contemplated by this Agreement. In any instance of a taking of all of the Site or the Improvements, any award payable for such taking shall be the sole property of Developer.

(d) In the event of condemnation of less than the whole or substantially all of the Improvements or Site during the Term, Developer, at its sole cost and expense, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the remaining part of the Project, as nearly as possible, to their former condition, and shall be entitled to draw upon the Casualty Escrow for payment of said costs.

5.7 Indemnity. Except to the extent of the City's negligence, Developer shall pay and indemnify and save the City and its governing body members, directors, officers, employees and agents harmless from and against all loss, liability, damage or expense arising out of: (a) the design, construction and completion of the Project by Developer; (b) the use or occupation of the Project or the Site by Developer or anyone acting by, through or under it; (c) damage or injury, actual or claimed, of whatsoever kind or character occurring during the Term, to persons or property occurring or allegedly occurring in, on or about the Site; (d) any breach, default or failure to perform by Developer under this Agreement; and (e) any act by an employee of the City at the Site which are within or under the control of Developer or pursued for the benefit of or on behalf of Developer (collectively, the "Indemnified Claims"). Developer shall also pay and indemnify and save the City and its governing body, commissioners, directors, officers, employees and agents harmless of, from and against, all costs, reasonable counsel fees, expenses and liabilities incurred by them or by Developer in any action or proceeding brought by reason of any such claim, demand, expense, penalty or fine relating to the Indemnified Claims. If any action or proceeding is brought against the City or its governing body, commissioners, directors, officers, employees or agents by reason of any such Indemnified Claims or demand, Developer, upon notice from the City, covenants to resist and defend such action or proceeding on demand of the City or its governing body, commissioners, directors, officers, employees or agents. Notwithstanding the foregoing, no party benefited by this indemnity shall be indemnified against liability for damage arising out of bodily injury to persons or damage to property caused by the said party's own respective willful and malicious acts or omissions or gross negligence. The foregoing covenants

contained in this Section 5.7 shall be deemed continuing covenants, representations and warranties for the benefit of the City and any successors and assigns of the City, and shall survive the termination, satisfaction or release of this Agreement, or any other instrument.

5.8 Access. During the Term, Developer hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the Project at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement or, to the extent Developer has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the Project. Nothing contained in this Section 5.8 shall restrict or impede the right of the City to enter the Project pursuant to any Applicable Laws and Requirements.

5.9 Environmental Matters. Developer shall assume responsibility for the costs of any remediation of any environmental conditions arising upon the Site. Further, Developer shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substances (as defined in Annex 1) in, upon, under, over or from the Project in violation of any Environmental Regulations (as defined in Annex 1); shall not permit any Hazardous Substances to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulations; shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations; shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulations; and shall comply with all other Environmental Regulations which are applicable to the Project. Developer shall indemnify the City against, shall hold the City harmless from, and shall reimburse the City for, any and all claims, demands, judgments, penalties, fines, liabilities, costs, damages and expenses, including court costs and attorneys' fees incurred by the City (prior to trial, at trial and on appeal) in any action against or involving the City, resulting from any breach of the foregoing covenants or from the discovery of any Hazardous Substances, in, upon, under or over, or emanating from, the Project, whether or not Developer is responsible therefor, it being the intent of Developer and the City that the City shall have no liability or responsibility for damage or injury to human health, the environment or natural resources caused by, for abatement and/or clean-up of, or otherwise with respect to, Hazardous Substances. The foregoing covenants contained in this Section 5.9 shall be deemed continuing covenants, representations and warranties for the benefit of the City and any successors and assigns of the City, and shall survive the termination, satisfaction or release of this Agreement, or any other instrument. Any amounts covered by the foregoing indemnification shall bear interest from the date incurred at the Prime Rate (as defined in Annex 1) plus two percent (2%), or, if less, the maximum rate permitted by law, and shall be payable on demand.

ARTICLE 6. SPECIAL PROVISIONS

6.1 Sales Tax Information. Developer shall not take any actions or adopt any practices or procedures which are designed to, or which may or will have the effect of, eliminating, reducing or diverting in any way any sales taxes or use taxes payable to the City, County or the State in connection with sales made or services from, in or on and about the Site. Developer agrees that it will itself provide, and that it will, by appropriate agreement, require all parties holding or operating by, through or under it, or otherwise operating on or from the Site, to provide, to the City and the STAR Bond Trustee (as defined in Annex 1), upon receipt of written request therefrom, true and correct copies of all sales tax and use tax returns filed with the State with respect to sales in, on or from the Site, the same to be provided simultaneously with, or within ten (10) days after such filing.

ARTICLE 7.
DEFAULT AND REMEDIES

7.1 Default Provisions. Developer shall be in default under this Agreement if:

(a) Developer fails to make any of the payments of money required by the terms of this Agreement, and Developer fails to cure or remedy the same within thirty (30) days after the City has given Developer written notice specifying such default; or

(b) Developer fails to keep or perform any covenant or obligation herein contained on Developer's part to be kept or performed, and Developer fails to remedy the same within sixty (60) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected; or

(c) After the expiration of any applicable cure period, a default shall exist or occur with respect to any of the duties or obligations of Developer; or

(d) Developer shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within one hundred twenty (120) days; or any execution or attachment shall issue against Developer whereupon the Project, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subparagraph being deemed a default under the provisions of this Agreement); or

(e) Developer breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within sixty (60) days of notice from the City.

7.2 Rights and Remedies. In the event of such default, the City may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and Developer covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies. The rights and remedies reserved by the City hereunder and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. If a default by Developer occurs under this Agreement and is continuing, the City may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by Developer of any provision of this Agreement. The City shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

(a) In addition to the other rights and remedies in this Section 7.2, whenever any default by Developer shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may also: (i) refuse to approve any further Certificates of Expenditures and make any further disbursements of Public Financing unless and until such default is cured by Developer, and/or (ii) terminate this Agreement, in which case the City may also terminate and/or recover the Public Financing.

(b) The rights and remedies reserved by the City hereunder and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. Failure of the City to enforce any such rights reserved under this Section 7.2 shall not be deemed a waiver thereof.

(c) Notwithstanding anything in this Agreement to the contrary, the parties hereby agree that if at any point in the Term of this Agreement, the STAR Bond Trustee has received more than \$532,150 of incremental sales tax revenues from the Site, the City hereby agrees that the Public Financing shall be deemed to have been fully and irrevocably earned by Developer and the City will not be entitled to reimbursement of the Public Financing at any time thereafter.

7.3 Default by the City. The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected. If a default by the City occurs under this Agreement and is continuing, Developer may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the City of any provision of this Agreement; provided, however, the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote or consequential damages. Developer shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceedings in equity. In the event of such default, Developer may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and if Developer is the prevailing party in an action to enforce its remedies hereunder, Developer shall be entitled, subject to Applicable Laws and Requirements, to reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of Developer in connection with the enforcement of such actions or remedies.

7.4 Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Ford County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

7.5 Inaction Not a Waiver of Default. Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.6 Mediation. Notwithstanding anything set forth in this Agreement to the contrary, the parties agree to first endeavor to resolve any disputes or claims under this Agreement by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Mediation Rules and Procedures of the American Arbitration Association in effect at that time. A request for mediation shall be delivered in writing to the other party to the Agreement and with the American Arbitration Association. Additionally, the parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties cannot resolve any disputes or claims under this

Agreement by mediation, any party may thereafter pursue its remedies as set forth in this Article 7 or as otherwise available at law or equity.

ARTICLE 8. MISCELLANEOUS

8.1 Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, governmental delays, strikes, lockouts, failure of power or other insufficient utility service, riots, insurrection, environmental remediation required by the appropriate Government Authorities, any lawsuit seeking to restrain, enjoin, challenge or delay construction, failure of the City to timely approve Material Changes, war terrorism or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement ("Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 8.1 shall not be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

8.2 Amendments. This Agreement may be amended, changed or modified only by a written agreement duly executed by the City and Developer.

8.3 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State.

8.4 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8.5 Time. Time is of the essence in this Agreement.

8.6 Consents and Approvals. Wherever in this Agreement it is provided that the City or Developer shall, may or must give its approval or consent, the City or Developer shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for Developer or the City in any action concerning the other's reasonableness will be action for declaratory judgment and/or specific performance, and in no event shall either such party be entitled to claim damages of any type or nature in any such action.

8.7 Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) delivered by electronic mail (with follow up within two (2) business days by United States Mail or by nationally recognized overnight delivery service); or (iii) delivered in person, in each case if addressed to the parties as set forth on Exhibit F attached hereto.

8.8 Agreement Runs With the Land; Recording. This Agreement runs with the land. Developer and the City shall execute and deliver a Memorandum of Agreement, and any amendments or supplements hereto, for recording in the real estate records of Ford County, Kansas. Such Memorandum of Agreement shall be promptly recorded against the Site by Developer at Developer's cost after execution, and proof of recording shall be provided to the City Clerk.

8.9 Survivorship. Developer's obligations of insurance and indemnification set out in Article V shall survive any termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during the Term.

8.10 Cash Basis and Budget Laws. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. §§ 10-1100 *et seq.*), the Budget Law (K.S.A. § 79-2935 *et seq.*), and other laws of the State. This Agreement shall be construed and interpreted in such a manner as to ensure the City shall at all times remain in conformity with such laws.

[Remainder of page intentionally left blank. Signature pages immediately follow.]

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

THE CITY:

THE CITY OF DODGE CITY, KANSAS

By: _____
Brian Delzeit, Mayor

STATE OF KANSAS)
) SS.
COUNTY OF FORD)

This instrument was acknowledged before me on _____, 2019, by Brian Delzeit as Mayor of Dodge City, Kansas.

Printed Name: _____
Notary Public in and for said State
Commissioned in Ford County

My commission expires

INDEX OF EXHIBITS

- A-1 The Site - Map
- A-2 The Site – Legal Description
- B Development Plan
- C Project Budget
- D Form of Certificate of Expenditure
- E Insurance Specifications
- F Notices

ANNEX 1

Definitions

"**2014 Amended District**" means the Original STAR Bond District, as amended on October 23, 2014 by passage of Ordinance No. 3594, adding approximately twenty five (25) acres of real property to the eastern boundaries of the Original STAR Bond District, as described in Recital C.

"**2017 Amended District**" means the 2014 Amended District, as further amended on February 3, 2017 by passage of Ordinance No. 3650 adding approximately 219 acres of real property in the Power Center Area, as described in Recital C.

"**2018 Amended District**" means the 2017 Amended District, as further amended on April 23, 2018 by passage of Ordinance No. 3684 removing approximately 184 acres of real property from the Power Center Area, as described in Recital C.

"**Agreement**" means this United Wireless Development Agreement by and between the City and Developer.

"**Applicable Laws and Requirements**" shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Government Authorities, and all requirements of any insurers. Applicable Laws and Requirements shall include, without limitation, the Development Plan, and the Kansas Cash Basis Law (K.S.A. § 10-1100 *et. seq.*) and Budget Law (K.S.A. §79-2935 *et seq.*).

"**Casualty**" means any fire, storm, earthquake, tornado, flood or natural disaster or other sudden, unexpected or unusual cause of damage or destruction.

"**Casualty Escrow**" means the escrow established in accordance with Section 5.6(a).

"**Certificate of Expenditure**" means a certificate in the form attached hereto as **Exhibit D**, attesting to the expenditure of Project Costs in accordance with the procedures set forth in Section 3.2.

"**City**" means the City of Dodge City, Kansas.

"**Commencement Date**" means the date by which Developer agrees to commence construction of the Improvements, as described in Section 4.4.

"**Completion Date**" means the deadline for Substantial Completion of the Improvements set forth in Section 4.4.

"**County**" means Ford County, Kansas.

"**Damaged Facilities**" means any part or the whole of the Project to the extent that the same is damaged or destroyed by a Casualty as set forth in Section 5.6(b).

"**Developer**" means United Wireless Communications, Inc., a Kansas corporation.

"**Development Plan**" means the plan agreed to by Developer and the City as more fully described in Section 2.2 and **Exhibit B** attached hereto.

"DOR" means the Kansas Department of Revenue.

"Effective Date" means the date of this Agreement first above written.

"Entertainment Area" means approximately 360 acres of real property generally located within the 2018 Amended District between U.S. Highway 50 and 108th Road, south of Frontview Road, as described in Recital C.

"Environmental Regulations" means any and all present and future laws, statutes, ordinances, rules, regulations and orders of any governmental authority having jurisdiction over the parties hereto or any portion of the Site or the Site and pertaining to the protection of human health, hazardous substances, pollution, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as the same may be further amended from time to time (hereinafter collectively called "CERCLA").

"Force Majeure" is defined in Section 8.1.

"Government Authorities" shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence.

"Hazardous Substances" means any substance that is defined or listed as a hazardous or toxic substance and which is regulated as such or may form the basis of liability under any present or future Environmental Regulations, or that is otherwise prohibited or subject to investigation or remediation under any present or future Environmental Regulations because of its hazardous, toxic, or dangerous properties, including, without limitation, (i) any substance that is a "hazardous substance" under CERCLA, and (ii) petroleum, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), only to the extent that the constituents of such synthetic gas are released or threatened to be released into the environment.

"Heritage Area" means approximately 191 acres of land within the 2018 Amended District which is located in the historic downtown area of Dodge City, Kansas, as described in Recital C.

"Improvements" means those certain improvements to be constructed in the Project as more particularly described in Section 2.2(a).

"Indemnified Claims" means those claims for which Developer shall indemnify the City, as described in Section 5.7.

"Insurance Specifications" means the insurance requirements on Developer in connection with the Project as generally described in Section 5.5 and more fully set forth in Exhibit E attached hereto.

"Material Changes" means any substantial change to any agreement, plan or other document referred to herein, which change would require changes to Developer's permits or approval of the appropriate Government Authorities pursuant to Applicable Laws and Requirements.

"Original STAR Bond District" means the original STAR bond project district approved by the City on March 19, 2012 by passage of Ordinance No. 3527, as described in Recital B.

"Parking Improvements" means any parking improvements provided for in Section 2.2(a)(ii).

"Permitted Uses" means the continuous operation of a first-class retail development to include a Scooters Coffee store, regional wireless carrier store and other retail users, as described in Section 5.2(a).

"Person" shall mean any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body or government or other entity.

"Plans and Specifications" means the plans and specifications for the Improvements, as described in Section 4.1.

"Power Center Area" means approximately 35 acres of real property in the 2018 Amended District, in which the Site is located, as described in Recital B.

"Prime Rate" means the rate of interest announced from time to time by Bank of America, or any successor to it, as its prime rate. If such bank, or any successor to it, ceases to announce a prime rate, the City shall designate a reasonably comparable financial institution for purposes of determining the Prime Rate.

"Private Contribution" means those funds paid by Developer (or affiliated entity) as and when needed for all Project Costs, as described in Section 3.1 and set forth in the Project Budget.

"Project" means the design, construction, and development of an approximately 6,500 square foot retail development to include an approximately 2,000 square foot Scooters Coffee store and the remaining 4,500 square feet to include a regional wireless carrier store and other retail users, as described in Recital D and Section 2.2.

"Project Budget" means the budget for the Project, including the portions of the Project to be funded with Public Financing as described in Section 3.1 and as set forth on Exhibit C attached hereto.

"Project Costs" means the estimated costs of the Project as described in Section 3.1 and as more particularly set forth in the Project Budget.

"Public Financing" means a method of financing pursuant to which a portion of Developer's hard construction costs are paid and/or reimbursed to the Developer from the City's Development Growth Fund as set forth in Section 3.1.

"Sewer Work" means the sanitary sewer work required for the Project as described in the Project Budget and in Sections 3.1 and 3.4 hereof.

"Site" means that certain real property situated in Ford County, Kansas, as shown on the map attached hereto as Exhibit A-1 and as legally described on Exhibit A-2, and as described in Recital A.

"STAR Bond Act" means the STAR Bonds Financing Act, K.S.A. 12 17,160 *et seq.*, as amended from time to time.

"STAR Bond Trustee" means that institution serving as trustee for the STAR bonds issued in connection with the 2018 Amended District under the STAR Bond Indenture.

"State" means the State of Kansas.

"Substantial Completion" and **"Substantially Complete"** means the stage in the progress of the construction of the Project, or as to any particular portion thereof, when construction is sufficiently complete so that the Project can be occupied, open and operated for its intended use.

"Term" means the term of this Agreement, as described in Section 5.1.

EXHIBIT A-1

The Site - Map

EXHIBIT A-2

The Site – Legal Description

EXHIBIT B

Development Plan

EXHIBIT C

Project Budget

EXHIBIT D

Form of Certificate of Expenditure

Date: _____

Certification # _____

Governing Body of the
City of Dodge City, Kansas

In accordance with the Development Agreement dated _____, 2018 (the "Agreement"), between the City of Dodge City, Kansas (the "City"), and United Wireless Communications, Inc. ("Developer"), Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to Developer for the cost of financing the Improvements, as follows:

1. To the best of my knowledge, all amounts are expenses for Improvements that are reimbursable to Developer pursuant to the Agreement.
2. All amounts have been advanced by Developer for Improvement costs in accordance with the Agreement and represent the fair value of work, materials or expenses.
3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

Developer further certifies that all insurance policies which are required to be in force under the Agreement are in full force and effect and that Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$ _____ which amount is itemized on Attachment A attached hereto and which Attachment J-1 includes _____ page(s), is incorporated herein by reference and has been signed by the authorized representative of Developer who signed this Certificate.

Approved:

City's Representative

By: _____
Its _____

ATTACHMENT D-1 TO CERTIFICATE OF EXPENDITURE
UNITED WIRELESS IMPROVEMENTS (DODGE CITY)

PAGE ____ OF ____

Date: _____

Certification # _____

**DESCRIPTION OF EXPENSE
(ATTACH ADDITIONAL SUPPORTING
DOCUMENTATION)**

Amount of Expense

1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____

TOTAL EXPENSES \$ _____

Signature of Developer

EXHIBIT E

Insurance Specifications

1. Worker's Compensation (as applicable). Developer may self-insure, to the extent allowed by Applicable Laws and Requirements. The self-insured retention shall be that which is standard in the industry. Developer will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. If self-insurance is not available under applicable state law, coverage will be purchased in accordance with the statutory requirements.
2. Comprehensive General Liability. Developer will purchase and maintain with primary limits of not less than \$2,000,000.
3. Automobile Liability (as applicable). Developer will purchase and maintain with primary limits of not less than \$1,000,000.
4. Excess Liability. Developer will purchase and maintain excess liability insurance in an amount not less than \$3,000,000.
5. Special Perils Form Property Insurance. Developer will purchase on a replacement cost basis. Deductibles and limits will be standard to those in the industry, and the policy shall include an "Agreed Amount" endorsement. Earthquake and flood insurance, as well as fired vessel, boiler and machinery, and underground collapse, may be required by the City as additional perils, but only to the extent required by Developer's lender for the Project.

EXHIBIT F

Notices

If to the City:

City Manager
806 N. Second Avenue
Dodge City, Kansas 67801
Telephone: 620-225-8100
Email: cheriset@dodgecity.org

And a copy to:

City Clerk
806 N. Second Avenue
Dodge City, Kansas 67801
Telephone: 620-225-8100

And a copy to:

Todd A. LaSala, Esq.
Stinson Leonard Street LLP
1201 Walnut, Suite 2600
Kansas City, Missouri 64106
Telephone: 816-842-8600
Email: todd.lasala@stinson.com

And a copy to:

The STAR Bond Trustee

And a copy to:

Gary Anderson, Esq.
Gilmore & Bell, P.C.
2405 Grand Blvd, Suite 1100
Kansas City, Missouri 64108-2521
Telephone: 816-221-1000
Email: ganderson@gilmorebell.com

If to the Developer:

United Wireless Communications, Inc.

Telephone:

Email:

with a copy to:

Memorandum

*To: City Manager
City Commissioners*

*From: Tanner Rutschman, P.E.
City Engineer*

Date: March 18, 2019

*Subject: 2019 Asphalt Street Sealing Program,
ST 1905*

Agenda Item: New Business

Recommendation: Approve the bid from Circle C Paving, using their alternate proposal, for the 2019 Asphalt Street Sealing Program in the amount of \$505,000. Considering their alternate proposal, they will apply chip seal to 238,000 square yards of asphalt streets for the funding available. If Circle C Paving's alternate proposal is not considered, APAC-Kansas would have the winning proposal. The Engineer's estimate for the area to be sealed with the funding available was 224,444 square yards.

Background: This project will perform preventative maintenance on the majority of asphalt streets in maintenance Zone 6. This maintenance will consist of applying a layer of emulsified asphalt material, which will fill in minor surface distresses, followed by a layer of rock chips which will seal off the asphalt surface and help prevent water from percolating through cracks as well as smooth out minor surface deformities. Maintenance Zone 6 can be seen in the attached map and has already received mastic crack sealant.

Justification: This project will maintain the street infrastructure in the form of preventative maintenance and extend the service life of the streets.

Financial Considerations: The 2019 Asphalt Street Sealing Program will cost \$505,000. Funding of this project will come from the Special Streets Fund.

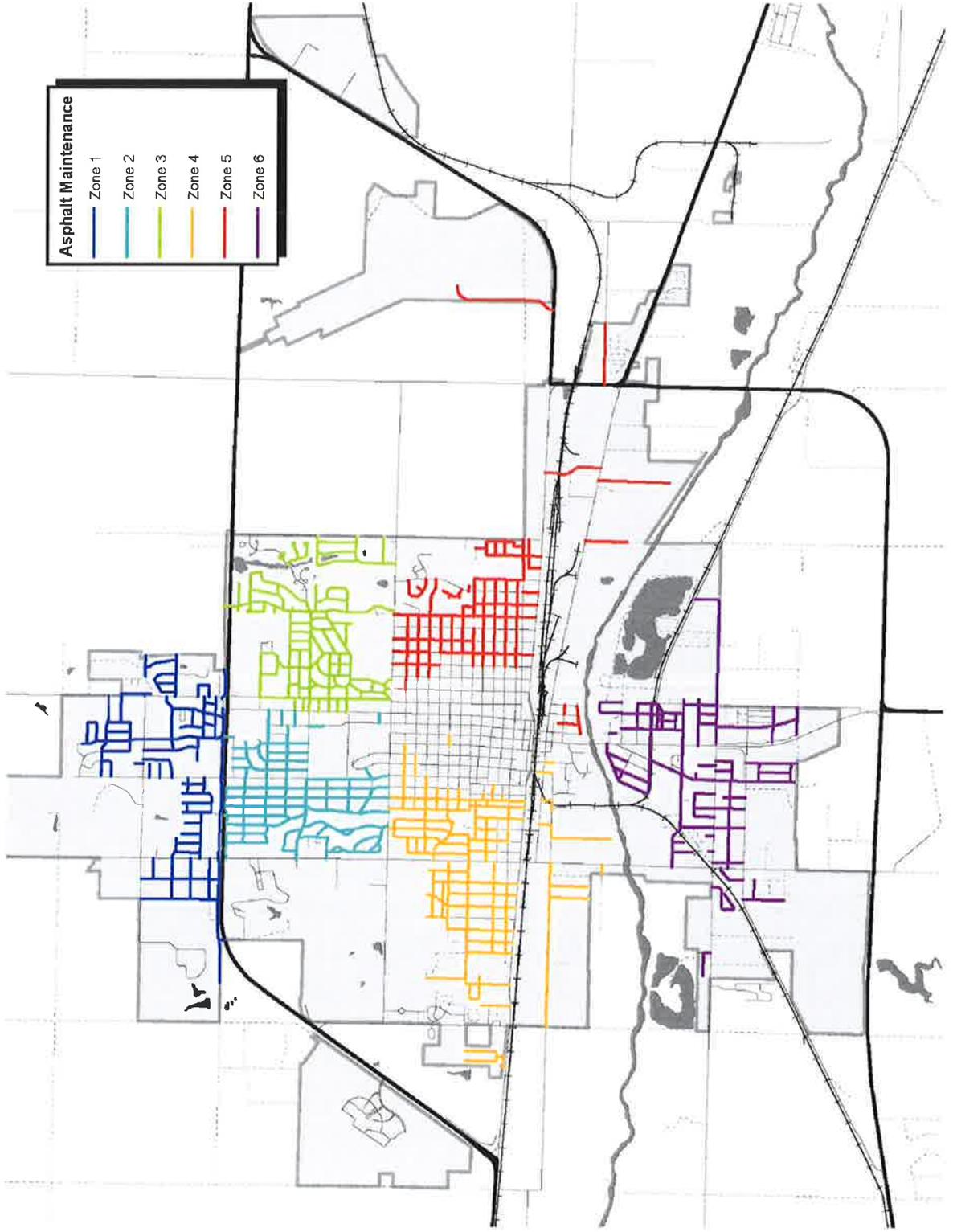
Purpose/Mission: The completion of this project will adhere to the City's core value of 'Ongoing Improvement' by maintaining our street infrastructure in an acceptable condition and extending the life of streets repaired under this project.

Legal Considerations: By approving the bid from Circle C Paving, the City will enter into a contract with Circle C Paving, and be responsible to make payments to Circle C Paving for the completed work.

Attachments: A map showing the maintenance zones for asphalt streets and the bid tabulation is attached.

Asphalt Maintenance

- Zone 1
- Zone 2
- Zone 3
- Zone 4
- Zone 5
- Zone 6



CITY OF DODGE CITY, KANSAS
 BID TABULATION

PROJECT: Asphalt Street Sealing Program
 PROJECT #: ST 1905
 BID DATE: 02/26/19

ENGINEER'S ESTIMATE

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
1	"Shot Rock" Sealing	S.Y.	224,444	\$2.25	\$ 505,000.00

TOTAL **224,444** SY

CONTRACTOR: APAC-Kansas, Inc.	
ADDRESS: 302 Peyton St.	
CITY: Emporia	
STATE: Kansas	
ZIP: 66801	
LOW BIDDER	
QTY	CONTRACT AMOUNT
225,000	\$ 505,000.00

TOTAL **225,000** SY

TOTAL w/
ALTERNATE **225,000** SY

BID SECURITY **5%**
 START DATE **7/1/2019**

CONTRACTOR: Circle C Paving	
ADDRESS: 630 Industrial Rd.	
CITY: Goddard	
STATE: Kansas	
ZIP: 67052	
QTY	CONTRACT AMOUNT
221,406	\$ 505,000.00

TOTAL **221,406** SY

TOTAL w/
ALTERNATE **238,000** SY

BID SECURITY **5%**
 START DATE **6/3/2019**

Memorandum

*To: City Manager
City Commissioners*

*From: Tanner Rutschman, P.E.
City Engineer*

Date: March 18, 2019

*Subject: Application of Mastic Crack Sealant,
ST 1903*

Agenda Item: New Business

Recommendation: This year we requested proposals on large crack sealing for the next three years. This will allow us to lock in quantities for the next three years and avoid having to go out for bid every year. After reviewing the proposals, it is staff's recommendation to approve the proposal from Stripe & Seal, LLC for the Application of Mastic Crack Sealant in the amount of \$100,000. They proposed to apply the most Mastic, 11,000 gallons (31,000 over a three year span), for the funding available. For each year that funding is approved in the budget the City will enter into a new contract with Stripe & Seal, LLC.

Background: This project will perform preventative maintenance of several asphalt streets in the City. This maintenance consists of filling large transverse cracks with Mastic material to prevent water from percolating through the cracks and into the sub-grade. The area of town that will receive Mastic crack sealant will be Zone 4, which are all the asphalt streets west of Central Ave., north of the river, and south of Comanche St. Zone 4 can be seen in the attached map.

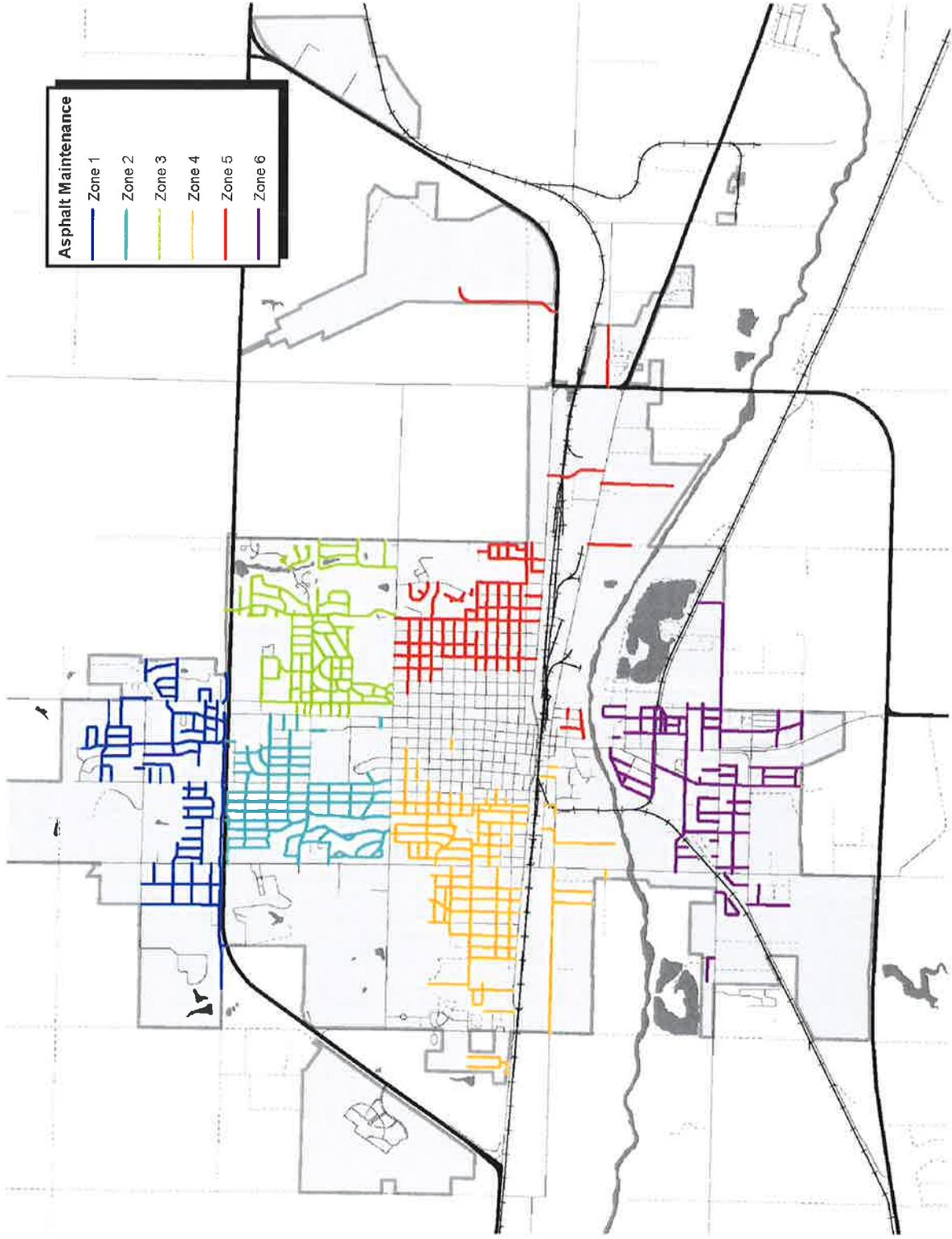
Justification: This project will maintain the street infrastructure in the form of preventative maintenance and extend the service life of the streets. The sealing project will align with our preventative maintenance plan by sealing cracks in Zone 4 this year so that it may receive chip seal the following year.

Financial Considerations: The Application of Mastic Crack Sealant will cost \$100,000 for 2019. Contracts for the years 2020 and 2021 will not be signed until funding is approved in the budget. Funding of this project will come from the Special Streets Fund.

Purpose/Mission: The completion of this project will adhere to our core value of 'Ongoing Improvement' by maintaining our street infrastructure in an acceptable condition and extending the life of streets repaired under this project.

Legal Considerations: By approving the bid with Stripe & Seal, LLC, the City will enter into a contract with Stripe & Seal, LLC, and be responsible to make payments to Stripe & Seal, LLC for the completed work.

Attachments: A map showing the area of town proposed to receive mastic and the bid tabulation for Strip & Seal, LLC and Sweeney's Pavement Maintenance which includes the Engineers' estimate is attached.



Memorandum

*To: City Manager
City Commissioners*

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

Date: March 13, 2019

*Subject: KDOT Agreement for US 50 & Gary St.
Intersection, 50-29 KA-5150-01,
ST 1901*

Agenda Item: New Business

Recommendation: Approve the Agreement with the Kansas Department of Transportation (KDOT) for the above referenced project. With this agreement, the City will confirm the acceptance of the project with KDOT.

Background: In May of 2018 the City submitted a Geo-Metric Improvement (GI) application to KDOT for consideration of the widening of this intersection. The project consists of adding a third, a two-way left turn, lane from 6th Ave. to Central Ave. In August of 2018, KDOT issued a Press Release stating that the Dodge City was awarded the GI Project with a not to exceed funding amount from KDOT of \$500,000. Our construction estimate for the project is \$901,521. However, the City did not receive an official notification from KDOT either prior to or after the press release. After a few phone conversations with KDOT about the possibility of KDOT funding being secured, it was determined that the City needed to proceed even though we have not received anything official. In December of 2018, Request-for-Qualifications (RFQ) were requested for design services. Eight firms responded to the RFQ. A selection committee made up of Engineering Staff reviewed and evaluated these RFQ's. KM was then chosen for the design of the project. In January of 2019, KDOT has sent us the program packet outlining a timeline as to when crucial steps in the design process of this project have to be completed. At the March 4, 2019 meeting the Commission approved a design agreement with Kirkham, Michael, & Associates for the design of the project. The project is scheduled to be advertised for bid in September 2019. Construction will take place in the calendar year of 2020.

Justification: Improvements to this intersection will improve safety and reduce delay on US 50 from 6th Ave. to Central Ave. Numerous accidents have been reported on this section of US 50.

Financial Considerations: Per the agreement, KDOT will be responsible for 85% of the total actual costs of Construction (including Construction Contingency Items) and construction engineering, but not to exceed \$500,000. This project was funded in this year's Street Program for the project.

Purpose/Mission: The completion of this project will enable the City to have the documents necessary to meet KDOT's requirements for the bidding of this project. The intersection will provide better access for the residents, businesses, and emergency services.

Legal Considerations: By approving the agreement with KDOT, the City will enter into the agreement, and be responsible to make payment to KDOT.

Attachments: The KDOT Agreement for the fore mentioned project.

PROJECT NO. 50-29 KA-5150-01
GEOMETRIC IMPROVEMENT
CITY OF DODGE CITY, KANSAS

AGREEMENT

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

RECITALS:

- A. The Secretary has authorized a geometric improvement project, as further described in this Agreement.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.
- C. The City desires to construct the Project.
- D. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such state aid, such work is required to be done in accordance with the laws of Kansas.

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

ARTICLE I

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

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the City of Dodge City, Kansas, with its place of business at 806 N. Second Avenue, Dodge City, KS 67801.
- 3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- 4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
- 5. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
12. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
13. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
14. **“Non-Participating Costs”** means the costs of any items or services which the Secretary reasonably determines are not Participating Costs.
15. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
16. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.

17. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
18. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **reconstructing the intersection of US-50 and Gary Avenue to widen to a three-lane for a two-way left turn lane in Dodge City, Kansas**, and is the subject of this Agreement.
19. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
20. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
21. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
22. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
23. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT’s Bureau of Right of Way and the Office of Chief Counsel.
2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.
3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor’s agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party’s claim, the Contractor

shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

4. **Payment of Costs.** The Secretary agrees to be responsible for eighty-five percent (85%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering, but not to exceed \$500,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering that exceed \$588,235.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way or Utility adjustments for the Project.

5. **Final Billing.** After receipt of the final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of state aid for this Project.

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

3. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state design criteria appropriate for the Project in accordance with the current AASHTO A Policy on Geometric Design of Highways & Streets, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions.

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

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must

be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule’s due dates as issued by KDOT, exclusive of delays beyond the Consultant’s control.

(b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

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

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

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

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

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

(c) **Relocation Assistance.** The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

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

(e) **Trails and Sidewalks on KDOT Right of Way.** With regard to any bike or pedestrian paths or sidewalks ("Trail/Sidewalk") constructed pursuant to the Design Plans, the City agrees as follows:

(i) **City Responsible for Repairs and Providing Alternative Accessible Routes.** The City agrees that the primary purpose of KDOT Right of Way is for the

construction and maintenance of US-50. If the construction or maintenance of US-50 reasonably requires the Trail/Sidewalk on KDOT Right of Way to be damaged or removed, the City shall be responsible for all repairs to the Trail/Sidewalk made necessary as a result of US-50 construction or maintenance. In the event the Trail/Sidewalk on KDOT Right of Way is temporarily closed or removed for any reason and for any length of time, the City will be wholly responsible for providing an alternative accessible path and for compliance with all laws and regulations relating to accessibility.

- (ii) Interference with KDOT Right of Way. If the Secretary, in the Secretary's sole judgment, determines that continued use of the Trail/Sidewalk is or will interfere with KDOT use of its Right of Way or is otherwise rendered impractical, inconvenient, or unsafe for use by the traveling public, the City will remove the Trail/Sidewalk and restore the KDOT Right of Way location to its original condition prior to the Construction of the Trail/Sidewalk.
- (iii) Incorporation of Trail/Sidewalk into Local Transportation System. The City agrees to take all steps necessary to designate the Trail/Sidewalk component of the Project as an integral part of its local transportation system, being primarily for transportation purposes and having only incidental recreational use for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135.
- (iv) Maintenance. When the Project is completed and final acceptance is issued, the City, at its own cost and expense, will maintain, including snow removal if required by law, the Trail/Sidewalk on KDOT Right of Way and make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within a reasonable period and will prosecute the work continuously until it is satisfactorily completed. Any notification by the State Transportation Engineer, however, is not intended to and shall not be construed to be an undertaking of the City's absolute duty and obligation to maintain the Trail/Sidewalk.

(f) Use of City Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing the Project.

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

11. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will

require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

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

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

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

(c) **Time of Relocation.** The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

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

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

(f) **Cost of Relocation.** Except as provided by state law, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state laws. Except where the Utility adjustments are Participating Costs for the Project, the expense of the removal or adjustment of only privately owned Utilities located on private Right of Way shall be borne by the City and the Secretary in the same proportion as other approved Construction costs as stipulated elsewhere in this Agreement.

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

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

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

(c) **Hazardous Waste Indemnification.** The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

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

14. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved Construction Engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all City personnel and all Consultant personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services between the Secretary and the City and/or the Consultant must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

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

(a) **Temporary Traffic Control.** The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate

or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

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

(c) Parking Control. The City shall prohibit parking of vehicles on the city connecting link and on the acceleration and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways as the Secretary may deem necessary to permit free flowing traffic throughout the length of the Project covered by this Agreement.

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

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

17. Financial Obligation. The City will be responsible for fifteen percent (15%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering, up to \$588,235.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering that exceed \$588,235.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

18. Remittance of Estimated Share. The City shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

19. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

20. **Audit.** The City will participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered Non-Participating Costs, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

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

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

ARTICLE IV

GENERAL PROVISIONS:

1. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.

2. **City Connecting Link.** The Parties have in the past entered into an agreement covering routine maintenance of the city connecting link and it is the Parties' intention that the agreement for routine maintenance shall remain in full force and effect and the mileage set out in the city connecting link maintenance agreement is not be affected by this Agreement. If necessary, the Parties will execute a new city connecting link maintenance agreement to include the Project.

3. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

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

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

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

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

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

ATTEST:

THE CITY OF DODGE CITY, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

By: _____
Burt Morey, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

CONTRACTUAL PROVISIONS ATTACHMENT

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

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

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

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

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

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

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

KANSAS DEPARTMENT OF TRANSPORTATION

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

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

Memorandum

To: City Commissioners
From: Cherise Tieben, City Manager
Date: March 14, 2019
Subject: Rib Crib Dev. Agreement
Agenda Item: New Business

Recommendation: Staff recommends the approval of the Rib Crib Development Agreement.

Background: The agreement took a significant amount of time to complete due to the evolution of the project. Originally it was going to be a Rib Crib development only, however, with the addition of the 2nd facility, Rib Crib thought it was best to bring in Boyd Development for assistance. Therefore, the agreement had to be a three way agreement between Dodge City Rib Crib LLC (Rib Crib), RCP Development LLC (Boyd Development) and the City. However, before our agreement could be completed the other two entities had to work out their own agreement. As you will note, some of the attachments are not available at this time, but will be assembled during the due diligence period. The agreement calls for the development of the Rib Crib restaurant first and then allows Boyd Development up two (2) years to develop Phase II of the property. If Boyd opts to not develop Phase II, the City has the right to have the property deeded back to us to sell to another developer in the future. Additionally, it was very clear that if Boyd were to back out for some reason, Rib Crib wanted the agreement transferred solely to them for completion of the restaurant. The developed lots will be eligible for the Neighborhood Revitalization Program (NRP). Rib Crib covenants the continuous operation of the restaurant for the ten (10) year term of the agreement.

Justification: As you will recall, the property is a part of the STAR Bond Heritage District and sales tax revenues will assist with repayment of the initial STAR bond issuance.

Financial Considerations: The lots will be sold for twenty thousand dollars (\$20,000.00). The development is eligible for the NRP incentive. The sales tax will assist with the Heritage District STAR Bond repayment, which should pay the bonds off early, if everything proceeds as anticipated.

Purpose/Mission: Together we value progress, growth and new possibilities by providing and preparing for the community's future.

Legal Considerations: See attached development agreement that has been prepared by STAR Bond legal counsel.

**RIB CRIB
DEVELOPMENT AGREEMENT**

RIB CRIB DEVELOPMENT AGREEMENT

THIS RIB CRIB DEVELOPMENT AGREEMENT (the “Agreement”) is made as of the _____ day of _____, 2019 (the “Effective Date”) between the City of Dodge City, Kansas (the “City”) and Dodge City Rib Crib, LLC, a Delaware limited liability company or its assigns (“Rib Crib”) and RCP Development, LLC, a Kansas limited liability company (“RCP”).

RECITALS:

A. The City owns certain real property situated in Ford County, Kansas and more particularly described on **Exhibit A-1** attached hereto (the “Site”), which consists of approximately 0.33 acres on six (6) parcels of land generally located in the 400 Block of Trail Street (the “Site”). The Site is generally depicted on **Exhibit A-2** attached hereto.

B. On March 19, 2012, pursuant to the STAR Bonds Financing Act, K.S.A. 12-17,160 *et seq.*, as amended (the “STAR Bond Act”), the City approved a STAR Bond Project District (the “Original STAR Bond District”) by passage of Ordinance No. 3527, which Original STAR Bond District contained two (2) separate non-contiguous areas totaling approximately 500 acres located within the City: (i) one area is approximately 166 acres located in the historic downtown area of Dodge City, Kansas (the “Heritage Area”), and (ii) the other area is generally located between U.S. Highway 50 and 108th Road, south of Frontview Road (the “Entertainment Area”).

C. The Original STAR Bond District has been amended twice since its inception: (i) on October 23, 2014, adding approximately twenty-five (25) acres of real property to the eastern boundaries of the Heritage Area of the Original STAR Bond District (as amended, the “2014 STAR Bond District”); and (ii) again on February 3, 2017, adding approximately 219 acres of real property (the “Power Center Area”) by passage of Ordinance No. 3650 (as amended, the “2017 STAR Bond District”). More specifically, the 2017 STAR Bond District contains three (3) separate non-contiguous areas totaling approximately 720 acres located within the City: (1) the Power Center Area, (2) the Heritage Area, and (3) the Entertainment Area.

D. The Site is included within the Heritage Area of the 2017 STAR Bond District. The Heritage Area is legally described on **Exhibit B-1** and generally depicted on **Exhibit B-2** attached hereto. A map showing the entire 2017 STAR Bond District is legally described on **Exhibit C-1** and generally depicted on **Exhibit C-2** attached hereto. By letter dated January 27, 2017, the Secretary designated the 2017 STAR Bond District as eligible for STAR Bond financing.

E. On April 20, 2015, pursuant to the STAR Bond Act, the City approved the Heritage Area Project Plan for the Heritage Area (the “Project Plan”) by adoption of Ordinance No. 3605. On December 22, 2015, the City issued Sales Tax Special Obligation Revenue Bonds (Heritage Project Area), Series 2015 in the principal amount of \$13,150,000 (the “STAR Bonds”) for the development, financing and implementation of the Project Plan.

F. RCP and Rib Crib desire to develop a portion of the Site as a “Rib Crib” branded barbeque restaurant (“RC Restaurant”).

G. In order to fully utilize the Site, the remaining square footage of the Site will be developed as one or more restaurant or retail uses of approximately 1,800 to 4,000 square feet (“Remaining Space”).

H. RCP is an experienced land developer in the Kansas market and desires to construct the RC Restaurant and lease to Rib Crib the RC Restaurant and to develop and lease the Remaining Space.

I. In consideration for the agreements contained herein, Rib Crib will develop and operate the RC Restaurant on the terms set forth herein. In consideration for the agreements contained herein, RCP will assure the development and operation of the Remaining Space. Rib Crib and RCP will work on all aspects of the overall development of the Site so that the RC Restaurant and Remaining Space will be an integrated and coordinated development. The RC Restaurant and the Remaining Space may be collectively referred to herein as the “Project”.

J. Subject to the terms and conditions set forth in this Agreement, Rib Crib and RCP shall have their respective development rights on the Site as generally depicted on the Development Plan attached hereto as **Exhibit D** (“Development Plan”).

K. In order to attract the Project to the Site, the City will deliver and convey the Site to RCP at a favorable purchase price and provide Neighborhood Revitalization Act (“NRA”) financing in connection with the Project.

L. The parties agree that the Project is not financially feasible without the public-private partnership as set forth in this Agreement, and therefore the parties wish to enter into this Agreement to provide the necessary financing incentives for the Project and to formalize their respective rights and obligations thereto.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Rib Crib hereby agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

1.1 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person (as defined in Annex 1) includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (e) reference in this Agreement to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;
- (f) each of the items or agreements identified on the attached Index of Exhibits are deemed part of this Agreement to the same extent as if set forth herein;
- (g) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

(h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and

(i) relative to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding.”

1.2 Accounting Terms. Unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determination and computations shall be made in accordance with income tax accounting principles.

1.3 Legal Representation of the Parties. This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

1.4 Definitions. All capitalized terms used in this Agreement shall have the meanings ascribed to them in Annex 1 attached hereto and made a part hereof, or as otherwise provided herein.

ARTICLE II. APPOINTMENT OF RIB CRIB AND RCP – GENERAL AGREEMENT – DOCUMENTS

2.1 Undertaking of Rib Crib and RCP. Rib Crib hereby agrees, subject to the terms and conditions hereinafter provided, to develop, construct, complete, and operate the RC Restaurant on the Site. RCP hereby agrees, subject to the terms and conditions herein provided (including without limitation, the terms of Section 6.10 below), to develop, construct, complete and operate (through third party Tenants, as defined below in Section 2.3(a)(i)) the Remaining Space and to lease the RC Restaurant to Rib Crib and cause to be developed, constructed, completed and operated, the Remaining Space. The performance of all activities by both Rib Crib and RCP hereunder shall be as an independent contractor and not as an agent of the City, except as otherwise specifically provided herein.

2.2 Transfer of Site.

(a) The City owns the Site and, at Closing (as defined below in Section 5.1), the City shall convey the Site to RCP pursuant to one or more special warranty deed(s) (collectively, the “Deed”) and subject only to the provisions set forth in Section 2.2 hereof and in the balance of this Agreement and subject to the Permitted Encumbrances (as defined in Section 3.1(e) below). In consideration for the Deed, RCP shall pay to the City a purchase price in an amount equal to \$20,000 for the Site (the “Purchase Price”). The form of the Deed has been agreed to by the parties and is attached hereto as Exhibit E. Upon acquisition of the Site by RCP, RCP will enter into a triple net lease with Rib Crib for the operation of the RC Restaurant (“RC Lease”).

(b) Reversionary Interests. Notwithstanding the foregoing, RCP hereby agrees that the Site shall be subject to a right of reversion in favor of the City (a “Reversionary Interest”) in the event that (i) commencement of construction of the RC Restaurant on the Site has not occurred on or before the Commencement Date set forth in Section 6.8 below, and/or (ii) completion of construction of the RC Restaurant has not occurred on or before the Completion Date set forth in Section 6.9 below. In order to exercise the Reversionary Interest, the City shall first give to RCP a written notice of default and an additional sixty (60) days to cure (the “Reversionary Interest Notice”) which shall specifically state that the City is invoking the Reversionary Interest remedy, and in that case, if RCP fails to remedy the default in question within said additional sixty (60)

days, the City shall have the right, in its discretion, to exercise its Reversionary Interest at the “Reversionary Price”. The “Reversionary Price” shall mean the actual cost of the site work on the Site at the time that the City issues its Reversionary Interest Notice. Upon timely completion of construction of the RC Restaurant, the City hereby directs the appropriate City official to deliver to RCP a quitclaim deed or such other documents as may be necessary to evidence the release of the Reversionary Interest set forth in this Agreement. The parties also hereby agree that the Reversionary Interest set forth herein shall be subject to the following lender protections:

(i) RCP shall have the right to mortgage (including any increase, replacement, or renewal of said mortgage) its entire interest in the Site to a lender to secure any private loan for construction or permanent financing for the Project (a “Private Loan”), with such mortgage herein described as the “Permitted Mortgage”. In the event that RCP obtains a Private Loan, and subject to the terms and conditions set forth in this Section 2.2(b), the parties hereby agree that the Reversionary Interest shall be subordinated to the Private Loan, in which event the City and the lender in connection with a Private Loan (“Lender”) shall execute such documents as may be necessary to evidence such subordinated interest.

(ii) The execution and delivery of such Permitted Mortgage shall not be deemed to constitute an assignment or transfer of the Agreement, nor shall Lender be deemed (prior to a foreclosure judgment or acquisition by deed in lieu of foreclosure) an assignee or transferee of this Agreement so as to require such Lender to assume the performance of any of the terms, covenants or conditions on the part of RCP to be performed under the Agreement, prior to a foreclosure judgment or acquisition by deed in lieu of foreclosure. RCP shall give prompt notice to the City of the execution and delivery of the Permitted Mortgage meeting the requirements of this Section 2.2(b) and shall furnish the City with conformed copies thereof.

(iii) Any Transferee (a “Transferee” being any Person who acquires the Site, whether as a result of any foreclosure sale, deed in lieu of foreclosure or other transfer authorized by law) shall take the Site subject to this Agreement as it relates to the Project, and shall, by such acquisition, be deemed to assume and agree to keep, observe and perform all of the terms, covenants and provisions of the Agreement on the part of RCP to be kept, observed and performed (including the obligation to cure defaults arising prior to such assumption curable by the payment of money or otherwise reasonably susceptible of being cured) as they relate to the Project.

(iv) If RCP or Lender shall provide to the City a copy of any such Permitted Mortgage, together with written notice specifying the name and address of the Lender, the City agrees that so long as any such Permitted Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Lender to the City, the provisions of this Section 2.2(b)(iv) shall apply. Following any such notification specifying the name and address of Lender:

(A) The City shall give Lender a copy of each notice given to RCP in connection with the Reversionary Interest or the Project under this Agreement (such notice to be given in the same manner as provided in Section 10.11 of the Agreement) at said Lender's last address for notice provided to the City as provided above. No such notice to RCP shall be effective unless notice thereof is so given to Lender. The City shall have no obligation to give notice to Lender at any address other than Lender's last address for notice provided to City.

(B) Lender shall have the right, until one hundred and eighty (180) days after the later of: (x) expiration of any applicable cure period of RCP set forth in this Agreement, or (y) receipt of its copy of any such notice as is given to RCP to remedy or cause to be remedied the event (such as an event of default by RCP) which is the basis of the notice; and the City shall accept performance by such Lender as performance by RCP; provided, however, that if performance of the obligation cannot reasonably be completed within such one hundred eighty (180) day time periods, the parties will negotiate in good faith to adjust the cure period as long as Lender shall have commenced to cure and is diligently pursuing the same to completion.

(C) In the event that the City has the right to title to the Rib Crib Property under the Reversionary Interest (a "Reversionary Event"), the City shall take no action to effect such Reversionary Interest without first giving to Lender notice, after which Lender shall have three hundred sixty (360) days during which Lender may (x) institute foreclosure proceedings or otherwise acquire RCP's estate in and to the Rib Crib Property and to cure such Reversionary Event if the same can reasonably be cured by Lender after obtaining possession, or (y) institute foreclosure proceedings or otherwise acquire RCP's estate in and to the Rib Crib Property without curing the Reversionary Event if the same cannot reasonably be cured by Lender after obtaining possession. If Lender does not exercise such rights within said three hundred sixty (360) days, then the Lender shall agree with the City that the City shall thereafter have a right to exercise its Reversionary Interest, free and clear of the Permitted Mortgage.

(D) Lender shall not be required to continue possession or continue foreclosure proceedings under Section 2.2(b)(iv)(C) above if the particular Reversionary Event has been cured.

(v) Nothing herein contained shall require Lender to cure or undertake to cure any default of RCP, unless and until Lender elects to exercise any right hereunder as to which such cure or undertaking to cure is a condition and subject always to the provisions of this Section 2.2(b).

(c) Development of the Remaining Space Property. RCP will (subject to the terms of Section 6.10 below) develop the Remaining Space Property in accordance with the terms set forth below:

(i) The proposed use for the Remaining Space is restricted from a retail use which is a "Prohibited Use" as set forth on Exhibit J attached hereto. The City may grant waivers to a Prohibited Use for the Remaining Space in its sole and absolute discretion.

(ii) The parties hereby understand and agree that all of the terms and conditions described in Sections 3.1 and 3.3 below shall apply and pertain to the Remaining Space Property.

(iii) The rights and obligations of RCP in this Agreement with respect to the "Site," as such term is used herein, shall be deemed to include the Remaining Space.

(d) Easements for Conduit. RCP hereby understands and agrees that the City needs to maintain the right to install conduit(s) within the western six feet (6') of the Site for installation of future street lights on Trail St. at a location mutually acceptable to the engineers of Rib Crib, RCP and the City. Rib Crib and RCP hereby agree to grant the City any easements required in connection with such installation, and to reasonably cooperate with the City in connection with same.

2.3 Development Plan. The City, Rib Crib and RCP hereby agree that the Development Plan for the Site shall be as described below and as depicted on Exhibit D attached hereto. RCP and Rib Crib (as to the RC Restaurant) covenant and agree that all buildings, parking facilities and other improvements described below with respect to the Project shall be developed, constructed and completed on the Site in substantial accordance and compliance with the terms and conditions of this Section 2.3 and the Development Plan. Subject to Article 6 and the other terms and provisions set forth in this Agreement, RCP and Rib Crib (as to the Rib Crib Improvements) shall have the sole right to, and shall be responsible for, the design, construction, equipment and completion of the RC Restaurant and the Remaining Space, respectively, and shall operate and use the same in the manner described in this Section 2.3 in accordance with all Applicable Laws and Requirements (as defined in Annex 1) and in compliance with Article 7 hereof. The parties further agree as follows:

(a) The Project shall be developed, designed and constructed to include, at minimum, the following improvements and amenities (the "Improvements"):

(i) The Retail Buildings. The Remaining Space shall be leased to one or more sales-tax producing retail uses that are new to the City of Dodge City (the "Tenants"). Notwithstanding anything herein to the contrary, the Remaining Space may be developed at a later time than the RC Restaurant.

(ii) Parking Lot, Drives and Lighting Improvements. The design, development and construction and completion of the parking lots, curbs and gutters for the Project, including parking lot signage and striping, lighting improvements for the parking lots, including light poles, fixtures and electrical service thereto (the "Parking Improvements"). The Parking Improvements shall include no less than the number of spaces required by the Applicable Laws and Requirements, but a portion of the Project's parking requirements may be satisfied by the off-site public parking located immediately to the north of the Site. The City agrees to restrict this area from overnight or long term parking.

(iii) Landscaping and Irrigation. The design, development and construction and completion of landscaping, islands, green space and irrigation systems benefiting the Project.

(iv) Infrastructure. The design, development and construction and completion of infrastructure improvements, including without limitation, sewer, stormwater and water main improvements, irrigation systems, sidewalks, drives and other pedestrian and vehicular thoroughfares (the "Infrastructure Improvements").

(v) Other. Any and all other Improvements required by the Development Plan, Applicable Laws and Requirements and/or the City's Planning Department.

(b) Rib Crib and RCP recognize, stipulate and agree that its identification signs, directional and way-finding signs, building signs and other signage shall be subject to all

Applicable Laws and Requirements, and any special use permits granted by the City's Planning Commission. The City hereby agrees that it will, to the extent possible, expedite the consideration of RCP's and Rib Crib's proposed signage and cooperate with RCP and Rib Crib to reasonably accommodate RCP's and Rib Crib's reasonable signage requirements.

(c) The Development Plan described in this Section 2.3 shall not be materially amended or modified without (i) the prior written consent of the City Manager, or his/her designee, which consent shall not be unreasonably withheld; and (ii) full compliance with all Applicable Laws and Requirements, provided that Rib Crib and/or RCP shall have the right, in its reasonable discretion, to modify the scope and physical parameters of the Development Plan (each, a "Permitted Modification") under the following conditions:

(i) To the extent modifications are required by Applicable Laws and Requirements;

(ii) To the extent modifications are required to maintain costs within Rib Crib's or RCP's budget; provided, however, that these budgetary modifications will not prevent or in any material way diminish Rib Crib's or RCP's ability to generate sales taxes payable to the City or the State;

(iii) To the extent of modifications to the applicable Improvements to accommodate new technologies or amenities or rebranding which may be necessary or desirable due to market or industry changes or conditions during the time that the Project is being developed or operated; or

(iv) To expand any Improvements.

Rib Crib and RCP agree that any such Permitted Modification shall be consistent and comply with Applicable Laws and Requirements. Rib Crib and RCP shall give to the City reasonable prior notice of any Permitted Modification, but a Permitted Modification shall not require the consent of the City.

ARTICLE III. CONDITIONS

3.1 Conditions. None of the parties shall be obligated to proceed to Closing unless and until each of the following conditions and requirements have been satisfied in full:

(a) Private Financing. The City has, following a confidential review by the City's representatives, satisfied itself with the terms and conditions of RCP's and Rib Crib's private financing, including evidence that the parties have procured and will, upon the Closing, close on financing transactions for private financing, the net proceeds of which, when added to the demonstrable equity commitments, are sufficient and available to fully fund the hard and soft costs for the Project.

(b) Platting and Zoning. The City shall have completed any subdivision, platting and zoning of the Site to allow for the uses described in Section 2.3 above and Rib Crib and RCP shall have satisfied itself that such actions have been completed to its satisfaction.

(c) Inspection. The City shall allow Rib Crib and RCP access to the Site for purposes of inspecting the Site, excluding the right to invasive testing but subject to the terms of Section

3.1(e) below) of same (the “Investigations”); provided, however, that: (i) Rib Crib and RCP will coordinate their inspection efforts to minimize any disruption to the City; (ii) Investigations must be scheduled with the City; (iii) Rib Crib and RCP will maintain the results of any such Investigations confidential, except to such third-party consultants, lenders, investors or attorneys as reasonably necessary to advise Rib Crib and RCP with regard to the Investigations; (iv) Rib Crib and RCP shall repair any and all damage caused by the Investigations, and shall restore the Site to the condition they were in prior to such Investigations; and (v) Rib Crib and RCP agree to indemnify and hold the City, its agents, officers, contractors and employees harmless from any and all injuries, losses, liens, claims, judgments, liabilities, costs actually incurred, expenses or damages (including reasonable attorneys’ fees and court costs) sustained by or threatened against the City which result from or arise out of the Investigations of the respective parties or their authorized representatives pursuant to this Section 3.1(c). Notwithstanding any provision herein to the contrary, the indemnity contained in the preceding sentence shall survive the termination of this Agreement or the Closing. If Rib Crib or RCP are not satisfied with the Site for any reason or no reason, then Rib Crib and RCP shall have the right, exercisable by written notice given to the City on or before the Closing, to terminate this Agreement (it being understood that if either RCP or Rib Crib elect to terminate this Agreement then this Agreement terminates as to the both). In the event that this Agreement is not terminated pursuant to this Section 3.1(c) before the Closing, except as it pertains to Section 3.1(e) below, Rib Crib and RCP shall be deemed to have waived this condition and accepted and acquired the Site “as is, where is”. Except as to specific representations expressly provided in this Agreement, Rib Crib and RCP agree that they are relying solely on their own investigations of the Site and not on any information provided or to be provided by the City, its officers, or agents and that if this transaction closes, subject to any representations or City obligations in this Agreement, Rib Crib and RCP shall be deemed and considered to be fully and completely satisfied with the Site and all parts and aspects thereof.

(d) NRA Rebates. The NRA Rebates (as defined in Section 4.2 below) must be authorized, approved and effective as of Closing.

(e) Title/Survey Review. The City, at its sole cost, shall provide to Rib Crib and RCP, copies of a commitment for title insurance (a “Title Commitment”) for the Site together with copies of Schedule B exception documents disclosed therein from High Plains Land and Title Company (the “Title Company”) which Title Commitment shall show RCP as the proposed insured and commit to deliver a title policy to RCP at Closing in an amount equal to the Purchase Price, insuring good and marketable title to the Site. In addition, the City shall deliver a current ALTA Survey (the “Survey”) of the Site to Rib Crib and RCP. RCP and/or Rib Crib may, within 30 days of receipt of the latter of the Title Commitment and the Survey notify the City in writing of any objections Rib Crib and/or RCP have to the Title Commitment or Survey (the “Title Objection Date”). Any matters to which RCP and/or Rib Crib do not object in writing prior to the Title Objection Date shall be considered Permitted Encumbrances. With regard to any items to which RCP and/or Rib Crib do timely object, the City shall notify RCP and/or Rib Crib as to whether or not the City will agree, in its sole discretion, to cure any such objection(s). Within ten (10) business days of any notice to RCP and/or Rib Crib that the City will not agree to cure any such title objection(s), RCP and/or Rib Crib shall have the right, exercisable by written notice given to the City to terminate this Agreement. If neither RCP nor Rib Crib exercises this right of termination, then any liens, encumbrances or other title matters shown on the Title Commitment or Survey shall be considered to be “Permitted Encumbrances”.

3.2 Termination. Upon any such termination of this Agreement pursuant to this Article 3, this Agreement shall terminate, and, except as specifically set forth herein, the parties hereto shall have no further duty or obligation hereunder and without limiting the generality of the foregoing, Rib Crib and RCP

shall be solely liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby, and the City shall be solely liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby.

3.3 Waiver of Conditions. If any of the conditions set forth in Section 3.1 hereof are not satisfied and the transaction nonetheless closes as set forth in Section 5.1 below, the City, RCP and Rib Crib shall be deemed to be satisfied as to the conditions in Section 3.1 and any corresponding provisions of this Agreement and shall be deemed to have waived the same.

ARTICLE IV. FINANCING — SOURCE OF FUNDS

4.1 Source of Funds. The public benefits and incentives offered to attract the Project shall also include NRA Rebates as defined and set forth in Section 4.2 below. Reference is hereby made to the estimated costs of the Project (the “Project Costs”) and budget for the same (the “Project Budget”) attached hereto as **Exhibit F** and by this reference made a part hereof. All of the Project Costs shall be paid with private funds. The City shall have no obligation to directly pay or reimburse any of the Project Costs – the City's only contribution to the financing of the Project shall be through the NRA Rebates as provided for below.

4.2 NRA Rebates. Subject to the terms and conditions of this Agreement, the City hereby agrees to cooperate with RCP and Rib Crib to secure a rebate of a portion of the incremental ad valorem property taxes collected within the Site (the “NRA Rebates”) pursuant to the NRA, as more particularly set forth herein. Obtaining the NRA Rebates is a condition to Closing under this Agreement.

(a) Rebate Structure. Subject to the terms of this Agreement, the NRA and the conditions in this Section 4.2, the City hereby agrees to cooperate with Rib Crib and RCP in their efforts to obtain NRA Rebates from Ford County (the “County”) for a portion of the incremental ad valorem property taxes levied by the County, and levied by the applicable school district and community college district, and any other taxing jurisdictions participating in the County’s NRA program, for the Project (collectively, the “Incremental Real Property Tax”). Such NRA Rebates will be as follows:

- (i) Year 1* – 100% of the Incremental Real Property Tax;
- (ii) Year 2 – 90% of the Incremental Real Property Tax;
- (iii) Year 3 – 80% of the Incremental Real Property Tax;
- (iv) Year 4 – 70% of the Incremental Real Property Tax;
- (v) Year 5 – 60% of the Incremental Real Property Tax;
- (vi) Year 6 – 50% of the Incremental Real Property Tax;
- (vii) Year 7 – 40% of the Incremental Real Property Tax;
- (viii) Year 8 – 30% of the Incremental Real Property Tax;
- (ix) Year 9 – 20% of the Incremental Real Property Tax; and

(x) Year 10 – 10% of the Incremental Real Property Tax.

* “Year 1” shall be as set forth in this Section 4.2(c) below.

(b) Payment of NRA Rebates. Subject to the terms and conditions of this Agreement, RCP and Rib Crib hereby understand and agree that the NRA Rebates shall be conditioned and limited to the extent that RCP and Rib Crib shall have fully satisfied all of the Public Financing Conditions set forth in Section 4.3 below.

(c) The NRA Rebate Period. The collection of NRA Rebates described in this Section 4.2 shall commence upon the first taxable year that the RC Restaurant is fully completed and fully taxed (“Year 1”) and continue through the collection and rebate of Incremental Real Property Tax for the tenth (10th) tax year thereafter (the “NRA Rebate Period”). At the end of the NRA Rebate Period, the parties understand and agree that the NRA Rebates shall thereafter terminate.

4.3 Conditions Precedent to Public Financing. Rib Crib and RCP hereby understand and agree that it shall not receive any NRA Rebates, unless and until the conditions precedent set forth below have been fully satisfied as determined by the City in its sole reasonable discretion (the “Public Financing Conditions”):

(a) The RC Restaurant (including all other Improvements described in Section 2.3, but excluding the Remaining Space) shall be substantially completed, fully stocked and open for business on the Rib Crib Property; and

(b) RCP and Rib Crib shall be in full compliance with the terms and conditions of this Agreement and shall not be in default hereunder, nor shall there be conditions, actions or omissions of RCP and/or Rib Crib which will, with the passage of time, become occurrences of default hereunder.

ARTICLE V. CLOSING

5.1 Closing. The Closing shall be the date on which the following occur: (i) the conditions set forth in Section 3.1 hereof are fulfilled or waived, (ii) RCP pays the Purchase Price to the City, and (iii) the City delivers the Deed and possession of the Site to RCP in accordance with the terms and conditions of this Agreement. It is hereby recognized, stipulated and agreed by Rib Crib, RCP and the City that none of the parties shall have any duty to proceed with Closing or to do or perform any of the duties or obligations to be performed at Closing unless and until each and all of the conditions described in Article 3 have either been satisfied or waived in accordance with the applicable provisions of Article 3. Notwithstanding anything herein to the contrary, Closing must occur on or before that date which is two hundred ten (210) days following the Effective Date (the “Outside Date”), or any party hereto shall have the right to terminate this Agreement.

ARTICLE VI. CONSTRUCTION OF IMPROVEMENTS AND INFRASTRUCTURE IMPROVEMENTS

6.1 Architect. Rib Crib and RCP shall select such architects, engineers and other design professionals and consultants as are necessary to provide construction documents and construction oversight services for the Improvements to be designed, constructed and completed on the Site (the “Design Professional(s)”). All agreements respecting architectural and engineering services shall be

between Rib Crib and/or RCP and such Design Professionals, and a copy of each document required for the approvals of and permits for the Project shall be timely provided to the City.

6.2 Design and Plans and Specifications. The City has provided Rib Crib and RCP with detailed design criteria, which set forth the architectural design of improvements and the building materials to be used in the construction thereof within the Heritage Area (the “Design Criteria”). The Design Criteria is hereby attached to this Agreement as **Exhibit G**. Rib Crib shall prepare plans and specifications for the RC Restaurant (the “Plans and Specifications”), which Plans and Specifications shall include cost estimates for the RC Restaurant, the design of which is compatible with the Development Plan, the Design Criteria and all Applicable Laws and Requirements. RCP shall provide plans and specifications for the Remaining Space which shall comply with the Development Plan, Design Criteria and all Applicable Laws and Requirements. RCP shall provide plans and specifications for the Remaining Space which shall comply with the Development Plan, Design Criteria and all Applicable Laws and Requirements. Rib Crib as to the RC Restaurant and RCP as to the Remaining Space, recognize, stipulate and agree that the Plans and Specifications shall be timely provided to the City upon request for the same, and the Plans and Specifications are subject to approval by the City and other appropriate Government Authorities (as defined in Annex 1) to the extent required by Applicable Laws and Requirements. Without the prior written approval of the City and any such other appropriate Government Authorities, there shall be no Material Changes (as defined in Annex 1) to the Plans and Specifications subsequent to the initial approval.

6.3 General Contractor and Construction Documents. RCP and/or Rib Crib shall select a general contractor (the “General Contractor”) for the RC Restaurant and RCP may select the same or a different general contractor for the Remaining Space. Rib Crib and RCP represent that its construction documents relative to their respective Improvements (the “Construction Documents”) will require and provide for the design, development, construction, equipping and completion of the Improvements in accordance with the Development Plan, the Plans and Specifications and all Applicable Laws and Requirements.

6.4 Changes or Amendments. Rib Crib and RCP agree with the City that: (a) it will perform its duties and obligations under the Construction Documents and (b) enforce the obligations of all other parties thereunder. Rib Crib and RCP shall not make any Material Changes to, or terminate any of the Construction Documents except upon default, or release any party therefrom without the prior written consent of the City.

6.5 Responsibility for Design and Construction. RCP and/or Rib Crib shall, subject to the terms of this Agreement and the Development Plan, have the sole right, and the responsibility, to design, manage, operate and construct the RC Restaurant and RCP shall, subject to the terms of this Agreement and the Development Plan, have the sole right, and the responsibility, to design, manage, operate and construct the Remaining Space. Neither Rib Crib nor RCP shall receive a separate fee from the City for acting as construction manager or developer of the Project. Notwithstanding anything set forth herein to the contrary, the Plans and Specifications shall be sealed by a Design Professional and shall require that a Design Professional render a certificate upon the completion of the work required thereby that said work has been completed in accordance with all Applicable Laws and Requirements.

6.6 Permits and Reviews. RCP and/or Rib Crib as to the RC Restaurant and RCP as to the Remaining Space hereby recognize, stipulate and agree that: (a) in the design, construction, completion, use or operation of their respective Improvements, Rib Crib and/or RCP, or their General Contractor, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required; and (b) nothing herein shall be construed as any release by the City of the responsibility of Rib Crib or RCP to comply with, and satisfy the requirements of, all Applicable Laws and

Requirements; the City agreeing, however, that it will, to the extent possible, expedite all plan review and permitting in connection with the design and construction of the Improvements.

6.7 Periodic Meetings with RCP and Rib Crib. From the Effective Date until Substantial Completion (as defined in Annex 1) of the Improvements, Rib Crib and RCP hereby agree to participate in conference calls with the City and/or its representatives at such intervals as Rib Crib, RCP and the City shall mutually agree or reasonably request, and not more frequently than monthly, to review and discuss the design, development and construction of the Improvements and the Project.

6.8 Commencement of Construction. RCP and/or Rib Crib hereby agree that RCP and/or Rib Crib shall commence construction (that is, building permit has been issued and a ground breaking on the land of the RC Restaurant on or before the date which is one hundred eighty (180) days from the date of Closing (the "Commencement Date"), subject only to Force Majeure (as defined in Section 10.2 below). RCP hereby agrees that RCP shall commence construction (that is, building permit has been issued and a ground breaking on the land) of the Remaining Space on or before the date which is twenty-four (24) months from the date of Closing (the "Remaining Space Commencement Date"), subject only to Force Majeure.

6.9 Completion Date. RCP and/or Rib Crib hereby agree that, subject only to Force Majeure, RCP and/or Rib Crib shall achieve Substantial Completion of the RC Restaurant and open on or before that date which is twelve (12) months from the Commencement Date (the "Completion Date"). RCP hereby agrees that, subject only to Force Majeure, RCP shall achieve Substantial Completion of the Remaining Space and open on or before that date which is thirty-six (36) months from the date that RCP commences construction on the Remaining Space (the "Remaining Space Completion Date").

6.10 Failure to Develop Remaining Space. In the event RCP fails or elects not to develop the Remaining Space within the time periods described in Section 6.8 and 6.9, then RCP shall provide written notice of such election or failure to the City (the "Remaining Space Notice"). The parties hereby agree that such election or failure by RCP shall not be deemed to be a default of this Agreement and the City's sole remedy for RCP not developing the Remaining Space is limited to requiring RCP to deed the Remaining Space back to the City. The City shall exercise such right by delivering written notice to RCP within one hundred and eighty (180) days after receipt of RCP's Remaining Space Notice, or the City shall be deemed to have waived the right to require RCP to deed the Remaining Space back to the City. If and to the extent that the City shall timely exercise its right to reacquire the Remaining Space from RCP, the parties hereby agree as follows:

(a) RCP shall convey the remaining space to the City by special warranty deed within thirty (30) days of the City's written notice exercising its rights to reacquire the Remaining Space, which conveyance shall be subject only to the Permitted Encumbrances as of the date of the Deed from the City to RCP (and not subject to any Private Loan or other liens); provided however, that the City agrees that it will take the Remaining Space subject to utility easements and a restriction for the benefit of Rib Crib which prohibits use of the Remaining Space for the sale of barbeque meats, which shall expire be of no further force and effect after Rib Crib ceases to operate in the RC Restaurant for more than 180 days (for reasons other than casualty) and/or Rib Crib's lease with RCP is no longer in effect.

(b) At closing on the Remaining Space, the City shall pay RCP an amount equal to \$100 for the Remaining Space;

(c) The ad valorem taxes for the Remaining Space shall be pro-rated as of the date of closing; and

(d) Notwithstanding anything set forth above to the contrary, if RCP fails to timely convey the Remaining Space to the City as described herein, such failure shall be deemed to be a default hereunder and the City shall have all rights and remedies available to the City under Section 9.2 hereof.

If and to the extent that the City does not timely exercise its right to reacquire the Remaining Space from RCP, the parties hereby agree that RCP and the Remaining Space shall continue to be subject to the terms and conditions of this Agreement, but the City understands and agrees that RCP shall not be obligated to develop the Remaining Space, nor shall RCP be in default hereunder for such failure to develop the Remaining Space.

ARTICLE VII. USE AND OPERATION

7.1 Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon the later to occur of: (a) ten (10) years from the Effective Date, or (b) RCP's and/or Rib Crib's receipt of the final NRA Rebates (the "Term").

7.2 Use and Operation.

(a) Rib Crib covenants that at all times during the Term (or such lesser period as otherwise set forth in this Agreement), it will, at its expense:

(i) Use the RC Restaurant only for the Permitted Uses (as defined in Annex 1) and prevent the use of the RC Restaurant for any of the Prohibited Uses set forth on **Exhibit J.**

(ii) Conduct its business at all times in a dignified quality manner and in conformity with the first class industry standards and in such manner as to help establish and maintain a high reputation for the Project.

(iii) Subject to Force Majeure, open and occupy, or cause to be occupied, the RC Restaurant on or before the Completion Date and thereafter, once open, continuously operate and conduct business without interruption, use, occupy and operate all of the same, other than such minor portions thereof as are reasonably required for maintenance, storage and office purposes; use such storage and similar space only in connection with the business conducted by Rib Crib in the Project; furnish and install all trade fixtures and permitted signs; open for business and remain open during the entire Term from at least the hours and days that are customary (including on a seasonal basis) with other Rib Crib branded restaurants ("Business Hours"), in accordance with standards and in such manner as to help establish and maintain a high reputation for the Project. Rib Crib shall be professionally operated and managed. Notwithstanding the foregoing, the parties hereby agree as follows:

A. The RC Restaurant shall be continuously open during reasonable Business Hours, subject to Rib Crib's (1) reasonable rules and regulations for use, (2) security and management restrictions, and (3) right to temporarily close as necessary for repair, maintenance, etc.

B. The RC Restaurant may be closed temporarily for periods during casualty and/or reconstruction and may be temporarily closed during remodeling

or during periods of rebranding, but in no event shall such temporary closure exceed a period of nine (9) months, subject to Force Majeure.

(iv) Perform its duties to repair, restore and replace the Improvements on the Rib Crib Property as set forth in Sections 7.3 and 7.9.

(b) RCP covenants that at all times during the Term (or such lesser period as otherwise set forth in this Agreement), it will, at its expense:

(i) Use the Remaining Space only for the Permitted Uses and prevent the use of the Remaining Space for any of the Prohibited Uses set forth on **Exhibit J**.

(ii) Conduct its business at all times in a dignified quality manner and in conformity with the first-class industry standards and in such manner as to help establish and maintain a high reputation for the Project.

(iii) Subject to Force Majeure, open and occupy, or cause to be occupied, the Remaining Space after the Remaining Space Completion Date and thereafter, in accordance with standards and in such manner as to help establish and maintain a high reputation for the Project. Any Tenant in the Remaining Space shall be professionally operated and managed. Notwithstanding the foregoing, the parties hereby agree as follows:

A. Each use in the Remaining Space shall when open, be open during reasonable Business Hours, subject to the Tenant's (1) reasonable rules and regulations for use, (2) security and management restrictions, and (3) right to temporarily close as necessary for repair, maintenance, etc.

B. Each use within the Remaining Space or any portion thereof may be closed temporarily for periods during casualty and/or reconstruction; and each use within the Remaining Space may be temporarily closed during remodeling or during periods of rebranding, but in no event shall such temporary closure exceed a period of nine (9) months; provided, however, that it will not be considered a breach or default of this Section 7.2(b)(iii) if a Tenant in the Remaining Space ceases its operation in violation of its lease so long as RCP is diligently and in good faith attempting to find a replacement Tenant.

C. RCP shall have a lease or leases which shall govern the use and operation of the Remaining Space which lease agreement(s) shall contain normal and customary provisions and commercially reasonable provisions, including but not limited to the obligation to comply with the terms of this Section 7.2(b)(iii).

D. In the event that a Tenant in the Remaining Space closes its business, RCP shall use commercially reasonable efforts to relet the unoccupied portion of the Remaining Space as soon as practicable; provided, however, that it will not be considered a breach or default of this Section 7.2(b)(iii) if a Tenant in the Remaining Space ceases its operation in violation of its lease so long as RCP is diligently and in good faith attempting to find a replacement Tenant.

(c) Rib Crib and RCP recognize that the performance by Rib Crib and RCP of their respective obligations under this Agreement are a material consideration of the City. Accordingly:

(i) In the event of a default by Rib Crib and/or RCP beyond any applicable cure period under this Agreement, the City shall have the right to injunctive relief to enforce the covenants contained in this Section 7.2 to compel performance of the terms hereof, and to restrain and enjoin any breach or threatened breach thereof and to cease the NRA Rebates until the default is cured;

(ii) In no event shall Rib Crib be liable to the City or any third party for a default of RCP under this Agreement and RCP shall not be liable to the City or any third party for a default by Rib Crib under this Agreement.

7.3 Maintenance and Use. During the Term, Rib Crib shall cause the RC Restaurant and RCP shall cause the Remaining Space to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated first-class restaurant/retail facilities operated in the Midwest, and will make all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations on the Site. Rib Crib and/or RCP may make additions, alterations and changes to the Project so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements and the Development Plan, and as long as the same do not materially adversely affect Rib Crib's and/or RCP's ability to perform its obligations under this Agreement.

7.4 Compliance. Rib Crib and RCP shall conduct their respective affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and health) of any Government Authorities applicable to the conduct of its business and operations and the ownership of the Project. Rib Crib and RCP agree to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Laws and Requirements for the Rib Crib Improvements and the Remaining Space, respectively.

7.5 Payment of Taxes and Other Charges. Subject to the NRA Rebates granted to RCP and/or Rib Crib by the County pursuant to Section 4.2 of this Agreement, during the Term of this Agreement, RCP as the owner of the Project, and its respective Affiliates (as defined in Annex 1, if any), shall pay when due all real estate taxes and assessments on the property it owns within the City. In the event that the RCP or its Affiliates shall fail to pay all such applicable real estate taxes and assessments after any notice and cure periods set forth in Section 9.1 hereof, the parties understand and agree that, among other things, the City may request termination of the NRA Rebates by the County. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit RCP (or Rib Crib as a tenant) from contesting the assessed value of the properties, Improvements or the taxes thereon in good faith by appropriate proceedings; provided, however, that any and all amounts that are contested under protest are paid while any such proceedings are pending. Rib Crib and/or RCP shall promptly notify the City in writing of a protest of real estate taxes or valuation.

7.6 Payment of Obligations. During the Term, Rib Crib and RCP shall promptly pay or otherwise satisfy and discharge all of their respective its obligations and all demands and claims against it as and when the same become due and payable, unless the validity, amount or collectability thereof is being contested in good faith or unless the failure to comply or contest would not materially impair its ability to perform its obligations under this Agreement nor subject any material part of the Project to loss or forfeiture.

7.7 Licenses and Permits. During the Term, (a) Rib Crib shall procure and maintain all licenses and permits, and allow all inspections and/or investigations required by Applicable Laws and Requirements or otherwise necessary in the operation of its business and affairs in, on or about the RC

Restaurant; and (b) RCP (or its Tenants) shall procure and maintain all licenses and permits, and allow all inspections and/or investigations required by Applicable Laws and Requirements or otherwise necessary in the operation of its business and affairs in, on or about the Remaining Space.

7.8 Insurance. During the Term, Rib Crib as to the RC Restaurant and RCP as to the Remaining Space shall maintain or cause to be maintained (by each Tenant, or otherwise) insurance covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations (including but not limited to property and casualty) and in such amounts as are customary for a Project of this nature, but in no event less than the amounts described on Exhibit H attached hereto. Each policy or other contract for such insurance shall name the City as an additional insured (with respect to liability insurance in an amount equal to \$500,000, but not property/casualty insurance).

7.9 Damage, Destruction or Condemnation.

(a) If, at any time during the Term, the RC Restaurant or any part thereof shall be damaged or destroyed by a Casualty, as defined in Annex 1 (the “Damaged Facilities”), Rib Crib, to the extent insurance proceeds are made available to Rib Crib, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the Casualty. If, at any time during the Term, the Remaining Space or any part thereof shall be damaged or destroyed by a Casualty (the “Remaining Space Damaged Facilities”), RCP, to the extent insurance proceeds are made available to RCP, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the Remaining Space Damaged Facilities as nearly as possible to their condition immediately prior to the Casualty. If at any time during the Term, title to the whole or substantially all of the Improvements shall be taken in condemnation proceedings or by right of eminent domain, RCP, at its sole discretion (but subject to the rights of Rib Crib under the lease between RCP and Rib Crib), may terminate this Agreement as of the date of such taking. For purposes of this Section 7.9(a), “substantially all of the Improvements” shall be deemed to have been taken if the City and RCP, each acting reasonably and in good faith, determine that the untaken portion of the Project, including the Parking Improvements, cannot be practically and economically used for the purposes and at the times contemplated by this Agreement.

(b) In the event of condemnation of less than the whole or substantially all of the Improvements during the Term, RCP (or Rib Crib under the lease between Rib Crib and RCP, at its sole cost and expense), shall commence and thereafter proceed as promptly as possible to repair, restore and replace the remaining part of the Project, as nearly as possible, to their former condition.

7.10 Indemnity. RCP and Rib Crib shall indemnify, defend and hold the City, including its governing body, its staff, employees and agents (the “City Indemnitees”) harmless from and against all loss, liability, damage or expense arising out of any damage or injury to persons or property, including death, in connection with the construction, use and occupancy of the RC Restaurant which is caused by the acts or omissions of RCP, Rib Crib and/or their Affiliates, or their respective employees, contractors and agents. Notwithstanding the foregoing, the parties hereby agree that for any period of time that Rib Crib leases, occupies and/or operates the RC Restaurant, Rib Crib shall be solely responsible for the indemnification set forth in the prior sentence and the City shall not look to RCP for losses, liability, damage or expenses arising during any such period of time. However, RCP shall indemnify defend and hold the City Indemnitees harmless from and against all loss, liability, damage or expense arising out of any damage or injury to persons or property, including death, in connection with the construction, use and occupancy of the Remaining Space which is caused by the acts or omissions of RCP and/or its Affiliates, and/or their respective employees, contractors, tenants and agents. Notwithstanding the foregoing, the City Indemnitees

shall not be indemnified against liability for damage arising out of bodily injury to persons or damage to property caused by the acts or omissions of the City Indemnitees. The foregoing covenants contained in this Section 7.10 shall be deemed continuing covenants, representations and warranties for the benefit of the City Indemnitees, and shall survive the termination, satisfaction or release of this Agreement, or any other instrument. In no event shall the foregoing indemnity be deemed to cause Rib Crib or RCP to assume any liability for any loss, injury or damage for which the City would otherwise be protected by its sovereign immunity.

7.11 Prohibition on Sales, Etc. The parties hereby agree as follows:

(a) Except as otherwise provided herein, during the Term, Rib Crib shall not assign its rights under this Agreement or Rib Crib's rights to the Public Financing (as defined in Annex 1) provided herein. The City shall not unreasonably withhold, condition or delay its consent to any of the aforesaid. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations under this Agreement and agree to be subject to all the conditions and restrictions to which the respective assignor is subject.

(b) Though RCP may assign, sell or transfer its interests in the Site (including the Remaining Space Property, or a portion thereof) and/or this Agreement to a third party at any time following completion of the RC Restaurant, the parties hereby understand and agree that:

(i) No such assignment, sale or transfer shall occur without RCP providing prior written notice of the same to the City; and

(ii) No such assignment, sale or transfer shall be for any of the Prohibited Uses set forth on Exhibit J; and

(iii) No such assignment, sale or transfer shall occur without the transferee assuming the obligations of RCP hereunder, and providing documentation of such assignment and assumption in a manner that is reasonably acceptable to the City in its discretion. In the case of an assignment, sale or transfer of a portion of the Site, the parties hereby agree that the assumption of the obligations of RCP described herein shall be deemed to mean the portion of such obligations that pertain to the portion of the Site assigned, sold or transferred.

(c) In addition to RCP's rights to assign to a third party as set forth in subparagraph (b) above, the City hereby agrees that RCP may sell or transfer its interests in the Site (including the RC Restaurant and/or the Remaining Space Property) and this Agreement to Rib Crib at any time during the Term of the Agreement, in which case the parties hereby understand and agree that:

(i) No such assignment, sale or transfer shall occur without RCP and Rib Crib providing prior written notice of the same to the City, jointly signed by RCP and Rib Crib; and

(ii) No such assignment, sale or transfer shall be for any of the Prohibited Uses set forth on Exhibit J; and

(iii) No such assignment, sale or transfer shall occur without Rib Crib assuming all of the obligations of RCP hereunder, and providing documentation of such

assignment and assumption in a manner that is reasonably acceptable to the City in its discretion.

(d) In the event that RCP shall fail to timely close on the Site as set forth in Section 5.1 hereof, or if the City or RCP shall elect to terminate this Agreement as to RCP's rights and obligations hereunder, then Rib Crib shall have the right (but not the obligation) to fully assume all of RCP's rights and obligations hereunder by written notice delivered to the City within sixty (60) days after the Outside Date or the date of termination of RCP's rights and obligations, provided however that (i) Rib Crib shall execute and deliver to the City an assumption document which is reasonably acceptable to the City in its discretion, and (ii) Rib Crib and RCP shall thereafter agree not to bring suit against the City and to hold the City harmless for any claims, damages, liability or expenses asserted by or through RCP as a result of such termination of RCP and RCP's rights and obligations hereunder.

(e) The parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as covenants running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement.

7.12 Utilities. During the Term, all utility and utility services used by Rib Crib and RCP in, on or about their respective improvements shall be contracted for and paid for by the respective party, and the respective party shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

7.13 Access. Nothing shall restrict or impede the right of the City to enter the Project pursuant to any Applicable Laws and Requirements.

7.14 Environmental Matters. For the Term of this Agreement, RCP and Rib Crib hereby agree that by Closing on the transactions contemplated by this Agreement, RCP and/or Rib Crib shall assume responsibility for the costs of any remediation of any environmental conditions upon the Site. Further, Rib Crib and RCP shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substances in, upon, under, over or from the Project in violation of any Environmental Regulations; shall not permit any Hazardous Substances to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulations; shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations; shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulations; and shall comply with all other Environmental Regulations which are applicable to the Project and the Site. For the Term of this Agreement and except and excluding in all cases, the Pre-Existing Conditions (as defined below), RCP and Rib Crib shall indemnify the City against, shall hold the City harmless from, and shall reimburse the City for, any and all claims, demands, judgments, penalties, fines, liabilities, costs, damages and expenses, including court costs and attorneys' fees incurred by the City (prior to trial, at trial and on appeal) in any action against or involving the City, resulting from any breach of the foregoing covenants or from the discovery of any Hazardous Substance condition in, upon, under or over, or emanating from, the Project or the Site, whether or not RCP or Rib Crib is responsible therefor, it being the intent of the parties that the City shall have no liability or responsibility for damage or injury to human health, property, the environment or natural resources caused by, for abatement and/or remediation of, or otherwise with respect to, Hazardous Substance conditions which are discovered, are exacerbated, or arise subsequent to Closing. "Pre-Existing Conditions" means those Recognized Environmental Conditions, as

more fully set forth in the Phase I Environmental Site Assessment (SCS Aquatera; 2014), which were confirmed by the subsurface investigation and the contaminant concentrations identified in the Phase II Environmental Site Assessment (SCS Aquatera; 2015). Any amounts covered by the foregoing indemnification shall bear interest from the date incurred at the Prime Rate (as defined in Annex 1) plus two percent (2%), or, if less, the maximum rate permitted by law, and shall be payable on demand.

7.15 Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. Further, nothing herein shall relieve Rib Crib or RCP respectively from complying with all Applicable Laws and Requirements.

ARTICLE VIII. SPECIAL PROVISIONS

8.1 Special Agreements of Rib Crib.

(a) Rib Crib recognizes, stipulates and agrees that it will actively market and advertise the RC Restaurant in the region in and around Dodge City, Kansas.

(b) During the Term, Rib Crib agrees to actively participate in the civic, charitable, educational, philanthropic and economic development of the Dodge City community in activities of its choice.

8.2 LBE Employment Opportunity Goals. RCP and/or Rib Crib agree to comply with the local employment goals set forth on **Exhibit I**, attached hereto and made a part hereof, in order to identify and provide employment opportunities for local businesses and contractors.

8.3 Sales Tax Information.

(a) Rib Crib shall not take any actions or adopt any practices or procedures which are designed to, or which may or will have the effect of, eliminating, reducing or diverting in any way any sales taxes or use taxes payable to the City, County or the State in connection with sales made or services from, in or on and about the Rib Crib Property. In connection therewith, Rib Crib recognizes, stipulates and agrees that such sales shall include any private parties, banquets and/or catering conducted by Rib Crib. Rib Crib agrees that it will itself provide, and that it will, by appropriate agreement, require all parties holding or operating by, through or under it, or otherwise operating on or from the Rib Crib Property, to provide, to the City and the STAR Bond Trustee (as defined in Annex 1) true and correct copies of all sales tax, use tax and transient guest tax returns filed with the State with respect to sales in, on or from the Rib Crib Property, the same to be provided simultaneously with, or within ten (10) days after such filing. Rib Crib shall, to the extent allowed by Applicable Laws and Requirements, provide to the City, the Kansas Department of Revenue and the STAR Bond Trustee the names of all vendors operating in, on or from the Rib Crib Property, their Kansas sales tax identification number and their dates of operation.

(b) RCP shall not take any actions or adopt any practices or procedures which are designed to, or which may or will have the effect of, eliminating, reducing or diverting in any way any sales taxes or use taxes payable to the City, County or the State in connection with sales made or services from, in or on and about the Remaining Space Property. In connection therewith, RCP recognizes, stipulates and agrees that such sales shall include any private parties, banquets and/or catering conducted by any of the Tenants in the Remaining Space. RCP agrees that it will itself provide, and that it will, by appropriate agreement, require all parties holding or operating by,

through or under it, or otherwise operating on or from the Remaining Space (including all Tenants), to provide, to the City and the STAR Bond Trustee true and correct copies of all sales tax, use tax and transient guest tax returns filed with the State with respect to sales in, on or from the Remaining Space, the same to be provided simultaneously with, or within ten (10) days after such filing. RCP hereby agrees to include a provision to this effect in any leases with Tenants or any party holding or operating the Remaining Space by, through or under it pursuant to Section 7.2(b)(iii)(C) hereof, or otherwise operating on or from the Remaining Space Property, and RCP will use its commercially reasonable efforts to enforce such provision. RCP shall, to the extent allowed by Applicable Laws and Requirements, provide to the City, the Kansas Department of Revenue and the STAR Bond Trustee the names of all vendors operating in, on or from the Remaining Space Property, their Kansas sales tax identification number and their dates of operation.

ARTICLE IX. DEFAULT AND REMEDIES

9.1 Default Provisions.

(a) Rib Crib shall be in default under this Agreement if:

(i) Rib Crib fails to keep or perform any covenant or obligation herein contained on Rib Crib's part to be kept or performed, and Rib Crib fails to remedy the same within sixty (60) days after the City has given Rib Crib written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Rib Crib within such period and diligently pursued until the default is corrected;

(ii) Rib Crib shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within sixty (60) days; or Rib Crib generally is not paying its debts as such debts become due; or Rib Crib makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of Rib Crib and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against Rib Crib whereupon the Project, or any part thereof, or any interest therein of Rib Crib under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subparagraph being deemed a default under the provisions of this Agreement); or

(iii) Rib Crib breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within fifteen (15) days of notice from the City.

(b) RCP shall be in default under this Agreement if:

(i) RCP fails to keep or perform any covenant or obligation herein contained on RCP's part to be kept or performed, and RCP fails to remedy the same within sixty (60) days after the City has given RCP written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective

action is instituted by RCP within such period and diligently pursued until the default is corrected;

(ii) RCP shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within sixty (60) days; or RCP generally is not paying its debts as such debts become due; or RCP makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of RCP and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against RCP whereupon the Project, or any part thereof, or any interest therein of RCP under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subparagraph being deemed a default under the provisions of this Agreement); or

(iii) RCP breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within fifteen (15) days of notice from the City.

In the event of such default by Rib Crib, the City may take such actions, or pursue such remedies, as exist hereunder, or at law or in equity and as set forth below, and Rib Crib covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies against Rib Crib; provided, however, that under no circumstances shall Rib Crib be liable for remote or consequential damages. In the event of such default by RCP, the City may take such actions, or pursue such remedies, as exist hereunder, or at law or in equity and as set forth below, and RCP covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies against RCP; provided, however, that under no circumstances shall RCP be liable for remote or consequential damages.

In no event will Rib Crib have liability for a default or breach by RCP and in no event will RCP have any liability for a default by Rib Crib.

9.2 Rights and Remedies. The rights and remedies reserved by the City hereunder and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. If a default by Rib Crib and/or RCP occurs under this Agreement and is continuing, the City may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by Rib Crib and/or RCP of any provision of this Agreement. The City shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

(a) In addition to the other rights and remedies in this Section 9.2, whenever any default by Rib Crib and/or RCP shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may also: (i) terminate this Agreement, and/or (ii) request that the County terminate the NRA Rebates. In addition to the other rights and remedies in this Section

9.2, whenever any default by RCP shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may also terminate this Agreement.

(b) Failure of the City to enforce any such rights reserved under this Section 9.2 shall not be deemed a waiver thereof.

9.3 Default by the City. The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Rib Crib and/or RCP has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected. If a default by the City occurs under this Agreement and is continuing, Rib Crib and/or RCP may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the City of any provision of this Agreement; provided, however, that the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote or consequential damages. Rib Crib and/or RCP shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceedings in equity.

9.4 Legal Actions.

(a) Institution of Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Ford County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

(b) Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

(c) Acceptance of Service of Process. In the event that any legal action is commenced by Rib Crib or RCP against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against Rib Crib or RCP, service of process on Rib Crib or RCP as the case might be or its agent shall be made by personal service upon an officer of Rib Crib or RCP as the case might be or authorized recipient for service of process and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law.

9.5 Inaction Not a Waiver of Default. Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

ARTICLE X. MISCELLANEOUS

10.1 Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by any party hereto of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or

payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

10.2 Force Majeure. In the event any party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, failure of power or other insufficient utility service, riots, insurrection, environmental remediation required by the appropriate Government Authorities, discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or delay construction, failure of the City to timely approve the Plans and Specifications or the Construction Documents (or any Material Changes thereto), war terrorism or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (“Force Majeure”), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 10.2 shall not be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

10.3 Covenants of Parties.

(a) Representations and Warranties of Rib Crib. Rib Crib represents and warrants to the City as follows:

(i) Organization. Rib Crib is a limited liability company duly formed under Delaware law and validly existing under the laws of the State. Rib Crib is duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. Rib Crib shall: (1) preserve and keep in full force and effect its corporate or other separate legal existence, and (2) remain qualified to do business and conduct its affairs in the State and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(ii) Authority. The execution, delivery and performance by Rib Crib of this Agreement are within Rib Crib’s powers and have been duly authorized by all necessary action of Rib Crib.

(iii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of Rib Crib or any provision of law, statute, rule or regulation to which Rib Crib is subject, or to any judgment, decree, license, order or permit applicable to Rib Crib, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Rib Crib is a party, by which Rib Crib is bound, or to which Rib Crib is subject.

(iv) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authorities or regulatory body or third party is required for the due execution and delivery by Rib Crib of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authorities or regulatory body or third party is required for the performance by Rib Crib of this Agreement or the consummation of the transactions

contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(v) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Rib Crib, enforceable against the same in accordance with the terms hereof.

(b) Representations and Warranties of RCP. RCP represents and warrants to the City as follows:

(i) Authority. The execution, delivery and performance by RCP of this Agreement are within RCP's owners and have been duly authorized by all necessary action of RCP.

(ii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of RCP or any provision of law, statute, rule or regulation to which RCP is subject, or to any judgment, decree, license, order or permit applicable to RCP, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which RCP is a party, by which Rib Crib is bound, or to which RCP is subject.

(iii) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authorities or regulatory body or third party is required for the due execution and delivery by RCP of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authorities or regulatory body or third party is required for the performance by RCP of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(iv) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of RCP, enforceable against the same in accordance with the terms hereof.

(c) Representations and Warranties of the City.

(i) Authority. The execution, delivery and performance by the City of this Agreement are within its powers and have been duly authorized by all necessary action.

(ii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

(iii) No Consents. Except as set forth in Section 3.1(d) hereof, no consent, authorization, approval, order or other action by, and no notice to or filing with, any court

or Government Authorities or regulatory body or third party is required for the due execution and delivery by the City of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authorities or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions contemplated hereby.

(iv) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

10.4 Amendments. This Agreement may be amended, changed or modified only by a written agreement duly executed by the City, Rib Crib and RCP.

10.5 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State.

10.6 Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

10.7 Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

10.8 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

10.9 Time. Time is of the essence in this Agreement.

10.10 Consents and Approvals. Wherever in this Agreement it is provided that the City, RCP or Rib Crib shall, may or must give its approval or consent, the City, RCP or Rib Crib shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for Rib Crib, RCP or the City in any action concerning the other's reasonableness will be action for declaratory judgment and/or specific performance, and in no event shall any such party be entitled to claim damages of any type or nature in any such action.

10.11 Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes if: (i) delivered by nationally recognized overnight delivery service; (ii) facsimile (with follow up within one (1) business day by United States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

If to the City:

City Manager
806 N. Second Avenue
Dodge City, Kansas 67801
Telephone: (620) 225-8100

With a copy to:

City Clerk
806 N. Second Avenue
Dodge City, Kansas 67801
Telephone: (620) 225-8100

And a copy to:

Todd A. LaSala, Esq.
Stinson Leonard Street LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106
Telephone: (816) 842-8600

If to Rib Crib:

Seth Nimmo
VP Finance & Development
4535 South Harvard Avenue
Tulsa, OK 74135

With a copy to:

Patricia M. Weller, Esq.
Monroe Moxness Berg PA
7760 France Avenue South, Suite 700
Minneapolis, MN 55435
Telephone: (952) 885-5999

If to RCP:

RCP Development, LLC
Attn: Michael J. Boyd
1707 N. Waterfront Parkway
Wichita, KS 67206

With a copy to:

Jay T. Shadwick
Duggan, Shadwick, et al
9101 W. 110th St., Suite 200
Overland Park, KS 66210

All notices given by pdf or personal delivery, followed up by regular United States mail, shall be deemed duly given one business day after they are so delivered.

10.12 *Intentionally omitted.*

10.13 Agreement Runs With the Land; Recording. The parties understand and agree that this Agreement runs with the land. Additionally, the parties shall execute and deliver a Memorandum of this

Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Ford County, Kansas. Such Memorandum of Agreement shall be promptly recorded against the Site by the City at the cost of the City, cost after execution, and proof of recording shall be provided to the City and shall state that a copy of this Agreement shall be on file with the City Clerk.

10.14 Survivorship. Notwithstanding the termination of this Agreement, the parties' obligations of insurance and indemnification set out in Sections 7.8, 7.10 and 7.14 shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during the Term.

10.15 Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

10.16 Tax Implications. Rib Crib and RCP acknowledge and represent that: (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to Rib Crib or RCP any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby; and (b) Rib Crib and RCP are relying solely upon their own tax advisors in this regard.

10.17 Required Disclosures. Rib Crib and RCP shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by Rib Crib or RCP in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

10.18 Amendment to Carry Out Intent. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement; provided, however, that nothing herein is intended to bind a future governing body of the City in a manner prohibited by the laws of the State.

10.19 Cash Basis and Budget Laws. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1100 *et seq.*), the Budget Law (K.S.A. 79-2935 *et seq.*), and other laws of the State. This Agreement shall be construed and interpreted in such a manner as to ensure the City shall at all times remain in conformity with such laws.

[Remainder of page intentionally left blank. Signature pages follow.]

INDEX OF EXHIBITS

- A-1 The Site – Legal Description
- A-2 The Site – Map
- A-3 The Rib Crib Property – Legal Description
- A-4 The Remaining Space Property – Legal Description
- B-1 Heritage Area of STAR Bond District – Legal Description
- B-2 Heritage Area of STAR Bond District – Map
- C-1 The 2017 STAR Bond District – Legal Description
- C-2 The 2017 STAR Bond District – Map
- D Development Plan
- E Form of Deed
- F Project Budget
- G Heritage Area Design Criteria
- H Insurance Specifications
- I Local Business Employment Opportunity Goals
- J Prohibited Uses

ANNEX 1
DEFINITIONS

“**Affiliate**” means any person, entity or group of persons or entities which controls Rib Crib or RCP or under common control with the respective entity. As used herein, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” means this Rib Crib Development Agreement.

“**Applicable Laws and Requirements**” shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Government Authorities, and all requirements of any insurers. Applicable Laws and Requirements shall include, without limitation, the Development Plan, the NRA, the STAR Bond Act and the Kansas Cash Basis Law (K.S.A. 10-1100 *et seq.*) and Budget Law (K.S.A. 79-2935 *et seq.*).

“**Business Hours**” means the hours and days that are customary for the Permitted Uses as provided in Section 7.2(a)(iii).

“**Casualty**” means any fire, storm, earthquake, tornado, flood or natural disaster or other sudden, unexpected or unusual cause of damage or destruction.

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

“**City Indemnitees**” means the City, including its governing body, staff, employees and agents to be indemnified by RCP pursuant to Section 7.10.

“**Closing**” means the occurrence of the following, as set forth in Section 5.1: (i) the conditions set forth in Section 3.1 are fulfilled or waived, (ii) RCP has paid the Purchase Price to the City and (iii) the City delivers the Deed and possession of the Rib Crib Property to RCP.

“**Commencement Date**” means the date by which RCP and/or Rib Crib agrees to commence construction of the RC Restaurant, as described in Section 6.8.

“**Completion Date**” means the deadline for Substantial Completion of the RC Restaurant set forth in Section 6.9.

“**Construction Documents**” means those documents respecting the construction, equipping and completion of the Improvements set forth in Section 6.3.

“**County**” means Ford County, Kansas.

“**Damaged Facilities**” means any part or the whole of the RC Restaurant to the extent that the same is damaged or destroyed by a Casualty as set forth in Section 7.9(a).

“**Deed**” means the special warranty deed(s) as set forth in Section 2.2(a).

“**Design Criteria**” means the design criteria exhibit to be provided by the City pursuant to Section 6.2 and attached hereto as **Exhibit G**.

“**Design Professional(s)**” means the architects, engineers and other design professionals and consultants referenced in Section 6.1.

“**Development Plan**” means the plan as more fully described in Recital J, Section 2.3 and **Exhibit D** attached hereto.

“**Effective Date**” means the date of this Agreement first above written.

“**Entertainment Area**” means that certain land generally located within the 2017 STAR Bond District between U.S. Highway 50 and 108th Road, south of Frontview Road as described in Recital B of this Agreement and generally depicted on **Exhibit C-2** attached hereto.

“**Environmental Regulation(s)**” means any and all present and future laws, statutes, ordinances, rules, regulations and orders of any governmental authority having jurisdiction over the parties hereto or any portion of the Site or the Site and pertaining to the protection of human health, hazardous substances, pollution, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as the same may be further amended from time to time (hereinafter collectively called “**CERCLA**”).

“**Force Majeure**” is defined in Section 10.2.

“**General Contractor**” means the contractor(s) selected pursuant to Section 6.3.

“**Government Authorities**” shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence.

“**Hazardous Substance(s)**” means any substance that is defined or listed as a hazardous or toxic substance and which is regulated as such or may form the basis of liability under any present or future Environmental Regulation, or that is otherwise prohibited or subject to investigation or remediation under any present or future Environmental Regulation because of its hazardous, toxic, or dangerous properties, including, without limitation: (i) any substance that is a “hazardous substance” under CERCLA, and (ii) petroleum, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), only to the extent that the constituents of such synthetic gas are released or threatened to be released into the environment.

“**Heritage Area**” means approximately 166 acres of land within the 2017 STAR Bond District which is located in the historic downtown area of Dodge City, Kansas as described in Recitals B and C to this Agreement and as legally described on **Exhibit B-1** and generally depicted on **Exhibit B-2** attached hereto.

“**Improvements**” means those certain improvements to be constructed in the Project as more particularly described in Section 2.3(a).

“**Incremental Real Property Tax**” means the incremental ad valorem property taxes levied by the County, and levied by the applicable school district and community college district, and any other taxing jurisdictions participating in the County’s NRA program, for the real property that comprises the Site, as described in Section 4.2(a).

“Infrastructure Improvements” means any infrastructure improvements provided for in Section 2.3(a)(iv).

“Insurance Specifications” means the insurance requirements of RCP and Rib Crib in connection with the Project as generally described in Section 7.8 and more fully set forth in **Exhibit H** attached hereto.

“Investigations” means those investigations to be conducted by RCP and/or Rib Crib as set forth in Section 3.1(e).

“Lender” means the lender in connection with a Private Loan, as described in Section 2.2(b)(i).

“Material Changes” means any substantial change to any agreement, plan or other document referred to herein, which change would require changes to RCP's and/or Rib Crib's permits or approval of the appropriate Government Authorities pursuant to Applicable Laws and Requirements.

“NRA” means the Kansas Neighborhood Revitalization Act, K.S.A. 12-17,114 *et seq.*, as amended.

“NRA Rebates” means those certain rebates of a portion of the Incremental Real Property Tax collected within the Site pursuant to the NRA, as more particularly set forth in Section 4.2.

“NRA Rebate Period” means that certain time period for NRA Rebates described in Section 4.2(c).

“Original STAR Bond District” means the real property approved as a STAR Bond Project District by the City's adoption of Ordinance No. 3527 on March 19, 2012, which Original STAR Bond District contains two (2) separate non-contiguous areas totaling approximately 500 acres located within the City: (i) the Heritage Area, and (ii) the Entertainment Area. The Original STAR Bond District is generally described in Recital B of this Agreement.

“Outside Date” means the date by which Closing must occur, or any party hereto shall thereafter have the right to terminate this Agreement pursuant to Section 5.1.

“Parking Improvements” means any parking improvements provided for in Section 2.3(a)(ii).

“Permitted Encumbrances” means those encumbrances accepted in accordance with Section 3.1(e).

“Permitted Uses” means retail and restaurant and ancillary uses.

“Permitted Modification” means those certain modifications to the scope and physical parameters of the Development Plan under the conditions set forth in Section 2.3(c).

“Permitted Mortgage” means any mortgage (including any increase, replacement, or renewal of said mortgage) of RCP's entire interest in the Rib Crib Property to a lender to secure a Private Loan, as described in Section 2.2(b)(i).

“Person” means any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body or government or other entity.

“Plans and Specifications” means those plans and specifications generally described in Section 6.2.

“**Power Center Area**” means approximately 219 acres of real property located within the 2017 STAR Bond District as described in Recital C and generally depicted on **Exhibit C-2** attached hereto.

“**Pre-Existing Conditions**” means those Recognized Environmental Conditions, as more fully set forth in the Phase I Environmental Site Assessment (SCS Aquatera; 2014), which were confirmed by the subsurface investigation and the contaminant concentrations identified in the Phase II Environmental Site Assessment (SCS Aquatera; 2015), as described in Section 7.14.

“**Prime Rate**” means the rate of interest announced from time to time by Bank of America, or any successor to it. If such bank, or any successor to it, ceases to announce a prime rate, the City shall designate a reasonably comparable financial institution for purposes of determining the Prime Rate.

“**Private Loan**” means the private loan for construction or permanent financing for the Project, as described in Section 2.2(b)(i).

“**Prohibited Uses**” means those uses which are prohibited on any portion of the Site, which uses are described in detail on **Exhibit J** attached hereto.

“**Project**” means that certain venture to be constructed, developed and completed as described in Recital I, Section 2.3, and elsewhere in this Agreement.

“**Project Budget**” means the budget for the Project, including the portions of the Project to be funded with Public Financing as described in Section 4.1 and as set forth on **Exhibit F** attached hereto.

“**Project Costs**” means the estimated costs of the Project as described in Section 4.1 and as more particularly set forth on **Exhibit F** attached hereto.

“**Project Plan**” means the Heritage Area Project Plan for the Project adopted and approved by the City by Ordinance No. 3605 on April 20, 2015, as described in Recital E.

“**Public Financing**” means the public incentives provided by the City, County and other Government Authorities in connection with the Project.

“**Public Financing Conditions**” means those conditions precedent for Public Financing set forth in Section 4.3.

“**Purchase Price**” means the amount of money to be paid in exchange for the Rib Crib Property as set forth in Section 2.2(a).

“**RC Lease**” means the triple net lease between RCP and Rib Crib for the operation of the RC Restaurant, as described in Section 2.2(a).

“**RC Restaurant**” means the “Rib Crib” branded barbeque restaurant, as described in Recital F.

“**RCP**” means RCP Development, LLC, a Kansas limited liability company.

“**Remaining Space**” means one or more restaurant or retail uses of approximately 1,800 to 4,000 square feet to be developed and constructed on the Remaining Space Property, as described in Recital G.

“**Remaining Space Commencement Date**” means the date by which RCP shall commence construction of the Remaining Space, as described in Section 6.8.

“Remaining Space Completion Date” means the date by which RCP shall achieve Substantial Completion of construction of the Remaining Space, as described in Section 6.9.

“Remaining Space Damaged Facilities” means any part or the whole of the Remaining Space to the extent that the same is damaged or destroyed by a Casualty as set forth in Section 7.9(a).

“Remaining Space Property” means that portion of the Site upon which RCP desires to develop the Remaining Space, which portion is legally described on Exhibit A-4 and depicted on Exhibit A-2.

“Reversionary Event” means the event in which the City has the right to title to the Rib Crib Property under the Reversionary Interest, as described in Section 2.2(b)(iv)(C). **“Reversionary Interest”** means the interest reserved and retained by the City in the Rib Crib Property which is to be included in the Deed strictly as provided in Section 2.2(b).

“Reversionary Interest Notice” means the written notice of default to be provided by the City to RCP specifically stating that the City is invoking its Reversionary Interest remedy and if RCP fails to remedy the default in question within sixty (60) days, the City has the right to exercise its Reversionary Interest as provided in Section 2.2(b).

“Reversionary Price” means the actual cost of the site work on the Rib Crib Property at the time that the City issues its Reversionary Interest Notice, as provided in Section 2.2(b).

“Rib Crib” means Dodge City Rib Crib, LLC, a Delaware limited liability company.

“Rib Crib Property” means that portion of the Site upon which RCP and Rib Crib desire to develop the RC Restaurant, which portion is legally described on Exhibit A-3 and depicted on Exhibit A-2, as described in Recital F.

“Site” means that certain real property situated in Ford County, Kansas, as legally described on Exhibit A-1 and generally depicted on Exhibit A-2 attached hereto, as described in Recital A.

“STAR Bond Act” means the STAR Bonds Financing Act, K.S.A. 12 17,160 *et seq.*, as amended.

“STAR Bonds” means the Sales Tax Special Obligation Revenue Bonds (the Heritage Area Project) Special Series 2015 issued by the City pursuant to the STAR Bond Indenture in connection with the development, financing and implementation of the Heritage Area Project Plan, as described in Recital E.

“STAR Bond Indenture” means the Bond Trust Indenture to be entered into between the City and the STAR Bond Trustee thereunder, as amended and supplemented from time to time, relating to the STAR Bonds.

“STAR Bond Trustee” means that institution serving as trustee for the STAR Bonds under the STAR Bond Indenture. Any notices to the STAR Bond Trustee must be addressed as follows:

Security Bank of Kansas City
One Security Plaza
701 Minnesota Avenue
Kansas City, Kansas 66101
Attention: Corporate Trust Department
Fax: (913) 621-8448

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

“**Substantial Completion**” means the stage in the progress of the construction of the Project, or as to any particular portion thereof, when construction is sufficiently complete so that the Project or such particular portion can be occupied or utilized for its intended use (which shall be evidenced by the receipt of a temporary certificate of occupancy).

“**Survey**” means the current ALTA/NSPS Land Title Survey to be provided by the City pursuant to Section 3.1(e)

“**Term**” means the term of this Agreement as set forth in Section 7.1.

“**Tenant(s)**” means each user or operator of the Remaining Space as set forth in Section 2.3(a)(i).

“**Title Commitment**” means the commitment for title insurance provided by the Title Company as provided Section 3.1(e).

“**Title Company**” means High Plains Land and Title Company as referenced in Section 3.1(e).

“**Title Objection Date**” means that certain date by which RCP and/or Rib Crib must notify the City in writing of any objections RCP and/or Rib Crib has to the Title Commitment or Survey as further described in Section 3.1(e).

“**Transferee**” means any Person who acquires the Rib Crib Property, whether as a result of any foreclosure sale, deed in lieu of foreclosure or other transfer authorized by law, as described in Section 2.2(b)(iii).

“**Year 1**” means the first taxable year that the RC Restaurant is fully completed and fully taxed, as described in Section 4.2(c).

“**2014 STAR Bond District**” means the Original STAR Bond District as amended by the City’s adoption of Ordinance No. 3594 on October 23, 2014 to add approximately twenty five (25) acres of real property to the Heritage Area of the Original STAR Bond District, as described in Recital C.

“**2017 STAR Bond District**” means the 2014 STAR Bond District as amended by the City's adoption of Ordinance No. 3650 on February 3, 2017 to add the Power Center Area to the 2014 STAR Bond District, as described in Recital C. The 2017 STAR Bond District, generally described in Recital C of this Agreement and legally described on **Exhibit C-1** and generally depicted on **Exhibit C-2** attached hereto, contains three (3) separate non-contiguous areas totaling approximately 720 acres located within the City: (1) the Power Center Area, (2) the Heritage Area, and (3) the Entertainment Area.

EXHIBIT A-1

The Site – Legal Description

The southernmost 95.6 feet of each of the following lots: Lots Sixty-three (63), Sixty-five (65), Sixty-seven (67), Sixty-nine (69), Seventy-one (71) and Seventy-three (73) on West Trail Street (formerly Locust Street), Dodge City, Kansas, according to the Plat of the Original Town, Dodge City, Ford County, Kansas.

EXHIBIT A-2

The Site – Map

Rib Crib Development Area - Lots 63,65,67, 69,71,&73 of Original Town, On Trail St.



EXHIBIT A-3

The Rib Crib Property – Legal Description

The South 95.6 feet of Lots Sixty-three (63), Sixty-five (65), Sixty-seven (67), Sixty-nine (69), Seventy-one (71) and Seventy-three (73) on Front Street in the Original Town of Dodge City, Ford County, Kansas.

EXHIBIT A-4

The Remaining Space Property – Legal Description

[To be agreed upon and attached on before the Outside Date; Remaining Space Property is generally depicted as "PERMISSIBLE BUILDING AREA" on the Development Plan in **Exhibit D.**]

EXHIBIT B-1

Heritage Area of 2017 STAR Bond District – Legal Description

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

AND

A tract of land beginning at a point along the south r/w line of Military Ave. and the west line of Lot 12, Block 2, F.W. Boyd's Addition; thence south along the west line of said Lot 12 for a distance of 160 feet to the north line of an e-w alley; thence east along the north line of said e-w alley to the projected west line of lot 1, Block 9, Centennial Addition; thence south along the projected west line of said Lot 1 to a point that intersects the south r/w line of Wyatt Earp Blvd.; thence east for a distance of 387.07 feet; thence south for a distance of 187.9 feet to the north r/w line of the B.N. & S.F. Railroad; thence east along the said north r/w line of the B.N. & S.F. Railroad to the southeast corner of Western Beverage; thence northeasterly to the southwest corner of Lot 1, Santa Fe Plaza; thence easterly along the south line of Santa Fe Plaza to the southeast corner of Lot 5, Santa Fe Plaza; thence north along the east line of said Lot 5 to the south r/w line of Wyatt Earp; thence west along the south r/w line of Avenue B; thence north along the extended west r/w line of said Avenue B to the northeast corner of Lot 7, Block 9, Centennial Addition; thence west along the

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

AND

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

EXHIBIT B-2

Heritage Area of 2017 STAR Bond District – Map

Exhibit A



EXHIBIT C-1

The 2017 STAR Bond District – Legal Description (All Areas of the District)

Heritage Area Legal Description

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

AND

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

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

AND

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

Entertainment Area Legal Description

All of the Replat of Mariah Center Lot 1, Block 1, a subdivision of land in Dodge City, Ford County, Kansas excluding Lot 6 and a tract of land described as follows: Commencing at a point that intersects northerly r/w line of Comanche Street with the westerly r/w line of U.S. Highway 50; thence northeasterly along the westerly r/w line of said U.S. Highway 50 for a distance 104 feet to the point of beginning; thence northwesterly and perpendicular with the westerly r/w line of said U.S. Highway 50 for a distance of 50 feet; thence northeasterly and parallel with the westerly r/w line of said U.S. Highway 50 for a distance of 30 feet; thence southeasterly and perpendicular with the westerly r/w line of said U.S. Highway 50 for a distance of 50 feet; thence southwesterly along the westerly r/w line of said U.S. Highway 50 for a distance of 30 feet to the point of beginning.

And all of BHC Resort Subdivision, a subdivision of land in Dodge City, Ford County, Kansas excluding Lot 1A.

Power Center Area Legal Description

A TRACT OF LAND LOCATED IN THE SOUTHEAST $\frac{1}{4}$ OF SECTION 15, THE EAST $\frac{1}{2}$ OF SECTION 22, THE WEST $\frac{1}{2}$ OF SECTION 23 AND THE NORTHWEST $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 26 SOUTH, RANGE 25 WEST OF THE 6TH PRINCIPLE MERIDIAN FORD COUNTY, KANSAS FOR THE USE OF STAR BOND AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 15; THENCE NORTH ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER TO THE NORTH RIGHT OF WAY LINE OF FRONTVIEW ROAD;

THENCE EASTERLY ALONG THE NORTH LINE OF SAID RIGHT OF WAY TO THE WEST RIGHT OF WAY LINE OF CENTER AVENUE;

THENCE NORTH ALONG THE SAID WEST LINE TO THE SOUTH RIGHT OF WAY LINE OF COUNTRY ACRES STREET;

THENCE EAST ALONG SAID SOUTH LINE TO THE EAST RIGHT OF WAY LINE OF CENTER AVENUE;

THENCE SOUTH ALONG SAID EAST LINE TO THE NORTH RIGHT OF WAY LINE OF FRONTVIEW ROAD;

THENCE EAST ALONG SAID NORTH LINE TO THE EAST RIGHT OF WAY LINE OF FOURTEENTH AVENUE; THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE TO THE INTERSECTION OF THE EXTENSION OF THE SOUTH RIGHT OF WAY LINE OF SPEIRS STREET TO NORTHERN STREET TO

MANOR DRIVE; THENCE EASTERLY AND SOUTHERLY ALONG SAID SOUTH RIGHT OF WAY AND EXTENSION THEREOF TO THE NORTHERLY RIGHT OF WAY LINE OF SOULE STREET;
THENCE WESTERLY ALONG SAID NORTH RIGHT OF WAY LINE TO THE SOUTHEAST CORNER OF LOT 1 BLOCK 1 OF THE REPLAT OF ROSTINE HILLS;
THENCE NORTHERLY AND WESTERLY ALONG THE EASTERN BOUNDARY OF THE REPLAT OF ROSTINE HILLS TO THE EAST RIGHT OF WAY LINE OF FOURTEENTH AVENUE;
THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE TO THE NORTHWEST CORNER OF LOT 2, BLOCK 3, ROSTINE HILLS ADDITION;
THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2 TO THE WEST RIGHT OF WAY LINE OF THIRTEENTH AVENUE;
THENCE SOUTH ALONG SAID WEST RIGHT OF WAY LINE TO THE SOUTHEAST CORNER OF LOT 3, BLOCK 3, ROSTINE HILLS ADDITION;
THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 3 TO THE EAST RIGHT OF WAY LINE OF FOURTEENTH AVENUE;
THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE TO THE NORTHWEST CORNER OF LOT 1, GREEN HILLS O'FORD NO. 2;
THENCE EAST ALONG THE NORTH LINE OF SAID LOT 1 TO THE NORTHEAST CORNER THEREOF;
THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 1 TO THE SOUTHEAST CORNER THEREOF;
THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 1 TO THE EAST RIGHT OF WAY OF FOURTEENTH AVENUE;
THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE TO THE SOUTH RIGHT OF WAY LINE OF HI STREET;
THENCE EAST ON SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 25 FEET TO THE NORTHWEST CORNER OF LOT 23, BLOCK 10 OF GREEN HILLS O'FORD ADDITION, SAID POINT ALSO BEING ON THE EAST LINE OF A WATER WAY AND UTILITY EASEMENT;
THENCE SOUTH ALONG THE EAST LINE OF SAID EASEMENT TO THE SOUTHWEST CORNER OF LOT 14, BLOCK 10 OF SAID GREEN HILLS O'FORD ADDITION;
THENCE EAST ON THE SOUTH LINE OF SAID LOT 14 AND EXTENSION THEREOF TO THE SOUTHEAST CORNER OF LOT 8, BLOCK 9 OF SAID GREEN HILLS O'FORD ADDITION;
THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 8 TO THE NORTHEAST CORNER THEREOF, POINT ALSO BEING ON THE SOUTH RIGHT OF WAY LINE OF DEBRAY DRIVE;
THENCE SOUTHEASTERLY ALONG SAID SOUTH RIGHT OF WAY LINE TO A POINT WHERE THE EXTENSION OF THE SOUTH LINE OF LOT 1, BLOCK 8 AND RIGHT OF WAY INTERSECT;
THENCE EAST ALONG SAID SOUTH LINE AND EXTENSION OF TO A POINT ON THE WEST LINE OF BLOCK 6 GREEN HILLS O'FORD ADDITION;
THENCE SOUTHERLY ALONG SAID WEST LINE TO THE NORTH RIGHT OF WAY LINE OF BARHAM BOULEVARD;
THENCE EASTERLY ALONG SAID NORTH RIGHT OF WAY LINE TO THE EXTENSION OF THE EAST LINE OF LOT 24, BLOCK 10 GREEN HILLS O'FORD ADDITION;
THENCE SOUTHERLY ALONG SAID EAST LINE AND EXTENSION THEREOF TO THE SOUTHEAST CORNER OF SAID LOT 24;
THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 24 TO THE SOUTHWEST CORNER OF LOT 1 BLOCK 10 GREEN HILLS O'FORD ADDITION;
THENCE NORTH ALONG THE WEST LINE OF SAID LOT 1 TO THE NORTHWEST CORNER, POINT ALSO BEING ON THE SOUTH RIGHT OF WAY LINE OF BARHAM BOULEVARD;
THENCE WESTERLY ALONG SAID SOUTH RIGHT OF WAY LINE TO THE EXTENSION OF THE WESTERLY RIGHT OF WAY LINE OF DEBRAY DRIVE;
THENCE NORTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE AND EXTENSION THEREOF TO THE NORTHEAST CORNER OF LOT 1 BLOCK 11 GREEN HILLS O'FORD ADDITION;
THENCE NORTHERLY ALONG THE EAST LINE OF SAID BLOCK 11 TO THE NORTHEAST CORNER OF LOT 7 OF SAID BLOCK 11;
THENCE WEST ALONG THE NORTH LINE OF SAID LOT 7 AND EXTENSION THEREOF TO THE NORTHWEST CORNER OF LOT 13, BLOCK 10 GREEN HILLS O'FORD ADDITION, SAID POINT ALSO BEING ON THE EAST RIGHT OF WAY LINE OF FOURTEENTH AVENUE;
THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE TO THE SOUTH RIGHT OF WAY LINE OF WEST COMANCHE STREET;

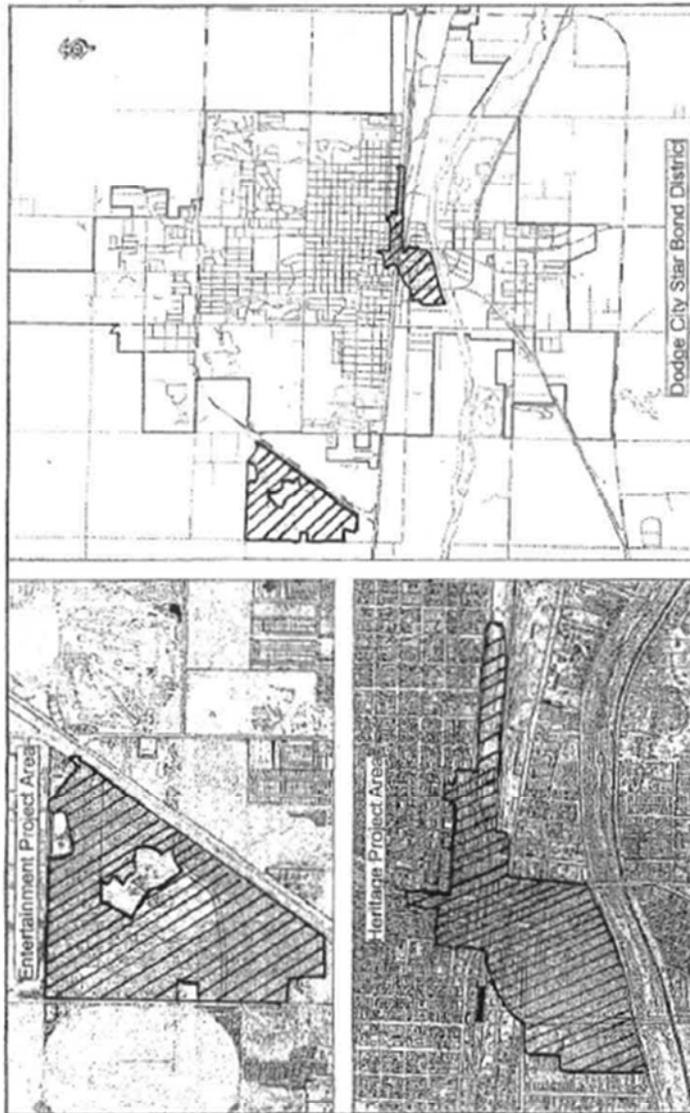
THENCE EAST ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 470 FEET;
THENCE SOUTH AND PARALLEL TO THE EAST RIGHT OF WAY LINE OF FOURTEENTH AVENUE, A DISTANCE OF 460 FEET TO THE NORTH LINE OF BLOCK 10, REPLAT OF WESTERN HILLS ADDITION PART TWO;
THENCE WEST ALONG THE NORTH LINE OF SAID BLOCK 10, A DISTANCE OF 570 FEET TO THE WEST RIGHT OF WAY LINE OF FOURTEENTH AVENUE;
THENCE NORTH ALONG SAID WEST RIGHT OF WAY LINE TO THE SOUTHEAST CORNER OF HY-PLAINS SHOPPING CENTER PLAT;
THENCE WEST ALONG THE SOUTH LINE OF SAID PLAT AND EXTENSION THEREOF, A DISTANCE OF 826.21 FEET TO A POINT 115 FEET WEST OF THE SOUTHWEST CORNER OF SAID PLAT;
THENCE NORTH AND PARALLEL TO THE WEST LINE OF SAID PLAT, A DISTANCE OF 430 FEET;
THENCE EAST AND PARALLEL TO THE SOUTH LINE OF SAID PLAT, A DISTANCE OF 325 FEET;
THENCE NORTH AND PARALLEL TO THE WEST LINE OF SAID PLAT, A DISTANCE OF 613.51 FEET TO A POINT ON THE NORTH LINE AND 325 FEET EAST OF THE NORTHWEST CORNER OF SAID PLAT, SAID POINT ALSO BEING ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 22;
THENCE WEST ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 22;
THENCE NORTH ALONG THE WEST LINE OF SAID NORTHEAST QUARTER TO THE NORTHWEST CORNER OF SAID QUARTER, SAID POINT ALSO BEING THE POINT OF BEGINNING.

EXHIBIT C-2

The 2017 STAR Bond District – Map (All Areas of the District)

Heritage Area and Entertainment Center Area

**EXHIBIT A
Map of the Current STAR Bond District**



Power Center Area



EXHIBIT D
Development Plan

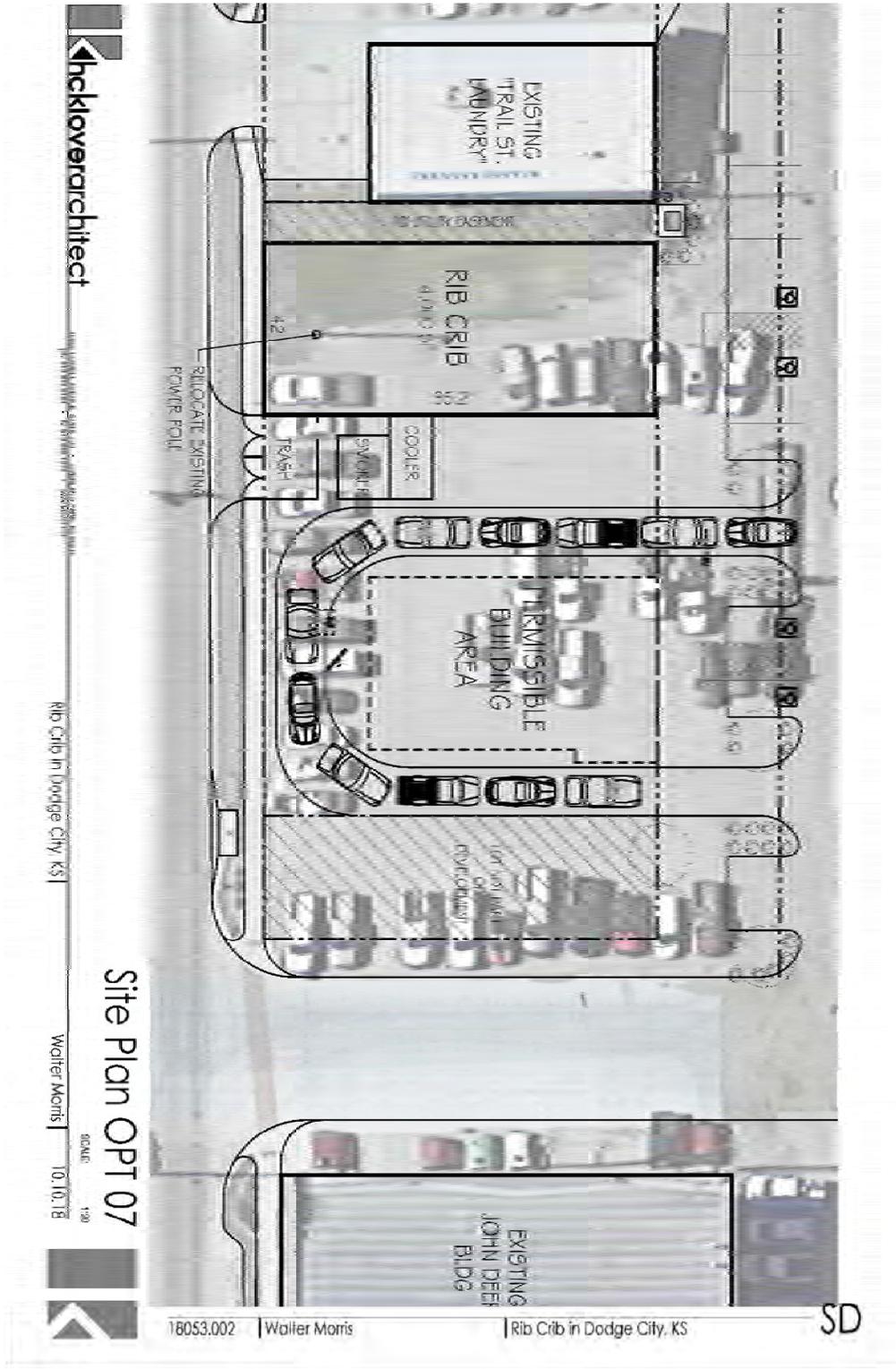


EXHIBIT E

Form of Deed

KANSAS SPECIAL WARRANTY DEED

THIS INDENTURE, made and entered into this ____ day of _____, 2019, by and between **CITY OF DODGE CITY, KANSAS**, a municipal corporation ("Grantor"), and RCP Development, LLC, a Kansas limited liability company ("Grantee"), whose mailing address is _____.

WITNESSETH, THAT GRANTOR, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents **GRANT, SELL, AND CONVEY** unto Grantee, its successors and assigns, all of that certain real estate situated in the County of Ford and State of Kansas, as described on Exhibit A attached hereto (the "Property").

SUBJECT TO: (a) easements, restrictions, declarations, and reservations of record, if any; (b) taxes and assessments, general and special, not now due and payable; and (c) the rights of the public in and to parts thereof, in streets, roads or alleys.

AND SUBJECT TO that certain that certain Rib Crib Development Agreement dated as of _____, 2019 by and among Grantor, Grantee and Dodge City Rib Crib, LLC, a Delaware limited liability company, as amended (the "Development Agreement"), a copy of which Development Agreement is on file with the City Clerk of Grantor, and a record of which Development Agreement has been made against the Property by recording a Memorandum of Development Agreement against the Property on or about the date hereof.

AND FURTHER SUBJECT TO those certain Reversionary Interests described in the Development Agreement. Specifically, Grantor hereby reserves and retains unto itself the Reversionary Interests, including without limitation, a (i) possibility of reverter, (ii) right of entry and/or (iii) power of termination, subject to the terms and conditions described in Section 2.2(b) of the Development Agreement. Grantee, for itself and its successors, assigns and successors in title, covenants and agrees that it shall take the Property subject to such Reversionary Interests, as the same may be terminated as set forth in the Development Agreement.

TO HAVE AND TO HOLD THE PROPERTY, together with all and singular the rights and appurtenances thereto in anywise belonging, to Grantee, its successors and assigns, forever; and Grantor binds itself, its successors and assigns, to **WARRANT AND FOREVER DEFEND** all and singular the Property to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

[Remainder of page intentionally left blank; signature page follows.]

Exhibit A to Form of Special Warranty Deed

Legal Description of the Property

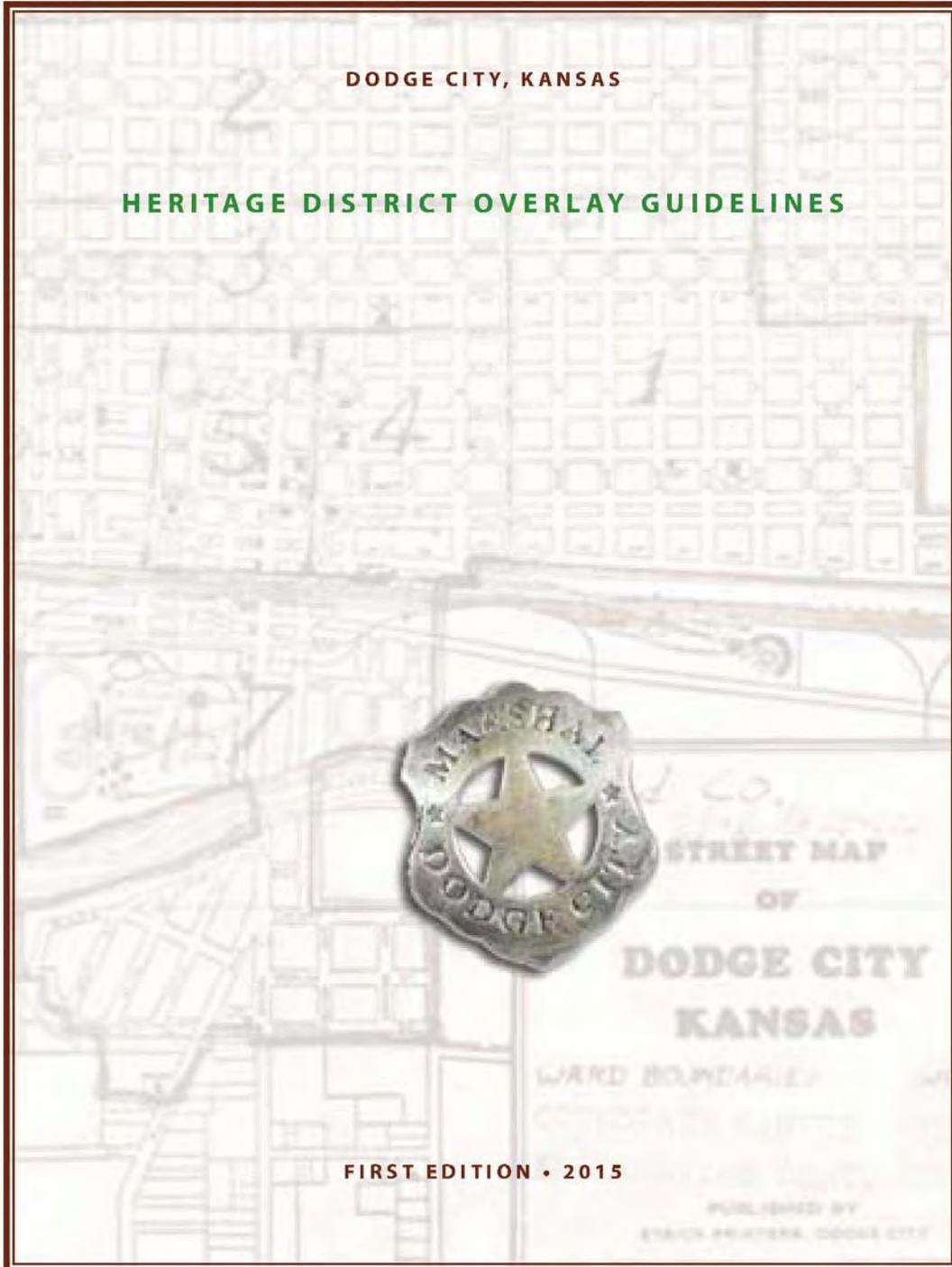
EXHIBIT F

Project Budget

[To be attached on or before the Outside Date.]

EXHIBIT G

Heritage Area Design Criteria



CONTENTS

Preface

Glossary of Terms

1. Purpose Of Design Guidelines

2. Architectural Precedents

3. Historic Building Elements Design Guidelines

4. Design Guidelines - Infill

5. Signage Guidelines

6. Site Design Guidelines

7. Appendix

Dear Reader,

Welcome to an exciting new chapter in the storied history of Dodge City!

This document is intended to facilitate the approval process of developing or redeveloping property within the Dodge City Heritage District. This special district designation is intended to provide continuity of quality in the environmental site in order to provide both visitors and residents with something of real value. Value in economic terms to the city and property investors as well as value to the folks who come to Dodge City to enjoy our hospitality and to experience a modern day interpretation of the early American western frontier.

These guidelines are intended to create a common thematic vision in the minds of stakeholders in the continued success of Dodge City's economic development. It is the City's belief that a strong entertainment component is a natural result of the industrial and natural resources we enjoy in this region. A strong groundwork has been laid with the new casino, numerous hotels recently constructed, retail and informal dining establishments opened within the last five years.

It is not the intention of these guidelines to inhibit development by national retailers or individual investors. The City welcomes all ideas and offers to our table and is confident that we can work together to create a beneficial solution for all stakeholders.

Let's move 'em on!

Cherise Tieben
City Manager

Joann Knight
Economic Development Director

Dodge City Kansas Heritage Overlay District

City Staff

Cherise Tieben
City Manager

Ken Strobel
City Attorney

Ryan Reid
Director of Administration

Jane Longmeyer
Director of Public Information

Vickie Williamson
Code Enforcement Officer

Dennis Veatch
Development Services Director

Jan Stevens
Director, Convention & Visitors Bureau

Joann Knight
Economic Development Director

Ray Slattery
Director of Engineering Services

Corey Keller
Superintendent of Public Works

City Council 2014

Brian Delzeit
Mayor

Kent Smoll

Rick Sowers
Commissioner

Joyce Warshaw
Commissioner

Jan Scoggins
Vice Commissioner

Historic Landmark Commission

Charles Meade
Darleen Clifton-Smith
Don Pearce
Matt Tuxhorn
Nancy Jo Trauer

**Dodge City/Ford County
Development Corporation**

311 W. Spruce, PO Box 818
Dodge City, KS 67801

Dodge City Area Chamber of Commerce

PO Box 939
Dodge City, KS 67801

Consultants

Carr Baier Crandall Real Estate Group
4706 Broadway, Suite 240
Kansas City, MO 64112

Slaggie Architects, Inc.
4600 Madison Ave., Suite 350
Kansas City, MO 64112

*Regarding illustrations and photographs:
Note that this document incorporates many
precedent images that represent successful
implementation of the guidelines intent.
Photographs from other cities may have been
incorporated to illustrate relevant narrative*

SECTION 1

Purpose Of Design Guidelines

These guidelines are to be used when considering improvements to historic properties in Dodge City, and for new construction within the city's historic overlay districts.

These Districts are described as the Heritage District, the Gunsmoke Street District, (and its existing design guidelines), the Boot Hill Museum District, West Trail Street District and Wyatt Earp Drive District. They are designated in two primary areas: 1-new construction/infill and 2-renovation/restoration.

- *See Exhibit A - Diagrammatic Map of the Dodge City Historic Overlay District*

The Dodge City Historic Overlay Master Plan

The Dodge City Historic Overlay Master Plan is a planning document designed to illustrate the overall vision of the downtown and enable the City, property owners, and citizens to make informed strategic decisions about future developments and enhancements. The Plan details a framework of how public infrastructure, street-scape design, way finding systems, circulation, parking, new construction, redevelopment, and preservation work together to provide a strong, viable commercial and cultural destination.

During site review of proposed projects in the Downtown Overlay, property owners will be asked to design public improvements, streets, sidewalks, street furniture, and other elements in conformance with the Downtown Master Plan. To help facilitate these improvements, there may be financial assistance or other incentives available.

Historic Landmark Commission

The Historic Landmark Commission was created by Ordinance No. 2153, replaced by Ordinance No. 2806, and currently under Ordinance No. 3289 adopted October 16, 2000. The Commission's central purpose is the identification, designation, and protection of historic properties, sites, and districts in compliance with the Kansas Historic Preservation Act.

- *See Exhibit B - Preservation Ordinance*

The Historic Landmark Commission recommends to the City Commission, local landmark designations following research regarding historical and architectural significance of each site. In addition, the Commission

reviews proposed changes to local landmark designations to ensure historical integrity remains in place during renovations. The Historic Landmark Commission and Planning and Development Department staff will use the guidelines when considering the issuance of a Certificate of Design Compliance for projects within the Overlay Districts.

- *See Exhibit C - Dodge City Certificate of Appropriateness*

Why Have Design Guidelines?

The design guidelines provide a basis for making decisions about the appropriate treatment of historic resources and compatible new construction. They also serve as a planning tool for property owners and design professionals who seek to make improvements that may affect historic resources.

While the design guidelines are written such that they can be used by the layman to plan improvements, property owners are strongly encouraged to enlist the assistance of qualified design and planning professionals, including architects and preservation consultants.

The historic core of Dodge City has served as the cultural center of the community since its inception and the city's iconic lore retains worldwide recognition through books, movies, and the long-running television series "Gunsmoke". The blocks north and south along Wyatt Earp Drive contain structures of historic significance that if renovated or redeveloped contain significant potential to enhance the quality of life as well as the economy for the community. Historic preservation and economic development are critical partners. Many have long recognized that the character of development in those blocks that define the historic district are of community and commercial interest.

How Are Guidelines Used?

Property owners, real estate agents, developers, tenants and architects should use the guidelines contained in this document when considering a project. This will help establish an appropriate direction for its design. For any project subject to review, the applicant should refer to the guidelines at the outset, to avoid planning efforts that later may prove to be inappropriate.

These design guidelines will be used for the review of proposed projects within the Overlay Districts to determine if the design policies presented herein have been followed. It is important to recognize that in each case a unique combination of design variables is at play and, as a result, the degree to which each relevant guideline must be met may vary. In making its determination of the appropriateness of a project, overall concerns are that:

1. The proposed work complies with the criteria in its ordinance
2. The integrity of an individual historic structure is preserved
3. New buildings or additions are designed to be compatible with surrounding historic properties
4. The overall character of the Overlay Districts is protected

For the purposes of these design guidelines, areas combined form the Downtown Overlay District (see pull out map exhibit on following page).

Portions of these design guidelines are written to assure that preservation efforts and property investments are protected by providing direction for future development. It is also important that a framework for the historic district is clearly established and provides for active retail uses that invites pedestrian use.

The guidelines are for property owners planning exterior alterations, additions to or the rehabilitation of existing buildings. They also apply to the design of new buildings. The guidelines will assist property owners in understanding the historic character of the buildings and environment in which they are located, and assist owners when they are faced with decisions about repair, maintenance, rehabilitation, and new construction. The guidelines are not a rigid set of rules. They do not require that buildings be restored to an historical period or style. Rather, their purpose is to provide:

- Guidance to property owners and tenants about buildings, their distinctive characteristics, and how to maintain them
- Various appropriate ways to address design,

- repair, and rehabilitation issues
- Good maintenance practices
- Appropriate ways to design new, compatible infill buildings and site layouts

Why Preserve Historic Resources?

Dodge City is rich in resources and offers an outstanding quality of life. In addition, it has the rare opportunity to leverage its namesake heritage for commercial and cultural enhancement. Preserving historic resources is a part of an overall strategy of maintaining community identity.

Preservation of the built environment provides a fundamental link to the past. Many of the buildings tell the story of Dodge City's unique historical part of the American West. Keeping these resources creates a sense of place for those who live here and provides visitors a connection with this unique heritage.

- *See Exhibit C - Diagrammatic Map of structures on the National Historic Registry in and around the Dodge City Historic Overlay District.*

Design Goals

In order to assure visual consistency, a series of design goals are established for each sub-district. These design goals reflect the concerns of residents and property owners alike.

Design in District South of Wyatt Earp Drive (Area 1) The Heritage District (Area 1) should develop in a coordinated manner so that an overall sense of visual continuity is achieved. The dominant character of this area should be that of a retail oriented, commercial environment, with an active street edge that is pedestrian friendly.

The design goals for the Heritage Area are:

- To rehabilitate existing historic commercial buildings
- To continue the use of traditional building materials found in the area
- To maintain the traditional mass, size, and form of buildings seen along the street (i.e., a building should be a rectangular mass that is one to three stories in height)
- To design commercial buildings with storefront elements similar to those seen traditionally (i.e.,

a commercial building should include: recessed entries, display windows, kick plates, transom windows, cornices or pediments, and vertically-oriented upper story windows)

- To design a project that reinforces the retail oriented function of the street and enhances its pedestrian character
- To promote friendly, walkable streets (i.e., projects that support pedestrian activity and contribute to the quality of life) are encouraged
- To provide site amenities such as benches, lights, waste receptacles, landscaping, etc, to enhance the pedestrian clean, uncluttered experience

Design in the Gunsmoke District (Area 2)

Those commercial streets immediately east of the Boot Hill Museum, should be redeveloped in a manner that is inviting to pedestrians while also accommodating automobiles. Development should include restoration to period facades, including older structures and more contemporary ones.

The design goals of the Gunsmoke District are:

- To preserve historic structures
- To continue the use of traditional building forms and materials in new construction
- To maintain the commercial character of street facing facades, streets, and the character of the area
- To provide for street scape amenities including light fixtures, tree grates, and trash receptacles to enhance outdoor spaces

Design for the Boot Hill Museum

The Boot Hill District includes original and reconstructed historically themed structures that include the famous Long Branch Saloon, commercial buildings, a church, a school, a home, and a blacksmith shop. Traditionally, buildings for these uses have contrasted with the framework of storefronts. Historic Front Street is an example. It stands apart from the Museum and Hotel, framed by a green space foreground. This commons is ringed with tables and

seating and is the site for the traditional gunfight and stage coach rides. The storefront entrances are faced with traditional board walkways further promoting pedestrian use. This orientation clearly defines its civic function as a gathering place.

The design guidelines focus on principles for rehabilitation and infill redevelopment of commercial and cultural use projects. These should reinforce the historic building fabric and enhance the pedestrian environment. While these are the majority of property types that will occur in the area, civic facilities also should be a part of the urban mix. Ample area for future development to the immediate south would be appropriate for public and private receptions and shop space for art galleries, performance venues, and event and multi-purpose sites.

The design goals are:

- Convenient pedestrian connections should link abutting buildings
- The edges of a civic property should be inviting to pedestrians
- The visual impacts of automobiles should be minimized
- Primary entrances should face the street, not parking lots
- A sense of human scale should be conveyed
- Impacts on adjacent historic resources should be minimized
- Outdoor spaces designed for public use should be provided

West Trail Street District (Area 1)

The West Trail Street District is designated as an entertainment, dining, and retail area. Currently it is comprised of existing period buildings and vacant lots designated for new construction infill.

The design goals are:

- Convenient pedestrian connections should link abutting buildings and public plazas

- The visual impacts of automobiles should be minimized
- New construction infill to retain setback and massing of existing period structures
- Material use and design to be sympathetic to existing structures
- A sense of human scale should be conveyed
- Impacts on adjacent historic resources should be minimized
- Outdoor spaces designed for public use should be provided

Wyatt Earp Boulevard

Wyatt Earp Boulevard is the primary east-west roadway through Dodge City. It bisects the Historic Overlay District and can literally be considered the “gateway” to the American West. Planned infrastructure improvements, landscaping, trails and paths adorned with sculptural elements will help define the district visually and beautify the front door to the city.

The design goals are:

- Civic facilities should be located such that they encourage pedestrian traffic to nearby downtown businesses
- Civic facilities should be designed to reinforce the downtown fabric of streets and sidewalks
- To develop in a compatible nature with that of the entire Downtown Overlay District to reinforce impression of a distinct commercial district
- To strengthen the pedestrian network of side walks, plazas, and paths
- To define the sidewalk edge with elements that are amenities for pedestrians
- To establish a sense of scale in buildings and street scape design that can be enjoyed by pedestrians

EXHIBIT A

CITY OF DODGE CITY
HISTORIC LANDMARK COMMITTEE
CERTIFICATE OF APPROPRIATENESS
APPLICATION INSTRUCTIONS

1. Complete the Certificate of Appropriateness Application form. Call the Development Services Department at 620-225-8105 with questions about the form or your project.

Mail or hand deliver the form to the Dodge City Development Services Department located at City Hall, P.O. Box 880, 806 Second Avenue, Dodge City, Kansas, 67801.

2. The Development Service Director will determine if your plan is a “major” or “minor” project.
 - a. If the project is a “minor” and meets the requirements of the City’s Historic Preservation Ordinance, the Director may approve the project immediately. You may proceed to the Inspection Department to obtain your permit.
 - b. If the project is a “major”, it will be reviewed on the next scheduled meeting of the Historic Landmark Committee. Please contact the Development Service Department to confirm schedule.

“Major projects require the following types of supplementary materials. Include whatever will assist the Board in visualizing the outcome of the project:

- A site plan
- Architectural drawings
- Photographs and/or computer-generated graphic representations.
- Sample of materials to be used.

Although it is not required, it is recommended that you or your representative attend the meeting in order to answer questions about your project. For all “major” projects, you will receive written notification of Board action on your application.

Please refer to the Historic Resources Preservation Ordinance at www.dodgecity.org/historic_preservation and Main Street Design Guidelines at <http://mainstreetdodgecity.org/design/design-guidelines> and Illustrated Guidelines for Rehabilitating Historic Building at <http://www.nps.gov/tps/standards/rehabilitation/rehabilitation-guidelines.pdf>. These documents are also available from the Development Services Department at City Hall.

**CITY OF DODGE CITY
CERTIFICATE OF APPROPRIATENESS
APPLICATION**

APPLICANT INFORMATION

Name: _____

Mailing Address: _____

Daytime Phone # _____ Other Phone # _____

E-mail: _____

PROJECT INFORMATION

Project Address: _____

Property Owner: _____

District: Downtown Historic District Individual Nomination 500' Environs

DETAILED PROJECT DESCRIPTION (Please attach additional pages as necessary)

I hereby certify with my signature that I have read and understand the information provided in the application, and that all information provided by me is accurate, and completed as required by this application and the City Regulations.

Applicant's Signature

Date

FOR STAFF USE ONLY:

Approved By: _____
Development Services Director

Date

Chair, Historic Landmark Committee

Date

EXHIBIT B

**DODGE CITY HISTORIC RESOURCES PRESERVATION
ORDINANCE**

- Section 1: Purpose & Applicability
- Section 2: Dodge City Landmarks Commission
- Section 3: Promotion And Other Functions
- Section 4: Administration and Enforcement
- Section 5: Landmarks Survey, Nomination, and Designation Process
- Section 6: Certificate of Appropriateness Required
- Section 7: Landmark Designation Process
- Section 8: Appeal and Variance Procedure
- Section 9: Severability
- Section 10: Definitions

Section 1: Purpose & Applicability

- 1.01 Title
This ordinance shall be known as the “Dodge City Historic Resources Preservation Ordinance,” and may be cited as such and will be referred to below as “this” ordinance.
- 1.02 Purpose
The purpose of this ordinance is to establish an historic preservation commission called the Dodge City Historic Landmarks Commission, hereafter referred to as the Landmarks Commission, to preserve and promote the preservation of prehistoric and historic sites, structures, objects, buildings and historic districts in the City. This ordinance is intended to enhance and promote Dodge City’s contribution to the history and architecture of the State of Kansas as well as to this nation.
- 1.03 Applicability
This ordinance shall apply to all historically and architecturally important structures, sites, properties and districts located within the Dodge City limits, which have been determined to be significant through nomination and placement on local, state or national registers of historic properties. This ordinance shall apply to new construction, demolition, exterior alteration or enlargements to designated properties, and to properties within 500 feet of state/national designated historic properties in Dodge City, as stipulated by the state in Kansas Administrative Regulations 118-3-1 et seq.
- 1.04 Statutory Authority
This ordinance is established under authority granted by Kansas Statutes, Annotated, Chapter 75, Section 2724 et seq., and the Home Rule authority of the City as granted by the Kansas State Constitution.

Section 2: Dodge City Landmarks Commission

2.01 Creation

The Dodge City Landmarks Commission (hereafter Landmarks Commission) is hereby created to inventory, promote, list, record, protect, preserve, and enhance places, areas, features, or sites within the City that have special architectural, archeological, cultural, or historical significance. The Landmarks Commission shall advise the City Commission and cooperate with other historic agencies and organizations concerning preservation of the City's historic and cultural heritage.

2.02 Membership

The Landmarks Commission shall consist of seven Dodge City residents appointed by the Mayor with concurrence of the City Commission. All members shall have interest, knowledge, or training in preservation related fields. Three members shall represent preservation related professions such as architecture, law, historian, real estate, finance, museum curator, planning, and/or building trades. Appointments shall be for a term of three years, except that the first Commission shall be appointed as follows: three for three year terms, two for two-year terms and two for one-year terms. The Mayor with City Commission concurrence may remove any member of the board for cause. Vacancies shall be filled by appointment as above for the remainder of the unexpired term.

2.03 Rules of Procedure

The Landmarks Commission shall adopt bylaws or rules of procedure for its efficient operation. Minutes of the meetings will be distributed to Landmarks Commission members, the City Commission, the State Historic Preservation Officer (SHPO), and others upon request.

2.04 Annual Report

The Landmarks Commission shall prepare an annual report of its activities to be submitted to the City Commission and SHPO. The report shall include an account of the number and type of cases reviewed and their disposition, a listing of new designations made during the year, and a record of members' attendance at meetings and training sessions. The report shall also assess progress in preserving historically important sites, structures, and districts, and assess the need for future changes to this ordinance and program. The report shall include a statement of goals for the ensuing year and shall be duly approved by the Landmarks Commission.

2.05 Authority and Responsibilities

- A. The geographic area of authority shall be the area within the Dodge City corporate limits.
- B. The Landmarks Commission's central purpose is the designation and the protection of historic properties, sites, and districts in compliance with the Kansas Historic Preservation Act (KSA 75-2724 et seq.). Matters arising under the statutes and standards of the Kansas Administrative Regulations shall require notification to the SHPO.

- C. The Landmarks Commission shall review all proposed nominations for local, state, and national registers of historic properties. A professional in an applicable specific relevant discipline shall evaluate all nominations, if not represented on the Landmarks Commission, prior to board recommendation.
- D. The SHPO may, by mutual agreement with the City, delegate certain responsibilities to the Landmarks Commission.
- E. Each commission member shall attend at least one information or training meeting each year as approved by the SHPO.
- F. The Landmarks Commission shall review and maintain an historic property inventory and add properties which may be eligible for designation as landmarks or districts in accordance with procedures established by the SHPO.
- G. The City shall provide for adequate public participation in all aspects of the implementation of this ordinance. All meetings shall be open to the public pursuant to KSA 75-4318. The Landmarks Commission shall meet at least four times each year. Agenda materials provided to members shall be open to the public. Decisions shall be made in a public forum and minutes of all meetings shall be kept on file and available for public inspection.
- H. The Landmarks Commission may establish other programs and services such as:
- create public information programs;
 - promote preservation activities with public and/or private funds;
 - review development plans that may affect historic structures of properties;
 - cooperate with local groups or agencies to provide the widest possible promotion of historic programs and places, and
 - similar activities to promote the intent of this ordinance.
- I. The Landmarks Commission shall review and recommend local incentives to encourage landmarks designation in Dodge City. These may be in the form of retail discounts, tax rebates, conservation easements, permit fee waivers, utility reductions, and other means to stimulate interest in historic preservation.
- J. The Landmarks Commission shall review and recommend policies regarding historically compatible public streetscapes, lighting, and signage around landmarks and in historic districts. Resources available to create such improvements may include general or special tax authority as well as special assessment processes.
- K. The Landmarks Commission shall prepare applications for City Commission approval for any gift, grant, bequest, devise, lease, fee, development right, easement, covenant, or conveyance for the purpose of preservation.
- L. The Landmarks Commission shall review the provisions of this ordinance periodically to recommend comprehensive or individual changes as deemed appropriate.

- M. Landmark Commission members shall serve without compensation. The City Commission shall establish budget authority to provide for historic preservation administration and promotion activities.

Section 3: Promotion And Other Functions

- 3.01 To further the purposes of this ordinance and to assure maximum public knowledge and involvement in the preservation of Dodge City's history, the City may enter into agreements with other units of government, other agencies, and private corporations. Specifically, the City shall negotiate an agreement with the SHPO whereby the state may delegate certain responsibilities to the City, including, but not limited to, the review of register nominations and development/demolition permit applications for compliance with the herein stated historical regulations and objectives.
- 3.02 Types and purposes of grant or other agreements
The Landmarks Commission may recommend and the City Commission may authorize such agreements which address:
 - A. Designation of landmarks and historic districts.
 - B. Administration and use of preservation fund resources.
 - C. Improvements to landmarks and historic districts.
 - D. Demolition and clearance of landmarks and historic district properties and properties and properties within 500 feet of state/national register properties.
 - E. Maintenance of landmarks and historic district properties.
 - F. Other mutually acceptable provisions such as contracts with public or private consultants and acceptance of grants or other resources to further the objectives and functions of the Landmarks Commission.
- 3.03 Promotion
The Landmarks Commission shall be the City's point of contact for all historic associations and organizations within the City, state, and nation and shall provide such assistance as practical to promote and develop historical, archeological, or prehistoric interest in Dodge City within the established budget for the operation of the Landmarks Commission. Activities such as submitting pass-through grants on behalf of these agencies, providing assistance with tax credit and other financial incentives directed toward historic property preservation, and providing basic research materials to interested parties will be conducted by the department as directed by the Landmarks Commission and as authorized by the City Commission through the various agreements. The Landmarks Commission is expected to provide accurate information to news media when appropriate to further the objectives of historic property preservation.

Section 4: Administration and Enforcement

4.01 Department

The Dodge City Development Services Department shall be responsible for the administration of this ordinance and performing staff functions for the Landmarks Commission. The Department is authorized to develop such application forms and procedures consistent with this ordinance, and to enforce its provisions.

4.02 Department Director

The Development Services Department Director or designated representative shall review all development permit applications and other pertinent information to determine if a landmark property or district may be affected by a proposed development. If so, the director shall follow the procedure to either issue a Minor Certificate of Appropriateness or begin a review process in accordance with the provisions of this ordinance. The director shall forward the Landmarks Commission recommendations to the City Commission, record and file all landmark designations, and maintain the Map of Landmarks and keep all agendas, minutes, reports, findings, determinations, and correspondence for the Landmarks Commission. Applications that cannot be approved by the director may be referred to the Landmarks Commission by the applicant as a Major Certificate.

4.03 Fees

Fees shall be set by the City Commission. Fees shall be set for the following activities: Nomination of a property to the local, state, or national, landmark registry; request for a variance from provisions of this ordinance; and application to appeal denial of a Certificate of Appropriateness for the improvement or demolition as indicated in the development permit application.

4.04 Enforcement

The Director, upon discovery that a demolition or improvement to a property is being made without review of, or contrary to, an appropriate development permit, shall issue a notice to cease to the owner and shall take all appropriate measures to prevent such unlawful act. Such notice shall explain the nature of the violation in clear terms and shall allow the owner to give satisfactory evidence that the action will be corrected within 30 days or that appropriate action to comply with the provisions of this ordinance will be initiated. Failure to comply may result in citation to municipal court and may result in the City taking corrective action to abate the offense and assess the costs of such abatement to the owner. Such notice and order may be appealed (see provision 4.08); however, the alleged violating work shall cease until the matter is finally resolved. The City may pursue any and all other available legal remedies to correct a violation of this ordinance.

4.05 Abatement Assessment of Costs

If the City has filed proper notice and the time has elapsed for the correction by the owner, the City may take corrective action as necessary. Any and all costs incurred by the City under the provisions of this article shall be assessed against each lot or piece of ground, chargeable therewith as a special assessment, and the City Clerk shall certify the assessment to the County Clerk for collection as other special assessments are collected.

- 4.06 Penalties
Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor, each day or portion thereof constituting a separate offense. Each offense may be punishable by a term of jail confinement not to exceed one year and/or a fine not exceeding \$2,500.00.
- 4.07 Appeals
Any property owner aggrieved by the administration and enforcement of this ordinance may appeal (see section 8) to the Dodge City Landmarks Commission. Any decision of the commission may be further appealed to the City Commission. The Landmarks Commission (and City Commission) shall act in a quasi-judicial capacity when deciding appeals. They shall make specific findings of fact and derive conclusions from such findings. All rulings by the City Commission shall be final and binding on all parties unless appealed to, and overturned by, the Ford County District Court.
- 4.08 Variances
Any property owner (or authorized representative) may apply for a variance from specific standards or guidelines for historic preservation as set and amended by the Secretary of the Interior Department or as provided by the Landmarks Commission and the City. Such application shall be made using the process identified in Section 8 of this ordinance.
- 4.09 Normal property maintenance shall be exempt from the provisions of this ordinance, unless and/or until a development permit for is required by other City development regulations.

Section 5: Landmarks Survey, Nomination, and Designation Process

- 5.01 Historic Resources Survey
The Landmarks Commission shall annually update the historical resources inventory to identify buildings, structures, sites, neighborhoods, and areas that may have archeological, historical, cultural, or architectural importance to the community. As part of the survey, the commission shall evaluate studies by other organizations and compile appropriate descriptions, facts, and photographs. All such materials shall be documented in accordance with the survey manual prepared by SHPO.
- 5.02 Identification of Landmarks and Historic Districts
The Landmarks Commission shall keep a Dodge City Landmarks Register. The register will contain a complete description of all buildings, structures, sites, and objects designated as landmarks and a description of boundaries on the Landmarks Register Map, on file in the office of the City Clerk and Development Services Department located in City Hall, 806 Second Avenue, Dodge City, Kansas.
- 5.03 Nomination of Landmarks and Historic Districts
The Landmarks Commission shall review nominations for landmarks and districts to the local, state, and national historic registers following the procedures of Section 7 of this ordinance.

Section 6: Certificate of Appropriateness Required for Alteration, Development, or Demolition

Upon receipt of an application for any demolition, alteration or expansion of a landmark property, or a property within an historic district, or property within 500 feet of a state/national landmark or district, the Landmarks Commission and department shall initiate a process to determine if such permitted action is appropriate. All applications shall be reviewed, approved, or denied in accordance with the process outlined below.

6.01 Determination of Appropriateness

Department staff shall prepare a Certificate of Appropriateness before any alteration, development, or demolition permit may be issued for any landmark or historic district property, or for properties within 500 feet of a state/national registered property or district. Certificates shall be classified as either a Minor Certificate of Appropriateness or a Major Certificate of Appropriateness.

6.02 Minor Certificates of Appropriateness

Minor certificates shall be issued for any demolition or alteration work involving the following types of activities which can be demonstrated by the owner to have no adverse effect on a landmark or historic district:

- Demolition or alteration of non-contributing structures
- Exterior improvements to contributing properties within 500 feet of a state/national landmark property or district
- Most interior improvements except those noted as a pertinent to a landmark designation
- Changes to accessory structures, landscaping features, signs, fences, public walkways, public streets, public alleys, retaining walls and utilities that do not contribute to the historic character of a landmark or historic district property.

Minor certificates shall be authorized by the director and reported to the Landmarks Commission and City Commission. Minor certificates shall be decided upon within 30 days from the time a complete application was submitted. If the director cannot approve a Minor Certificate, it may be forwarded to the Landmarks Commission at the option of the applicant as a Major Certification application.

6.03 Major Certificate of Appropriateness

Major certificates shall be subject to review and approval by the Landmarks Commission and may be authorized for the following types of permits:

- Interior space rehabilitation where such space was a important component in approval of the landmark nomination;
- Demolition of any contributing structure within 500 feet of a state/national landmark or historic district;
- Any demolition, exterior alteration or expansion of a landmark or historic district property;
- Any proposed new construction on a landmark property or within an historic district;
- Demolition of part or all of a landmark property, building or structure in an historic district; and
- Other items not covered by a Minor Certificate.

The review process for a Major Certificate of Appropriateness is:

- A. The department receives application for permit which triggers the determinations warranting a Major Certificate of Appropriateness and notifies the applicant that a formal review is required before a Certificate of Appropriateness can be issued.
- B. The applicant submits a request for review in writing on provided forms and with all the required information.
- C. A completed request is placed on the next available Landmarks Committee agenda. The Department prepares and publishes notice of time, date, place, and purpose of public hearing, such notice to be published at least twenty days prior to the date of the hearing. Notice is also sent by regular mail to all affected property owners.
- D. The Landmarks Commission conducts the public hearing and determines if the Certificate of Appropriateness can be issued and submits its decision, in writing with appropriate documentation to the applicant. If the Certificate of Appropriateness can be issued, the development permit may be granted by the regulating department as appropriate. If the requested action is determined not appropriate in order to protect the historic character or integrity of the property, then the applicant may file and appeal, in writing, within thirty days asking that the application be reconsidered by the City Commission. (See Section 8)
- E. A decision may be made immediately after the public hearing, or the Landmarks Commission may recess the meeting for further deliberation. Failure to render a decision within 60 days from the time a complete application was submitted shall be deemed to be approval, unless an extension is agreed upon by both the applicant and the Landmarks Commission.
- F. The decision of the Landmarks Commission (or City Commission) is conveyed in writing to the applicant. If the Certificate of Appropriateness is issued, the appropriate regulating department may grant a development permit.

6.04 Criteria to Determine Appropriateness

The Landmarks Commission shall prepare, and the City Commission shall adopt principles and guidelines establishing criteria for new construction, alterations, additions, moving and demolition of landmark properties, properties in historic districts, and properties within 500 feet of a state or national landmark or district, including but not limited to the following:

- A. Specific design criteria for exterior alterations of landmarks or historic district properties shall be based on the U.S. Secretary of the Interior's Standards for Rehabilitation as published in Section 36, code of Federal Regulations, Part 67 as revised from time to time, and by further reference to such specific design criteria as the Landmarks Commission may require.

- B. New construction and additions to existing structures shall be sensitive to and take into account the special historic district or landmark characteristics including height, scale, orientation, site coverage, spatial separations, façade and window patterns, entrance and porch size, and general design, materials, texture, color, architectural detail, roof forms, vertical or horizontal elements, walls, fences, landscaping, and other features.

6.05 Signs

The Landmarks Commission shall review and approve or deny all requests for signs to be located on a landmark property or within an historic district in accordance with the following criteria:

- A. Signs shall be relative to the scale of the site, and shall not block, obscure or distract from the landmark's or historic district's significant design elements.
- B. Wherever possible, actual historic signage should be maintained and restored to original significance regarding design, materials, craftsmanship or placement.
- C. Illuminated signs shall be designed to reduce glare and shall not detract from the landmark's or district's historic character.
- D. Freestanding signs and monument placards explaining the landmark's or district's significance or age shall be compatible with the landmark or district, but are otherwise encouraged.
- E. Signs requiring a Major Certificate are not subject to the public hearing process and will be reviewed at the next regular Landmarks Commission meeting with appeal to the City Commission if denied. Appeals must be submitted in writing within 30 days of denial.

6.06 Retention of Accessory Structures and Landscaping

Accessory structures such as out buildings and existing site characteristics such as trees, other significant landscaping, walls, stairs, paving materials, fencing, walkways, and other site features that reflect the landmark's or district's significance shall be retained and protected from demolition or alteration.

- A. Landscaping shall be appropriate to the scale, era, and features of the landmark or district.
- B. Accessory structures shall be appropriate to and compatible with the architectural features of the primary structure. Non-contributory structures shall not distract from the landmark or historic district properties.
- C. Design criteria are more stringently applied to projects/properties of greater significance.
- D. Accessory structures and landscaping features requiring a Major Certificate are not subject to the public hearing process and will be reviewed at the next regular Landmarks Commission meeting with appeal to the City Commission if denied. Appeals must be submitted in writing within 30 days of date of denial.

- 6.06 Normal property maintenance shall be exempt from the provisions of this ordinance unless or until a development permit for work is required by other City development regulations.
- 6.07 Demolition applications for landmark or contributing historic district properties shall be denied for a period not to exceed 180 days if a proposed public or private re-use of the property is unknown. The maximum period of delay may be reduced whenever the Landmarks Commission determines the owner will suffer extreme hardship or will be deprived of all beneficial use of the property virtue of the delay. In either instance, the Landmarks Commission shall use the delay to negotiate with the owner and interested parties to find a means to preserve the landmark or contributing historic district property. Demolition application requests for properties within 500 feet of a state/national landmark or district shall be delayed not more than 30 days to ascertain their impact on the landmark or district. If the proposed re-use of the property is known, the use will be examined for relationship and compatibility with the landmark or historic district before demolition of a contributing or landmark structure may proceed. This provision also applies to properties nominated for landmarks or historic district designation. Once redevelopment plans are known, the Landmarks Commission may determine appropriateness pursuant to Section 6 of this ordinance.

Section 7: Landmark Designation Process

Except where otherwise specifically excepted, the following process shall be used whenever historic landmarks or districts are proposed or whenever permit applications are received to alter, expand or demolish part or all of landmark or historic district property or a contributing property within 500 feet of state/national register properties or districts.

- 7.01 Landmark nominations shall be processed as follows.

The Landmarks Commission or department generates or receives a nomination and determines the appropriateness of the nomination based on age and character of the property, site, or district being nominated. All applications shall be submitted to the Dodge City Development Services Department, City Hall, 806 Second Avenue, Dodge City, Kansas.

- A. Nominations for landmark or historic district designations shall be made by application submitted by the owner of a landmark or by written consent signed and acknowledged by 75% of the owners within the boundaries of a defined proposed historic district. [Each owner or owners of any legal parcel of record shall have one voice in the district per parcel, regardless of parcel size to determine this threshold. Lots which have been historically combined to create one parcel or building site, shall be considered one parcel for this purpose.]
- B. The department advertises the date, time, place and purpose of the public hearing at least 20 days prior to the date set and sends notices to all affected property owners (within 500 feet of the proposed property for state/national register nominations).

- C. The Landmarks Commission conducts the hearing and makes a recommendation to the City Commission. The meeting may be recessed for further deliberation. A recommendation shall be made within 60 days from the time a complete application is received.
- D. Within thirty days after close of the public hearing, the Landmarks Commission shall submit its recommendation to the City Commission that the nominated property does or does not meet the criteria for placement on the register.
- E. The City Commission shall consider the nomination and recommendation at the next available regular commission meeting. The City Commission shall approve acceptable nominations by ordinance. Denials may be by simple motion and recorded vote. The City Commission may:
 - Accept or reverse the Landmarks Commission recommendation.
 - Amend by reduction of a proposed historic district area.
 - Refer the matter back to the Landmarks Commission for further study.
- F. If approved, proper notifications are made and the property or district is declared a landmark or historic district. Notice is forwarded to the SHPO in a format to request placement on the state and national registers as appropriate.
- G. If denied, reasons therefore are presented to the owner, in writing, with remedies which the owner may address and resubmit in a future nomination of the same property.

7.02 Landmark Eligibility Criteria

The Landmarks Commission shall apply the following criteria to determine eligibility of a landmark nomination:

- A. Character, interest, or value as part of the development, site, structure, or district which contributes significantly to the heritage or cultural characteristics important to the development of the city, state, or nation.
- B. Identification with a person or persons who significantly contributed to the development of the city, state, or nation.
- C. Architectural style valuable to the study of a period; or to the type, method of construction, materials used, design elements, detailing materials, or craftsmanship embodied in the structure; or identification with a master builder, architect, or craftsman whose work influenced the development of the city, state, or nation.
- D. Location of a prehistoric or historic site, occupation, or activity possessing significant archeological value.
- E. The weight of any one criterion may be sufficient to accept the nomination and criteria not listed above may be contributed in the nomination which may render the nomination sufficient for placement on the register.

Section 8: Appeal and Variance Procedure

- 8.01 Applications for an appeal or variance shall be filed with the Development Services Department. The director shall assure that all documentation and forms are properly submitted, and prepared notices for a public hearing before the Landmarks Commission. Notice shall be published in the newspaper and mailed to all affected property owners at least 20 days prior to the public hearing.
- 8.02 The Landmarks Commission conducts a public hearing on the case at the advertised place and time. A decision or recommendation may be made immediately after the public hearing, or the Landmarks Commission may recess the meeting for further deliberation. Failure to render a decision within 60 days from the time a complete application was submitted shall be deemed to be approval, unless an extension is agreed upon by both the applicant and the Landmarks Commission.
- 8.03 An applicant for an appeal may further appeal to the City Commission. Such appeal shall be filed within 30 days of the Landmarks Commission decision.
- 8.04 An applicant for an appeal may further appeal the City Commission decision to district court. Such appeal shall be filed with the court within 30 days of the City Commission decision.
- 8.05 Variance applications shall be made to the Dodge City Landmarks Commission, whose decisions are final except for possible appeal to the Ford County District Court. The Landmarks Commission may grant a variance from the specific regulation upon a finding that such variance:
- A. Would not be contrary to the health, safety or best interest of the public; **and**
 - B. A literal enforcement of the provision will result in an unnecessary hardship to the owner; **and**
 - C. There is a condition unique to the property which was not created by the property owner; **and**
 - D. There is no adverse effect on surrounding properties; **and**
 - E. The variance would not be contrary to the general spirit or intent of the ordinance.
- All five conditions shall be affirmed with specific findings of fact before granting the variance.
- 8.06 An applicant for a variance may appeal the Landmarks Commission decision to Ford County District Court. Such appeal shall be filed with the court within 30 days of the Landmarks Commission decision.

Section 9: Severability

If any section, provision, sentence, clause or phrase of this ordinance or its application in a specific instance is found to be invalid, the remainder of this ordinance and its application shall remain in full force and effect.

Section 10: Definitions

For the purpose of this ordinance, certain terms and words are hereby defined. Words used in the present tense include the future; words in the singular include the plural. The word "shall" is mandatory while "should" and "may" are permissive. Any words not defined herein shall carry and convey the meaning ascribed by a common English language dictionary.

Adaptive Use: Changing the use of a structure or property to a use other than that for which the structure or property was originally designed.

Appeals Board: The Dodge City Historic Landmarks Commission.

Alteration: Any change or rearrangement to the structural parts of an existing building, structure, or property. Any enlargement, whether by height or dimension, shall be considered an alteration.

Applicant: The owner (or duly designated representative) of a structure or property nominated for local, state, or national registry; or group of owners in a proposed historic district; or the owner or duly designated representative who has applied for a development permit, demolition or clearance permit involving a registered state/national historic property or property or property within 500 feet of a state/national historic property.

Building: A structure, such as a house, barn, church, hotel, courthouse, city hall, social hall, commercial building, library, factory, mill, train depot, theater, school, store, warehouse, or other building created to shelter human activity. The term may also refer to a small group of buildings consisting of a primary and one or more accessory structures in a historically, functionally related manner such as a mansion and a carriage house, a church and rectory, or a farm house and agricultural structures.

Certificate of Appropriateness or CofA: A certificate issued by the City approving plans for alteration, construction, demolition, or other matters relating to various historic properties.

CofA-Major: A Certificate of Appropriateness which may only be granted by the Landmarks Commission or, on appeal, by the City Commission.

CofA-Minor: A Certificate of Appropriateness which may be granted by certain designated staff for non-exterior repairs or for non-registered properties which have no adverse impact on historic properties.

City: The City of Dodge City, Kansas

City Commission: The governing body of the City of Dodge City.

Contributing/Key Contributing: A building, site, structure, or object which adds to the architectural qualities, historic association, or archeological values of historic register property for which a property is significant because: (a) it was present during the pertinent historic time; (b) it possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period; or (c) it independently meets the standards and criteria of this ordinance.

Design Guideline/Standard: The standards set forth by the Secretary of the U.S. Department of the Interior for the preservation of historic places. In addition, the Landmarks Commission shall develop policies to further interpret federal standards, which shall be adopted by the City Commission.

Development Permit: A permit issued by any Dodge City department authorizing construction or other land development activity, including but not limited to building, curb cut, electrical, excavating, zoning, certificate of occupancy, business license, and sign permits.

Director: The director of the City of Dodge City Development Services Department or his/her authorized representative.

District: An area that possesses a significant concentration, relationship among, or continuity of sites, buildings, structures, or objects united historically or architecturally by plan or physical development. Districts include college campuses, downtown areas, residential areas, industrial complexes, civic centers, government reservations, planned street systems, and parks. The term may also be applied to individual associated or functionally related sites, buildings, structures, or objects that are geographically separated. In such cases, visual continuity should not be necessary to convey the historic relationship of a goal of related resources.

Exterior Architecture/Feature: The character and composition of the exterior of the structure, including but not limited to the kind, color, and texture of the building material, and the type, design, and character of all windows, doors, light fixtures, signs, and appurtenant elements, and the elements and components of the outer surface of a structure including windows, doors, light fixtures, signs, fences, hitching posts, decorations, chimneys, false fronts, parapets, flag poles, landscaping, retaining walls, and related materials.

Historically or Architecturally Important Feature: The quality present in the structure, property or district because it: (a) Is associated with an event or events that significantly contributed to the broad patterns of the history or architectural heritage of the city, state, or nation. (b) Is associated with the life of a person(s) significant to history of the city construction. (c) Embodies distinctive characteristics of a type, design, period, or method of construction. (d) Represents the work of a master craftsman or possesses high artistic value. (e) Exemplifies the cultural, political, economic, social, or historic heritage of the city, state, or nation. (f) Contains elements of design, detail, materials, or craftsmanship which represent a significant construction innovation. (g) Is part of or related to a square, park or other distinctive area that was or should be developed or preserved according to a plan based on a historic or architectural motif. (h) Is an established and familiar visual feature of a neighborhood or of the community. (i) Has yielded or is likely to yield archeological artifacts and/or information.

Historic District: An area designated as an historic district and which may contain within definable geographic boundaries one or more significant sites, structure features, or objects and which may have such other structures which contribute to the overall visual characteristics of the significant structures or objects located within the designated area, and are relatively free from non-contributing structures which detract from the historic properties.

Historic Preservation: The study, identification, protection, restoration, and rehabilitation of buildings, sites, structures, objects, districts, and areas significant to the history, architecture, archaeology, or culture of the city, state or nation. Preservation may include work to halt the process of decay, normal maintenance work, and other measures to retain and sustain the nature, form, material, and integrity of historically or architecturally important properties, structures, or districts.

Historic Restoration: The accurate reconstruction of structural elements matching in shape, size, texture and color, the original construction method and material, including removal of materials that are not appropriate to the structure.

Historic Replication: The reconstruction of structural elements which match the shape and size but may be made of different materials or methods used in the original construction.

Kansas Register/State Register: The current State Register of Historic Places as prepared, approved, and amended by the State Historic Sites Board of Review and authorized by KSA 75-2701, et seq., as may be amended.

Local Register Landmark: A district, site, structure or object designated as a landmark by ordinance of the City Commission deemed worthy of preservation because of its historic, archaeological and/or architectural significance to the city, state or nation.

National Register: The current National Register of Historic Places established by the National Preservation act of 1966, 80 Stat. 915.16 USC 470 et seq., as may be amended.

Non-contributing: A building, site, structure or object that does not add to the architectural quality, historic association or archaeological values for a landmark or historic district because it was not present historically, or has been altered or a changed such that its historic integrity is destroyed and it is incapable of being restored, or it cannot independently meet the criteria for landmark designation.

Normal maintenance/repair: Any work designated to correct damage or deterioration to the condition that existed prior thereto. "Normal maintenance" includes all work performed by a property owner which does not require a development permit as prescribed by the City's development regulations.

Site: The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself possesses historic, cultural or archeological value.

State Historic Preservation Officer or SHPO: The person who has been designated by law and by the Governor of the State of Kansas to administer the State Historic Preservation Program.

State Review Board: The Kansas Historic Sites Board of Review as established in KSA 75-2719a.

Variance: A variation from a specific requirement of the adopted design standards, as applied to a specific structure or property.

EXHIBIT A - DODGE CITY HISTORIC DOWNTOWN



1. BOOT HILL CEMETERY
2. EL CAPITAN
3. ORIGINAL SITE - FRONT STREET
4. SANTA FE DEPOT
5. MILITARY RESERVATION MARKER
6. DODGE THEATER BUILDING
7. FORD COUNTY COURTHOUSE
8. U.S. POST OFFICE
9. PRESBYTERIAN CHURCH
10. SACRED HEART CATHEDRAL
11. SUGHRUE HOME
12. HOME OF STONE
13. ST. CORNELIUS EPISCOPAL CHURCH
14. CARNEGIE CENTER FOR THE ARTS
15. BRICK STREETS
16. FIRST NATIONAL BANK
17. FIDELITY STATE BANK
18. OLD MUNICIPAL BUILDING
19. COWBOY STATUE

SECTION 2

Architectural Precedents

Dodge City is a pure definition of the West with a history that began with the opening of the Santa Fe Trail in 1821, the great commercial route between Independence, Missouri, and Santa Fe, New Mexico until 1880. In those days, safety from marauding Indians was essential. Fort Dodge was established in 1865 on the Santa Fe Trail near the present site of the city.

The Santa Fe Railroad reached this area in September of 1872 and Dodge City was founded five miles west of Fort Dodge. The railroad initiated a tremendous growth for many years. Already, south of the tracks, hastily built frame buildings and tents were housing two grocery and general merchandise stores, a dance hall, a restaurant, a barber shop, a blacksmith shop, and a saloon were established. Dodge City was already setting a record for growth and during those early years and also acquired its reputation of lawlessness and gun-slinging. There was no local law enforcement and the military had no jurisdiction over the town. Fights often lead to the shootings where men died with their boots on. And that created a hasty need for a local burial place - Boot Hill Cemetery. The cemetery is now a part of downtown Dodge City. It was used until 1878.

Dodge City was the Buffalo capital for three years with an estimated 850,000 Buffalo hides shipped in the years 1872-1874. By 1875 the Buffalo were gone as a source of revenue, but the Longhorn cattle of Texas drove the dollars into town. For ten more years, over five million head were driven up the western branch of the Chisholm and Western Trails to Dodge City. Law and order came with such respectable officers as Bat Masterson and Wyatt Earp. The town these early men knew was laid out with two Front Streets, one on either side of the railroad tracks. The city passed an ordinance that guns could not be worn or carried north of the "deadline" which was the railroad tracks. The south side where "anything went" was wide open. In 1876 the population was 1,200 and nineteen businesses were licensed to sell liquor.

Fort Dodge was closed in 1882 and by 1886, the cattle drives had ended. An illustrious period of history was over but the legend lives on in Dodge City's history preservation of its romantic and internationally famous past much of which survives in

the varied styled buildings constructed during the city's heyday. As the nineteenth century ended, an abundance of material provided for cheap novels, Hollywood films, radio and television. Most famously, the Western drama "Gunsmoke" that ran from 1952 to 1975. Even today, over 100,000 tourists relive the legend each year by visiting the Boot Hill museum and historic Front Street reconstruction.

Architectural Styles and Building Types

The sources of architectural styles in a small town are often indirect and difficult to trace. Buildings of mixed influence are common. In particular, with commercial buildings the means and desires of the building owner, the available building materials, and the skills of the local builders may have had a more direct influence on the design of a building than any recognized architectural style.

Most commercial building types within the downtown share a basic two or three story boxlike form. They are rectangular in plan with load-bearing masonry walls. Facades and sidewalls are rectangular and roofs are flat. Individual buildings are attached, often sharing interior sidewalls. At street side, a continuous facade line is created with each building being set at the sidewalk edge. The width and depth of these buildings has been prescribed by the dimensions of the lots and properties. While buildings may span several of the 20 to 30 foot wide properties, the individual lot width is still expressed as a distinct bay or module. This helps give the town a consistency in scale.

Public buildings, including churches, are much fewer in number than commercial buildings. Like the commercial types, these buildings are also of load-bearing masonry but they are freestanding rather than attached. Unlike the commercial types with street level storefronts, each public building has a raised basement with a stepped approach from the street to the main level.

The most notable building types found in the Historic Overlay District are presented on the pages that follow. The key features of each type are listed, along with a brief description of the style. Property owners should review these descriptions carefully.

In many cases the following design guidelines make reference to the characteristics of styles that are presented in this chapter. The property owner is encouraged to use the styles section in analyzing the overall historic character of their building, as well as distinguishing its character defining features. Ultimately, this should aid in choosing an appropriate design solution for any proposed work.

Italianate
• circa 1885-1900



Originally inspired by farmhouses found in Northern Italy, this blending of classical and romantic features became one of the most popular of the picturesque styles in the United States. Because of its ornate details, such as bracketed cornices, this style was easily adapted to simple buildings and storefronts. As the details and features of this style were capable of being interpreted in wood, masonry, or iron, it was also very adaptable in the various regions of the country. With this adaptability and the sensibilities of the times, its popularity grew for commercial buildings.

Characteristics

- Tall, narrow, double-hung windows, often with arched or round arch heads (commonly referred to as "punched" windows as opposed to "ribbon" windows)
- Window panes are either one-over-one or two-over-two
- Protruding sills
- Quoins at building corners
- Double doors with glass panels
- Transom, often curved, above the front door
- Brackets, modillions, and dentil courses
- Flat roof with ornate cornices
- Decorative paired brackets

Commercial Storefront
• circa 1900-1920



Usually between one and four stories, the vernacular commercial building is divided horizontally into two distinct bands. The first floor is more commonly transparent so goods can be displayed, while the second story is usually reserved for residential or storage space. The upper floor is typically supported by a steel beam that spans the glass opening. However, many one-story examples also exist. A kickplate is found below the display window

while above the display window, a smaller band of glass, a transom, is seen. Also, the main door is frequently recessed.

These buildings have stone and brick facades. Ornamental detail exists, but is simple, limited to a shallow molding such as a cornice. Some cornices were made of masonry, while others were made of stamped metal. Many carry simplified Italianate detailing. In essence, these buildings lack distinctive detail, contrasting them with the revival styles that were also popular during this period.

Characteristics

- Cast-iron supported storefronts
- Large display windows
- Transom lights
- Kickplate
- Recessed entry
- Tall second story windows
- Cornice

Art Deco

• circa 1925-1940



These were the buildings of the future: sleek, geometric, dramatic. With their cubic forms and zigzag designs, art deco buildings embraced the machine age. Art Deco architecture was a complete break away from older architecture. It was meant to reflect a style of its own: It embodied all that was

thought of as “modern.” It represented the modernity of the machine age with all the amenities of modern society brought on by the industrial revolution. It represented modern simplicity, strength, forward motion, achievement, technology. Gone were the remnants of fancy, traditional, classic design/ornamentation.

During the roaring twenties and the early thirties, jazzy Art Deco architecture was the rage. Like any style, it evolved from many sources. The austere shapes of the Bauhaus School and streamlined styling of modern technology combined with patterns and icons taken from the Far East, ancient Greece and Rome, Africa, India, and Mayan and Aztec cultures.

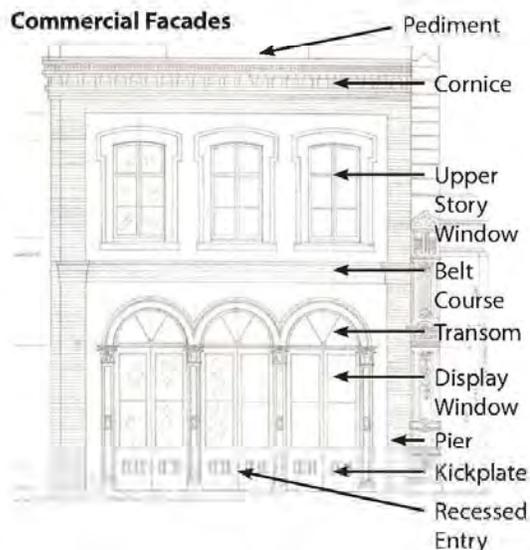
Characteristics

- Stylized floral patterns
- Segments of circle
- Repetitive geometric forms incorporating sharp angles, zigzags, chevrons, and other stylized geometric motifs on the façade
- Vertical emphasis on towers and other projections above the roof line
- Building entrances embellished with decoration extending to hardware and light fixtures
- Smooth wall surfaces, usually stucco, with glass brick used in rounded or angular corner windows and panels/walls
- Illumination through colored lighting is common

SECTION 3

Purpose of Design Guidelines

This chapter presents design guidelines for the preservation of individual historic building elements in Dodge City. They apply to individually listed historic resources, as well as historic properties located in the Overlay District. The guidelines are organized into a series of relevant design topics. Within these design topics are individual policy and design guideline statements upon which the City will base its decisions.



Ornamentation and details of elements such as Cornices and parapets are original components that “dress up” a building and give it a sense of style and character. Ornamental items include hood molds, trim at doors and windows, plaques and medallions, signboards or sign panels, date or name stones, and simple geometric shapes in metal, stone, or concrete.

Cornices, which are usually found at the top of building walls, and ornamental moldings or belt courses, which are located just above storefronts, are horizontal projecting elements that provide a visual break in, or termination to, a wall. A parapet is an upward extension of a building wall above the roof-line, sometimes ornamental and sometimes plain, used to give a building a greater feeling of height or a better sense of proportion.

Cornices are most apparent on late 19th century commercial structures, when several ornate, bracketed types were used. Early 20th century buildings were, as a rule, less decorated and had simpler ornamentation. Rather than cornices, they tend to have parapets, some low and some extending several feet above the roof surface. A parapet may be capped with brick, stone, or tile, and frequently decorative elements or panels are placed in it.



Commercial buildings should, for the most part, all relate to the street and to pedestrians in the same manner with a clearly defined primary entrance and large windows that display goods and services offered inside. The repetition of these standard elements creates a visual unity on the street that should be preserved.

Windows & Doors

Windows and doors are some of the most important character defining features of historic structures. They give scale to buildings and provide visual interest to the composition of individual façades. Distinct window and door designs, in fact, help define many historic building styles. Windows and doors often are inset into relatively deep openings or have surrounding casings and sash components which have a substantial dimension that casts shadows that contribute to the character of the historic style.

Historic Landmark Commission should consider the following when evaluating proposals to replace historic windows:

1. Historic windows and doors are not necessarily decorative, so their functionality as well as appropriate design should be considered.
2. It should be considered whether the repair of the historic windows and/or doors is technically not feasible.
3. The window and door openings should not be altered to accommodate windows or doors of different sizes, proportions, views, or configurations.
4. If the windows and doors are visible to the public they should not be removed, enclosed, or obscured.
5. Windows and doors visible to the public view should be retained in the original location.
6. Whether the appearance matches the details such as window or door size, shape, operation, glass configuration, material, and finish. The appearance of the sash, opening size, and decorative detail should look like the historic window or door.
7. It should be considered whether the operation of the replacement window or door is the same; for example, double-hung or casement windows that open inward.
8. It should be considered whether the munting style, configuration, detailing, and installation are the same for the replacement window or door as the historic window or door.
9. It should be considered whether the sash and frame materials are the same materials, match the historic detailing, style, complexity, and profile.

Historic Landmark Commission should assess the following when evaluating proposals to replace non-original windows:

1. It should be considered whether the proposed replacement windows and/or doors are based on the documented configuration of the building's original windows and/or doors.
2. It should be considered whether historic window and door openings are proposed to be altered to accommodate windows or doors of different sizes, proportions, views, or

configurations.

3. A historic window or door opening should not be enclosed, altered in its dimensions, or obscured.
4. It should be considered whether the non-original windows and/or doors have taken on historic significance and now contribute to the history of the building.

Roofs

The character of the roof is a major feature for most historic structures. When repeated along the street, the repetition of similar roof forms contributes to a sense of visual continuity for the neighborhood. In each case, the roof pitch, its materials, size, and orientation are all distinct features that contribute to the character of a roof. Gabled and hip forms occur most frequently in residential areas while flat roofs appear on most historic commercial buildings in Dodge City.

Although the function of a roof is to protect a structure from the elements, it also contributes to the overall character of the building. The Overlay Districts have seen the construction of various roof forms, as illustrated below.

When evaluating roofing proposals Historic Landmark Commission should consider the following:

1. The condition of the deteriorated or damaged existing roof materials and whether they can be economically repaired.
2. Whether the proposed new roofing material can be installed without removing, damaging, or obscuring character defining architectural features or trim, such as cupolas, dormers, cornices, brackets, chimneys, cresting, finials, and weathervanes.
3. If the proposed new roofing material is similar in regard to size, style, and details of the original historic roofing materials, to the extent that such original roofing can be documented. If no photographic or other documentation exists for original historic roofing materials, selection of new roof materials shall be typical of those used in the style of the historic building.

4. The original form and shape of the roof are retained.
5. The original character of the structure should be maintained.

Policy: Maintain an historic storefront and all of its character defining features.



1.1 For a commercial storefront building, a rehabilitation project shall preserve these character defining elements:

- Display windows: The main portion of glass on the storefront where goods and services are displayed. This will help maintain the interest of pedestrians by providing views to goods and activities inside first floor windows.
- Transom: The upper portion of the display window, separated by a frame.
- Kickplate: Found beneath the display window. Sometimes called a bulk-head panel.
- Entry: Usually set back from the sidewalk in a protected recess.
- Upper-story windows: Windows located above the street level. These usually have a vertical orientation.
- Cornice molding: A decorative band at the top of the building.
- These features shall not be altered, obscured or removed.

1.2 Maintenance of storefronts.

- Wash display windows.
- Repair damaged kickplates.
- Re-caulk display windows to reduce air infiltration.
- Install weather stripping around doors.

1.3 If a storefront is altered, restoring it to the original design is preferred.

- If evidence of the original design is missing, use a simplified interpretation of similar storefronts. The storefront still should be designed to provide interest to pedestrians.
- Note that, in some cases, an original storefront may have been altered early in the history of the building, and may itself have taken on significance. Such alterations should be preserved.
- See also Preservation Briefs #11: Rehabilitating Historic Storefronts, published by the National Park Service in the appendix of this document.

Combining Rehabilitation Principles

This sequence of photographs illustrates the positive results of combining procedures for preservation, repair, reconstruction, and sympathetic alterations that are set in the design guidelines in this chapter.

1.4 Alternative designs that are contemporary interpretations of traditional storefronts may be considered.

- Where the original is missing and no evidence of its character exists, a new design that uses the traditional elements may be considered.
- However, the new design should continue to convey the character of typical storefronts, including the transparent character of the display window.

1.5 Retain the kickplate as a decorative panel.

- The kickplate, located below the display window, adds interesting detail to the street scape and should be preserved.
- If the original kickplate is covered with another material, consider exposing the original design.

1.6 If the original kickplate is missing, develop a sympathetic replacement design.

- Wood is an appropriate material for replacements on most styles. However, ceramic tile and masonry may also be

considered when appropriately used with the building style.

1.7 Preserve the character of the cornice line.

- An original cornice molding should be preserved.
- Most historic commercial buildings have cornices to cap their facades. Their repetition along the street contributes to the visual continuity on the block.
- Many cornices are made of sheet metal. Areas that have rusted through can be patched with pieces of new metal.

1.8 Reconstruct a missing cornice when historic evidence is available.

- Use historic photographs to determine design details of the original cornice.
- Replacement elements should match the original in every detail, especially in overall size and profile. Keep sheet metal ornamentation well painted.
- The substitution of another old cornice for the original may be considered, provided that the substitute is similar to the original.

1.9 A simplified interpretation is also appropriate for a replacement cornice if evidence of the original is missing.

- Appropriate materials include stone, brick, and stamped metal.

1.10 Retain the original shape of the transom glass in historic storefronts.

- Transoms, the upper glass band of traditional storefronts, introduced light into the depths of the building, saving on light costs. These bands should not be removed or enclosed.
- The shape of the transom is important to the proportion of the storefront and it should be preserved in its historic configuration.
- If the original glass is missing, installing new glass is preferred. However, if the transom must be blocked out, be certain to retain the original proportions. One option is to use it as a sign panel or decorative band.

1.11 A parapet wall should not be altered, especially those on primary elevations or highly visible facades.

- When a parapet wall becomes deteriorated, there is sometimes a temptation to lower or remove it. Avoid doing this because the flashing for the roof is often tied into the parapet, and disturbing it can cause moisture problems.
- Inspect parapets on a regular basis. They are exposed to the weather more than other parts of the building so watch for deterioration, such as missing mortar or excessive moisture retention.
- Avoid waterproofing treatments, which can interfere with the parapet's natural ability to dry out quickly when it gets wet.

Policy: Historic windows and doors significantly affect the character of a structure and should be preserved.



The size, shape and proportions of window and door openings are important features. They give scale to buildings and provide visual interest to the composition of individual facades. These features are inset into relatively deep openings in a building wall or they have surrounding casings and sash components that have substantial dimensions. They cast shadows that contribute to the character of the building.

1.12 Preserve the position, number, size, and arrangement of historic windows and doors in a building wall.

- Enclosing an historic opening in a key

character-defining facade is inappropriate, as is adding a new opening.

- Do not close down an original opening to accommodate a smaller window. Restoring original openings which have been altered over time is encouraged.
- Historically, windows had a vertical emphasis. The proportions of these windows contribute to the character of each residence and commercial storefront.

1.13 Preserve the functional and decorative features of an historic window or door.

- Features important to the character of a window include its clear glass, frame, sash, muntins, mullions, glazing, sills, heads, jambs, moldings, operation, location, and relation to other windows.
- Features important to the character of a door include the door itself, door frame, screen door, threshold, glass panes, paneling, hardware, detailing, transoms, and flanking sidelights.
- Historic screen and storm doors should be preserved and maintained.

1.14 Maintenance of windows.

- Wash windows.
- Clean debris from windows.
- Replace loose or broken glass in kind. This will reduce air leaks.
- Replace damaged muntins, moldings, or glazing compound with material that matches the original in shape, size, and material.
- Repair window hardware or replace with materials that match the original in scale and design. If the replacement hardware does not match the original design it should be simple, unobtrusive, and compatible with the style and building's period of significance.
- Install weather stripping. This will enhance energy conservation significantly.
- Maintain the interior views, so that either merchandise or furniture can be seen.

1.15 Repair wood features by patching, piecing

in, consolidating, or otherwise reinforcing the wood.

- Avoid the removal of damaged wood that can be repaired.
- Rebuild or repair portions of existing window frames, sashes, or sills, rather than replacing complete windows unless it is technically not feasible to do so.
- See also Preservation Briefs #9: The Repair of Historic Wooden Windows, published by the National Park Service.

1.16 Glass in doors and windows should be retained.

- If it is broken or has been removed in the past, consider replacing it with new glass. If security is a concern, consider using wire glass, tempered glass, or light metal security bars (preferably on the interior).
- Replacement glass may be insulating glass, but it should match the style and color of the original glass.
- Replacement glass should match the historic glass - clear, rolled (wavy), tinted, etc.
- Removal of historic leaded, art, stained, beveled, prismatic glass, etc., should not be permitted, unless it is damaged and is technically infeasible to repair.

1.17 Installing window air-conditioners in windows on building fronts is inappropriate.

1.18 Maintain recessed entries.

- The repetition of recessed entries provides a rhythm of shadows along the street, which helps establish a sense of scale.
- These recessed entries were designed to provide protection from the weather and the repeated rhythm of these shaded areas along the street helps to identify business entrances. Typically, recessed entries were set back between three and five feet.
- Restore the historic recessed entry if it has been altered.
- Avoid doors that are flush with the sidewalk, especially those that swing outward.

1.19 Where entries were not recessed historically, maintain them in their original position.

- However, one may also need to comply with other code requirements, including door width, direction of swing, and construction.
- In some cases, entries must comply with accessibility requirements of the Americans with Disabilities Act. Note, however, that some flexibility in application of these other regulations is provided for historic properties.
- See also Preservation Briefs #32: Making Historic Properties Accessible, published by the National Park Service.



Policy: A new or replacement window or door should match the appearance of the original.

While replacing an entire window or door is discouraged, it may be necessary in some cases. Although wood is preferred as a replacement material, metal is common on the market today and sometimes is suggested for replacement. It is possible to consider alternative materials, if the resulting appearance matches the original as closely as possible. The substitute also should have a demonstrated durability in this climate.

1.20 When window or door replacement is necessary, match the replacement to the original design as closely as possible.

- Preserve the original casing, when feasible.
- If the original is double-hung, then the replacement window should also be double-hung, or at a minimum, appear to be so. Match the replacement also in the number and position of glass panes.
- Very ornate windows or doors that are not appropriate to the building's architectural style are inappropriate.

- Using the same material (wood) as the original is preferred.
- A new screen door added to the front of a visible door should be "full view" design or with minimal structural dividers to retain the visibility of the historic door behind it.
- A screen door should be sized to fit the original entrance opening and the design should be of the appropriate style and period of the building.
- Security doors are non-historic additions. If installed, they should follow the guidelines for screen doors.

1.21 Maintain the historic ratio of window and storefront openings to solid wall.

- Significantly increasing (or decreasing) the amount of glass will negatively affect the integrity of a structure.
- On traditional storefronts, first floors should be more transparent than upper floors.
- Upper floors should appear more solid than first floors.
- Avoid a blank wall appearance that does not provide interest to pedestrians. Note, however, that the side wall of a historic building located on a corner will have fewer openings.
- Large surfaces of glass are inappropriate on the upper floors and sides of commercial buildings.
- If necessary, divide large glass surfaces into smaller windows that are in scale with those seen traditionally.



Policy: Preserve the original form and scale of a roof.

1.22 Preserve the original roof form of an historic structure.

- In residential areas, most roof forms are pitched, such as gabled and hipped. Most commercial buildings, on the other hand, have flat or slightly sloping roofs.
- Avoid altering the angle of a historic roof. Instead, maintain the perceived line and orientation of the roof as seen from the street.
- Retain and repair roof detailing. All architectural features which give the roof its fundamental traits, such as dormer windows, cupolas, cornices, brackets, chimneys, cresting, and weather vanes, shall be retained.
- Often repairing a basically sound roof can be much less expensive than a complete replacement. If a new roof is necessary, try to match the color, material, and pattern of the old as closely as possible. A roof may be re-roofed with substitute materials, such as asphalt or composite shingles that resemble the original style, if the original materials are determined to be beyond repair, are no longer available, or the historic roofing has been previously removed or covered.
- Skylights shall not be added where they are visible from the public right-of-way.
- Skylights should be placed at the rear roof lines or behind gables or dormers.
- Do not install new ornaments unless it can be shown that they historically existed on the roof.
- Roof alternations such as adding a green house, roof deck, solar panels, vents, and mechanical and electric equipment are not recommended if they would be visible from the street. These items should be made less noticeable by minimizing the size and using subdued colors.

1.23 Locate downspouts to minimize impacts on historic canopies and other facade details.

- Water from downspouts should drain away from the building properly.
- Ideally, a downspout should empty into an underground drainpipe that takes the water to the sewer or street.

- If this is not possible, a downspout should empty onto a metal or concrete splashblock that slopes downward and away from the building.
- Maintain and repair existing gutters and downspouts in place.
- If existing gutter and downspouts are deteriorated to the extent that they must be replaced, new gutters and downspouts shall match the original historic gutters and downspouts. They shall be of size and profile that would be characteristic of the period of significance.
- Where built-in gutters exist and must be repaired, repair or replace only those sections needing it, using similar materials to existing historic built-in gutters.
- Note that galvanized half-round sheet metal gutters may in many cases be more appropriate for historic buildings that had exposed gutters than the colonial profile aluminum gutters and downspouts commonly used today.

1.24 Regular maintenance and cleaning is the best way to keep your roof in good shape.

- Inspect the roof for breaks or holes in the surface and check the flashing for open seams.
- Many commercial buildings have shallow sloping flat roofs that are hard to see, so there is a tendency to forget about them until problems develop.
- Clean debris from gutters and downspouts to prevent the backing up of water.
- A roof should not hold water.
- Patch leaks in the roof. This should be a high priority for ongoing building maintenance.
- Replace deteriorated flashing.
- Solder downspout connections to prevent water from leaking into walls.

Design guidelines for additions and alterations to historic buildings

Design guidelines for additions and alterations to historic buildings. They apply to individually listed historic resources as well as historic properties. The design guidelines are organized into a series of relevant design topics. Within each category, individual policies and design guidelines are pre-

sented, which the City will use in determining the appropriateness of the work proposed.

Design of Alterations

Alterations may be considered for historic buildings, however, these alterations should occur in a manner that will not diminish the historic integrity of the property and they should be reversible for future property owners.

Additions

Many buildings have experienced additions over time as need for additional space occurred, particularly with a change in use. An historic addition typically was subordinate in scale and character to the main building. The height of the addition was usually positioned below that of the main structure and it was often located to the side or rear, such that the primary facade remained dominant. An addition was often constructed of materials that were similar to those in use historically. In some cases, owners simply added on to an existing roof, creating more usable space without increasing the footprint of the structure. This tradition of adding on to buildings is anticipated to continue. It is important, however, that new additions be designed in such a manner that they maintain the character of the primary structure.

The compatibility of proposed additions with historic buildings will be reviewed in terms of the mass, the scale, the materials, the color, the roof form, and the proportion and spacing of windows and doors. Additions that echo the style of the original structure and additions that introduce compatible contemporary design could be acceptable.

Demolition/Relocation

Demolition is forever, and once a building is gone it takes away another piece of the city's character. Demolition of an historic building or resource should only be an action of last resort. Historic Landmark Commission can delay or deny requests for demolition while it seeks solutions for preservation and rehabilitation.

Historic Landmark Commission should not allow the demolition or relocation of any resource that

has historical and/or architectural significance unless one or more of the following conditions exist and if, by a finding of Historic Landmark Commission, the proposed demolition or relocation will materially improve or correct these conditions:

1. The resource constitutes a hazard to the safety of the public or the occupants, as determined by the Building Official.
2. The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.
3. Retention of the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship; and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.
4. Retention of the resource is not in the interest of the majority of the community.

Historic Landmark Commission should consider the following when evaluating proposals to demolish or relocate historic resources:

1. Does the resource proposed for demolition or relocation have architectural and/or historical significance?
2. What would be the effect on surrounding buildings of demolition or relocation of the resource?
3. What would be the effect on the Overlay District as a whole of demolition or relocation of the resource?
4. What would be the effect on safeguarding the heritage of the city of the demolition or relocation?
5. What has been the impact of any previous inappropriate alterations?
6. Has the owner offered the property for sale?
7. Has the owner asked a fair price?
8. Has the property been marketed for a reasonable time?
9. Has the property been advertised broadly in a reasonable manner?

10. Has the owner sought the advice of a professional experienced in historic preservation work?
11. What would be the effect of open space in that location if the lot is to be left open?
12. What will be done with the empty lot?
13. What would the effect of any proposed replacement structure be to the community?
14. What is the appropriateness of design of any proposed replacement structure to the Overlay District?



Policy: Design an alteration to be compatible with the historic character of the property.

2.1 Avoid alterations that would damage historic features.

- Avoid alterations that would hinder the ability to interpret the design character of the original building.
- Alterations that seek to imply an earlier period than that of the building are inappropriate.

2.2 Properties designated by the City as a High or Medium Priority Historic Structure should be preserved and their historic character retained.

- Due to special circumstances, a structure's historic priority may change over time (because a reduced number of similar style structures in stable condition still exist within the district or city, or if unknown historic information becomes available that adds significance).

Policy: Minimize the visual impacts of an addition to a commercial building.

Two distinct types of additions are considered to be appropriate by Historic Landmark Commission: ground-level or rooftop.

First, a ground-level addition that involves expanding the footprint of a structure may be considered. Such an addition should be to the rear or side of a building. This will have the least impact on the character of a building, but there may only be limited opportunities to do this.

Second, an addition to the roof may be designed that is simple in character and set back substantially from the front of a building. The materials, window sizes and alignment of trim elements on the addition should be compatible to those of the existing structure, but also visually subordinate in character so as to avoid calling attention alteration to the addition.

Another option, which will only be considered on a case-by-case basis, is to design an addition to the front wall plane of the existing building. This option may only be considered on a "newer" or more contemporary building that was originally constructed set back from the front property line or sidewalk edge.

2.3 An addition shall be compatible in scale, materials, and character with the main building.

- An addition shall relate to the building in mass, scale, and form. It should be designed to remain subordinate to the main structure.
- An addition to the front of a building is inappropriate. However, where a building in the Downtown Overlay is set back from the front property line and the structure does not have historic significance, the first consideration for the placement of an addition should be to fill the gap between the existing building and sidewalk. This will maintain the consistent "street wall" desired in the downtown.

- For example, mounting a sign panel in a manner that causes decorative moldings to be chipped or removed would be inappropriate.

2.4 An addition shall not damage or obscure architecturally important features.

- For example, loss or alteration of a cornice line should be avoided.

2.5 An addition may be made to the roof of a commercial building if it does the following:

- An addition should be set back from the primary, character-defining facade, to preserve the perception of the historic scale of the building.
- Its design should be modest in character, so it will not attract attention from the historic facade.
- The addition should be distinguishable as new, albeit in a subtle way.
- The roofs of additions should not interfere with the original roof form by changing its basic shape and should have a roof form compatible with the original building.

Design Guidelines for Color in the Overlay District

Historic Color Schemes

When renovating an historic building, first consider returning to the original color scheme, which can be discovered by carefully cutting back paint layers. Accurately determining the original color scheme requires professional help, but one may get a general idea of the colors that were used by scraping back paint layers with a penknife. Since the paint will be faded, moisten it slightly to get a better idea of the original hue. It is not necessary, however, to use the original color schemes of the building. An alternative is to use colors in ways that were typical of the period or architectural style, and with them create a new color scheme.

With respect to the treatment of color on individual historic buildings, colors that represent the appropriate period of history are preferred, but not necessarily required. Color does not damage the

historic materials or alter significant details and can always be changed in the future and thus its application is not as critical as some other design options.

Inappropriate applications of color, however, may hinder one’s ability to perceive the character of the building’s architecture. For example, if a building with jig-saw brackets and moldings is painted solid black, with no contrast between the background and the details, and little opportunity for expression of shadows, the perception of the character of the building may be diminished.

This concern for perception of character is more relevant in the context of the Downtown Overlay District, where assemblage of buildings on the street is important to one’s perception of the character of the streetscape. In this sense, one building that stands out from the rest with an inappropriate color scheme will impede one’s perception of the continuity in the district. For this reason, the city reviews the use of color as part of its consideration of design issues. In general, the Historic Landmark Commission will consider color on a case-by-case basis, and in context with the building’s location.

Policy: In general, bright colors used on large surfaces are discouraged. In all cases, the following standards for use of color shall apply.



7.1 Develop a color scheme for the entire building that coordinates all the façade elements.

- Using the historic color scheme is encouraged.
- Choose a base color that will link elements of the entire building face together. It can tie

signs, ornamentation, awnings, and entrances together. It can also help the building better relate to others on the block.

- A single color scheme should be used for the entire exterior so upper and lower floors and subordinate wings of buildings are seen as components of a single structure.
- For a newer building in the Overlay Districts, a color scheme that complements the historic character of this district should be used.

7.2 Paint colors should enhance individual building elements while creating a unified,

coordinated appearance for the entire structure.

- Paint colors and placement should create a cohesive look for the structure. There should be one main color on the body of the building to unify the façade.
- Choose colors for trim, accents, and architectural details that complement the main color on the body of the structure.
- Consider the palette of surrounding structures to create a harmonized appearance along the block face.
- Background and accent colors should be consistent within separate buildings, where a number of buildings are attached or where unity in theme is desired.

7.3 A muted color is preferred for the base color of most buildings.

- Use muted colors to minimize the apparent scale of buildings and blend them with the natural colors of area.
- Matte finishes are preferred to glossy ones.

7.4 Roof colors must complement the style and overall color scheme of the structure.

Policy: Focus attention to a building's decorative details and entrances.

7.5 In general, use bright colors for accents only.

- Colors of a vivid saturation are not appropriate for the body of commercial buildings.

- Overly strong or bold colors are not appropriate for the main body of a structure. Reserve the use of strong, bright colors for accents when you want to draw the customer's eye, such as to the sign, the building's ornamentation or entrance.
- In most cases only one or two accent colors should be used in addition to the base color.
- Doors may be painted a bright accent color or they may be left a natural wood finish. Historically, many of the doors would have simply had a stain applied.
- Window sashes, casings, and trims are also an excellent opportunity for accent color.
- Brilliant luminescent or day-glow colors are not appropriate.
- Minimize the metallic shine of aluminum and door frames.

7.6 Paint colors should highlight architectural details.

- Plan painting to use more than one color. It is inappropriate to allow architectural details to be camouflaged by painting them the same color as the background of the structure.
- Strong or bold colors can be appropriate for trim, accents, and architectural details.

Policy: It is important to know when to paint buildings and when to leave the material in its natural state or color.

7.7 Wooden structures must be painted.

- Historically wooden structures in Dodge City were painted and would not have been left as exposed wood.
- Stained wood is inappropriate for the body of a structure.
- Certain wooden details, such as doors and windows, may remain unpainted. But the wood must not be exposed to the elements, so the materials need to be treated.
- The use and color of stain must be a typical style for the period of the structure.

7.8 Leave natural masonry finishes unpainted when feasible.

- Where the natural color of the materials exists, such as with stone or brick, they should be left unpainted.
- Painting an unpainted brick or stone wall may trap moisture inside the walls and will drastically alter its character and appearance.
- For other parts of the building that do require painting, select colors that will complement those of the natural materials.

7.9 Where brick has been painted historically it should remain painted.

- If a wall is made of porous brick, which has always been painted, it should remain painted. Removing the paint will expose the brick to weather, accelerating its deterioration.
- If a building was originally plain brick, but was painted sometime in the past, consider applying new paint colors that simulate the original brick color.

SECTION 4

Design Guidelines - Infill

Design Guidelines for Infill Construction (Area 2 - Historic Downtown Dodge City)

This section presents design guidelines for the construction of new buildings within the boundaries of the Dodge City Historic Overlay District. The design guidelines are organized into a series of relevant design topics. Within each category, individual policies and design guidelines are presented, which the City will use in determining the appropriateness of the work proposed.

Summary of Key Characteristics

Key design characteristics of this area include the following:

- Buildings aligned with adjacent historic buildings at the sidewalk edge
- One to three story, traditional commercial buildings (some buildings reach greater heights, however)
- Masonry construction dominates
- Transparent ground floor with smaller windows “punched” into predominantly solid upper floors
- Flat-roof buildings
- Sidewalk uses and activities

Design Goals

The Dodge City Historic Overlay District should continue to develop in a coordinated manner so that an overall sense of visual continuity is achieved. The dominant character of this area should be that of a retail-oriented, commercial environment, with an active street edge that is pedestrian friendly.

The design goals are:

- To rehabilitate existing historic commercial buildings
- To continue the use of traditional building materials found in the area
- To maintain the traditional mass, size, and form of buildings seen along the street (i.e., a building should be a rectangular mass that is one to three stories in height)
- To design commercial buildings with store front elements similar to those seen traditionally (i.e., a commercial building should include: recessed entries, display windows, kickplates, transom windows, midbelt

cornices, cornices, or parapets, and vertically oriented upper story windows)

- To design a project that reinforces the retail-oriented function of the street and enhances its pedestrian character
- To promote friendly, walkable streets (i.e., projects that support pedestrian activity and contribute to the quality of life are encouraged)
- To provide site amenities such as benches, lights, waste receptacles, landscaping, etc; to enhance the pedestrian experience
- To accurately convey the history of the area by avoiding styles that are not accurate to Dodge City’s history

Building Setbacks

To contribute to a sense of visual continuity, it is encouraged for commercial buildings to be aligned immediately at the inside edge of the sidewalk.

A typical building in the Historic District also has its primary entrance oriented to the street. This helps establish a “pedestrian friendly” quality. In most cases, similar entryways are evenly spaced along a block, creating a rhythm that also contributes to the sense of visual continuity. These entrances are also typically recessed from the sidewalk edge.

Mass and Scale

Patterns are created along the street by the repetition of similarly sized building elements. For example, uniform facade widths evenly spaced in downtown create a rhythm that contributes to the visual continuity of the area.

Building Form

One of the most prominent unifying elements of the Dodge City Historic Overlay District is the similarity in building form. Commercial buildings are simple rectangular solids, deeper than they are wide. This characteristic is important and should be continued. Also, commercial roof forms appear flat, although there is typically a slight pitch to it for water to drain. This characteristic is important and should be preserved.

Materials

Building materials of new structures should contribute to the visual continuity of the area. They should appear similar to those seen traditionally to establish a sense of visual continuity. Brick and stone are the dominant materials and their use in new construction is preferred.

Architectural Character

The street level floors of traditional commercial buildings are clearly distinguishable from the upper floors. First floors are predominantly fixed plate glass with a small percentage of opaque materials. Upper floors are the reverse. Opaque materials dominate and windows appear as smaller, vertically oriented openings puncturing the solid walls. The floor-to-floor height on the street level is also generally taller than the upper floors. This feature should also be expressed in new construction.

Policy: Maintain the line of building fronts in the block.

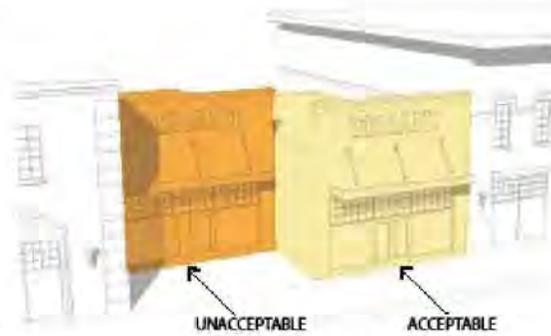
Structures in the Dodge City Historic Overlay District should contribute to a strong “building wall” along the street. A new building should align at the front lot line and be built out to the full width of the parcel (i.e., to the side lot lines). Although small gaps can occur between some structures, these are exceptions.

3.1 Maintain or enhance the alignment of buildings at the sidewalk edge.

- Locate the front building wall at the sidewalk line when feasible.
- Where a building must be set back from the sidewalk, use landscape elements to define the sidewalk edge

3.2 Orient the primary entrance of a building toward the street.

- A building shall have a clearly defined primary entrance. For most commercial buildings, this should be a recessed entryway.
- Secondary public entrances to commercial spaces are also encouraged on a larger building.



A new building should align at the front lot line and be built out to the full width of the parcel.

Policy: A building should appear similar in scale to traditional commercial buildings.

Building heights vary in the Dodge City Historic Overlay District and yet there is a strong sense of similarity in scale. This is in part because most buildings are one to two stories in height.

3.3 Maintain the traditional range of building heights seen in the historic core.

- Traditional floor heights should be expressed with horizontal moldings, alignment of windows, and other architectural details.
- Set back portions of a third floor to emphasize the lower scale of one and two story portions of a building.

3.4 Buildings shall appear similar in width to those seen historically in the block.

- Traditionally, building fronts were built in 20 to 30 foot increments. Building fronts should reflect this pattern.
- On corner lots, the secondary side wall is traditionally longer in its “module”, and this may be appropriate for new secondary elevations.

3.5 Consider dividing a larger building into “modules” that are similar in scale to buildings seen traditionally.

- If a larger building is divided into “modules,” they should be expressed three-dimensionally throughout the entire building facade.

3.6 Floor-to-floor heights shall appear to be similar to those seen traditionally.

- In particular, the windows in a building should appear similar in height to those seen traditionally.

3.7 A building shall maintain the alignment of horizontal elements along the block.

- This alignment occurs because many of the buildings are similar in height.
- Window sills, moldings, and cornices are among those elements that may be seen to align.



Maintain the traditional range of building heights seen in the historic core.

Policy: *The form of a building should be similar to those seen traditionally.*

One of the most prominent unifying elements of downtown is the similarity in building form. Commercial buildings were simple rectangular solids, deeper than they were wide. This characteristic is important and should be continued.

3.8 Rectangular forms shall be dominant on commercial facades.

- Rectangular forms should be vertically oriented.

3.9 Use flat rooflines as the dominant roof form.

- Parapets on side facades should step down towards the rear of the building.
- Gable roof forms may also be considered if they are obscured by a “false front” storefront similar to those seen historically.



Use flat rooflines as the dominant roof form.

Policy: Building materials should be visually compatible with the predominate materials of this area.

Traditionally, a limited palette of building materials, primarily brick and stone, was used in the area. This same selection of materials should continue to be predominant. New materials also may be appropriate when they relate to the scale, durability, color, and texture of the predominate materials of this area.

3.10 Materials shall appear to be similar to those used traditionally.

- Brick and stone were the traditional materials and are preferred.
- If alternative materials are selected they should be comparable to traditional materials, both in texture and color.

3.11 A simple material finish is encouraged for a large expanse of wall plane.

- A matte or non-reflective finish is preferred.
- Polished stone should be avoided as a primary material and mirrored glass is inappropriate.



Materials shall appear to be similar to those used traditionally.

Policy: A building should be visually compatible with traditional commercial buildings.

While it is important that buildings be compatible with the surrounding traditional commercial context, it is not necessary that they imitate older building styles.

3.12 New interpretations of traditional building styles are encouraged.

- A new design that draws upon the fundamental similarities among older buildings in the area without copying them is preferred. This will allow the building to be seen as a product of its own time and yet be compatible with its historic neighbors.
- Buildings that are similar in scale and overall character to those seen historically are strongly encouraged.
- In essence, infill should be a balance of new and old in design.
- This applies to architectural details as well as the overall design of a building.

3.13 Maintain the distinction between the street level and the upper floor.

- The first floor of the primary facade should be predominantly transparent glass.
- Upper floors should be perceived as being more opaque than the lower floor.
- Highly reflective or darkly tinted glass is inappropriate.
- Express the traditional distinction in floor heights between street level and upper levels through detailing, materials, and fenestration. The presence of a belt course is an important feature in this relationship.

3.14 Upper-story windows with vertical emphasis are encouraged.

- A typical, upper-story window is twice as tall as it is wide. These proportions are within a limited range. Therefore, upper-story windows in new construction should relate to the window proportions seen historically.
- Windows should align with others in a block. Windows, lintels, and their trim elements should align with those on adjacent historic buildings.



New interpretations of traditional building styles are encouraged.



Maintain the distinction between the street level and the upper floor.

3.15 Windows should be trimmed with wood, painted metal or anodized aluminum.

- This trim should have dimension and shadow lines similar to those used historically.

3.16 Window dimensions that are similar to those used traditionally are encouraged.

- Many windows are “one-over-one,” in that a single pane of glass is in both the upper and lower sashes. Other pane configuration also may be present, such as “two-over-one,” with two panes (or lights) in the upper sash and one is in the lower sash. These arrangements are preferred.

3.17 The ratio of solid-to-void surface area shall be similar to that seen traditionally on commercial storefront buildings in the district.

- First floors should be more transparent than upper floors.
- Upper floors should appear more solid than first floors.
- Avoid a blank wall appearance that does not provide interest to pedestrians

3.18 Building entrances should appear similar to those used historically in the block.

- Clearly define the primary entrance with an awning, canopy, or other architectural or landscape feature.
- A contemporary interpretation of a traditional building entry, which is similar in scale and overall character to those seen historically, may be considered.
- Building entrances should be recessed.
- Clearly define primary entrances.
- Secondary public entrances are also encouraged on a larger building or along an alley if there is parking in the rear of the site.



Upper-story windows with vertical emphasis are encouraged.

3.19 Doors should be trimmed with wood, painted metal or anodized aluminum.

- This trim should have dimension and shadow lines similar to those used historically.

Design Guidelines for Infill Construction (Area 1 - South Wyatt Earp Blvd)

This section presents design guidelines that apply to the area south of Wyatt Earp Blvd. The design guidelines are organized into a series of relevant design topics. Within each category, individual policies and design guidelines are presented, which the City will use in determining the appropriateness of the work proposed.

The area should continue to develop with a mix of uses. Improvements should occur in a manner that enhances the experience for pedestrians and to build a sense of visual correlation among properties. Even though vehicle circulation routes significantly affect the character, it is still possible to strengthen pedestrian links and to improve the edges of properties such that a sense of human scale is conveyed.

Design Goals

Those commercial streets south of Wyatt Earp Blvd should develop in a manner that is inviting to pedestrians while also accommodating vehicles. Development should include a mix of building types, including older structures and more contemporary ones. Each should reflect the design trends of its own time, while also contributing to a sense of visual continuity and strengthening the pedestrian experience. In addition, a combination of uses is encouraged, including office, and retail.

The design goals for the area South of Wyatt Earp Blvd are:

- To define the sidewalk edge with elements that are amenities for pedestrians
- To establish a sense of scale in buildings and streetscape design that can be understood by pedestrians
- To minimize the visual impacts of vehicles
- To strengthen the pedestrian network of sidewalks, plazas, and paths
- Retain native vegetation with project design

Building Setbacks

A wide variety of building setbacks can be seen throughout the area south of Wyatt Earp Blvd. Much of this variety is due to the influence of the automobile and the need to provide on-site parking. This parking typically has been provided in front of the building for consumer convenience. However, this trend erodes the view of the edge of buildings located along a sidewalk as was seen historically. Therefore, it is strongly encouraged that new developments South of Wyatt Earp Blvd should build on this tradition and locate buildings at the front lot line.

Mass and Scale

A variety of building sizes exist in this area. While contemporary design approaches are encouraged, developments should continue to exhibit a variety of sizes, similar to the buildings seen historically and traditionally.

Building Materials

Building materials of structures should contribute to the visual continuity of the area. They should appear similar to those seen traditionally to establish a sense of visual continuity.

Architectural Character

Commercial buildings throughout the Downtown Overlay District should relate to one another through the consistent use of similar building materials, storefronts, recessed entries, and the alignment of these different elements along a block. This tradition is strongly encouraged for new developments in the area south of Wyatt Earp Blvd.

One of the concerns in building design is that when national chain companies or their franchisees construct buildings in the area south of Wyatt Earp Blvd that they do so in a way that reinforces the design traditions of Dodge City. Some typical issues and negative impacts often associated with national chain or commercial franchise designs include:

- Bright logo colors are used over large expanses of a building.
- Large blank walls on "big box" buildings are bland and out of scale, and discourage pedestrian activity.
- Buildings are surrounded by parking lots and

cars. Primary entrances are typically oriented to these parking lots, rather than to the street.

- Metal panels and large areas of featureless stucco are often used and these are out of character and not of human scale.

Instead, these building types shall comply with the design guidelines that follow.

Pedestrian Environment

The area south of Wyatt Earp Blvd should provide a controlled, organized automobile system which provides a safe pedestrian environment. Streets, sidewalks, lighting, and landscaping should define the road edge and encourage walking, sitting, and other pedestrian activities.

Projects that can occur in the area also may have automobile activity associated with them. This should not, however, make it an unsafe environment for the pedestrian or cyclist. Automobile circulation patterns, both internal and external, should be clearly identified and should not interfere with pedestrian or cyclist circulation systems.

Policy: A new building should maintain the wall of buildings at the sidewalk edge.

Continuity of design within the Downtown Overlay District is a goal of the city, both in terms of connecting individual projects and town blocks. Not only should a new building in the area south of Wyatt Earp Blvd be located at the sidewalk edge, but it should be designed to provide visual interest.

4.1 Locate a new building at the front property line.

- Align the building front at the sidewalk edge.
- A minimum of 50% of the street frontage of a property shall have a building wall at the sidewalk edge.
- Where no sidewalk exists one should be installed that aligns with nearby sidewalks.

4.2 Where a portion of a building must be set back, define the edge of the property with landscape elements.

- For example, define the edges of a lot with landscaping, such as low-scale urban street trees or shrubs.
- Landscaping elements should be compatible with the character of the area in size, scale, and type. Free-form, suburban type landscaping is inappropriate in this setting.
- Also consider using a fence, or other structural element that reflects the position of typical storefront elements. These elements should align with nearby traditional commercial building types.

Policy: The overall mass of a new building should convey a sense of human scale.

Buildings in the downtown should appear similar in height and width to commercial structures seen traditionally in Downtown Dodge City.

4.3 A new building shall reflect the traditional lot width as expressed by the following:

- Variation in height at internal lot lines
- Variation in the plane of the front façade
- Variation in architectural detailing and materials to emphasize the building module
- Variation in the façade height to reflect traditional lot width

4.4 Building heights of larger projects should provide variety.

- A larger development should step down in height towards the street or smaller, surrounding structures.
- Vary the building height in accordance with traditional lot width.
- Set back the upper floor to vary the building façade profile(s) and the roof forms across the width and the depth of the building.
- Vary the façade (or parapet) heights at the front.

4.5 Large project sites should be developed with several buildings, rather than a single structure.

- This will help reduce the perceived size of the project.
- The façade height shall be varied to reflect traditional lot width.

4.6 Where a large building is needed, divide the building into modules that reflect the traditional size of buildings.

- A typical building module should not exceed 30 feet in width. The building module should be expressed with at least one of the following:
 - A setback in wall planes of a minimum of 3 feet
 - A change in primary facade material for the extent of the building module
 - A vertical architectural element or trim piece
 - Variations in facade treatment should be continued through the structure, including its roofline and front and rear facades.
- If a larger building is divided into “modules,” they should be expressed three dimensionally throughout the entire building. Variation in height should occur where the site is larger than two traditional lot widths, in order to reduce overall scale of the building.



Where a large building is needed, divide the building into modules that reflect the traditional size of buildings.

Policy: Building materials for new construction should be visually compatible with the predominate materials of this area.

New materials should relate to the scale, durability, color and texture of the predominate materials of downtown.

4.7 Masonry materials that convey a sense of scale are preferred.

- Brick and stone are preferred for new construction.
- New materials should appear similar in character to those used traditionally. For example, stucco, cast stone, and concrete should be detailed to provide a human scale.

4.8 A simple material finish is encouraged for a large expanse of wall plane.

- A matte or non-reflective finish is preferred.
- Polished stone and mirrored glass, for example, are inappropriate and should be avoided as primary materials.

4.9 Traditional building materials such as wood, brick, and stone are encouraged.

- Horizontal lap siding of traditional dimensions is appropriate in most applications.
- Maintenance of traditional siding dimensions is encouraged.
- Brick or stone, similar to that used traditionally, is also appropriate.
- Highly reflective materials are inappropriate.
- New materials that are similar in character to traditional ones may be considered. Alternative materials should have a proven durability in similar locations in this climate.

4.10 Use roof materials that appear similar to those seen traditionally.

- Metal and shingle roofs are preferred.
- Clay tile is discouraged.



Policy: A new building should contribute to a pedestrian friendly environment by providing an active street edge.

The downtown should continue to develop as a pedestrian oriented environment. Streets and sidewalks should encourage walking, sitting, and other outdoor activities. Buildings also should be visually interesting to invite exploration by pedestrians. Existing pedestrian routes should be enhanced. These are important concepts because buildings are experienced at close proximity by pedestrians.

4.11 Develop the ground floor level of a project to encourage pedestrian activity.

- Provide at least one of the following along primary pedestrian ways:
 - A storefront
 - Display cases
 - Landscaping
 - A courtyard or plaza
- Include traditional elements such as display windows, kickplates, and transoms on commercial storefronts.
- Avoid a blank wall or vacant lot appearance.

4.12 Orient the primary entrance of a building toward the street.

- A building should have a clearly defined primary entrance.
- The building entrance should be recessed.
- A primary building entrance also should be at or near street level.

4.13 Clearly identify the road edge and project entrances for both automobiles and pedestrians.

- Use landscaping and lighting accents to identify entrances.

4.14 Buildings shall convey a sense of human scale.

- Use building materials that are of traditional dimensions.
- Provide a one-story entry element that is similar in size to those seen traditionally.
- Use a building mass that is similar in size to those seen traditionally.
- Use elements that provide a sense of scale.



New materials should relate to the scale, durability, color and texture of the predominate materials of downtown.

4.15 Building heights of larger projects should provide variety.

- A larger development should step down in height towards the street or smaller, surrounding structures.

4.16 New interpretations of traditional building styles are encouraged.

- A new design that draws upon the fundamental similarities among commercial and residential buildings in the community without copying them is preferred. This will allow them to be seen as products of their own time yet compatible with their historic neighbors.



Develop the ground floor level of a project to encourage pedestrian activity.

SECTION 5

Design Guidelines - Signage & Wayfinding

Design Guidelines - Signage & Wayfinding

This section presents design guidelines for the design of signs and wayfinding programs. Within each category, individual policies and design guidelines are presented which the City will use in determining the appropriateness of the work proposed.

Historically, a variety of signs have evolved in the Heritage District of Dodge City. In addition, modern requirements have driven new sign developments. Often signs were mounted to fit within architectural features. In many cases, they were mounted flush above the storefront, just above moldings. Others were located between columns or centered in "panels" on a building face. This method is least distracting to the design character of individual structures.

Generally, signage in the Dodge City Heritage District will be defined by the following types:

- **Freestanding Signs** - mounted on a pole or post; located near the sidewalk and typically imprinted on both sides. This would include municipal use such as street signs.
- **Marquee Type Signs** - square or rectangular shaped signs mounted to the building above the awnings or canopies; printed on both sides
- **Facade Type Signs** - mount directly to face of structure, may be indirectly illuminated or internally illuminated.
- **Blade Type Signs** - protrude from the building below the awnings or canopies but above pedestrians' heads; printed on both sides.
- **Hanging Type Signs** - protrude from the building and hang from a bracket, essentially a blade sign but typically larger and mounted higher; printed on both sides
- **Canopy Type Signs** - horizontally-oriented rectangular signs attached flat against the building, above and/or below the awnings; printed on one side only. They may also be mounted and backlit from the canopy face or affix to top of same.
- **Window Signs** - painted on glass; used at the street level and on upper floors
- **Mural Signs** - painted on the exterior advertised the primary business of a building. It was also not unusual for these facades to serve as modern day billboards primarily advertising consumer goods
- **Site Specific Signs** - located at destination examples include facade or pavement mounted plaques and post mounted signs

Representative examples of these sign types are located at the end of this section.



The overall facade composition, including ornamental details and signs, should be coordinated.

A sign typically serves two functions. First, to attract attention and second, to convey information essentially identifying the business or services offered within. If it is well designed, the building front alone can serve the attention-getting function, allowing the sign to be focused on conveying information in a well-conceived manner. All new signs should be developed with the overall context

of the building and of the area in mind.

Multi-tenant buildings shall share signage through co-locating the various businesses' advertising on directories and monument or other approved signs via an approved Master Sign Plan.



Design a sign to be in balance with the overall character of the property.

A primary sign represents the owner's largest sign expense and is likely the most important of the sign types. Only one primary sign will be allowed per business per building. The primary sign's audience is specifically the viewer driving past in a vehicle. The sign should be in proportion to the building, such that it does not dominate the appearance.

A primary sign should identify the services or business offered within. To avoid driver confusion, the information on the primary sign should be in a large enough font or design that it is easily viewable from a vehicle.

The sign should contain only enough information to alert the viewer in a vehicle to the location of the business or entity at the building. Whenever possible, other signs should be utilized for information geared towards pedestrian or other viewers. The primary sign should be easily viewable from a vehicle with as little visual clutter as possible.

Secondary signs are utilized in addition to the

primary building sign. Typically, a secondary sign protrudes from the building below the awnings or canopies but above pedestrian heads, printed on both signs. This may also be a small to medium free-standing sign mounted on a pole or post. The secondary sign is generally intended to capture the attention of the pedestrian walking on the sidewalk.

A Master Sign Plan is required for multi-tenant buildings. Where several businesses share a building, coordinate the signs. Align several smaller signs, or group them into a single panel as a directory.

Use similar forms or backgrounds for the signs to tie them together visually and make them easier to read. The manner in which a directory sign is mounted to a building, either flush to or projecting from a wall, will determine the maximum allowable sign area. Electronic message centers are not allowed.

Signage allocation must be considered when setting up a building for multiple tenants, and the appropriate distribution of allowable sign square footage and sign sizes and locations planned for the various tenants. The maximum area of a flush-mounted or projecting sign is subject to review by the Historic Landmark Commission.

A small hanging sign is easier for a pedestrian to read than other sign types and is encouraged. This type of sign should be located near the business entrance, just above the door or to the side of it. A hanging sign installed under a canopy should be a maximum of 50% of the canopy's width.

A hanging sign should be mounted perpendicular with the building facade. A hanging sign should provide a minimum of eight feet clearance between the sidewalk surface and the bottom of the sign. However, a hanging sign mounted under a canopy may provide a minimum clearance of seven feet. With few exceptions, a hanging sign shall be no more than eight square feet in size.

Window signs are painted or applied to the glass

used at street level and/or on upper floors. The window signage is intended for the pedestrian walking on the sidewalk and conveys specific information about the business offered. A window sign may be considered in addition to the primary building sign to convey specific information regarding contact information (i.e., telephone number, email, or web address of a business), other business locations, or list more than one (1) specific product or service.

A window sign should cover no more than thirty percent (30%) of the total window area. It may be painted on the glass, attached with flush vinyl, or hung just inside a window using appropriate attachment materials, as reviewed and approved by Historic Landmark Commission. No more than 50% of a window shall be covered by business signage, advertisements, open signs, hours of operation, and other messages.

One small (maximum 2 square feet) window sign with a dark background displaying the business' hours of operation with contrasting (but not in a vivid color) lettering is allowed without Certificate of Appropriateness Application. If additional size or design is requested, then a Certificate of Appropriateness is required. One small (maximum 1.5 square feet) 'open' sign per business is allowed to be placed in a window without Certificate of Appropriateness review, if additional size is requested then a Certificate of Appropriateness is required. The sign message cannot be in a flashing or traveling mode.

Window located electronic message signs that are designed to be visible from the street are not allowed.

While window displays are not reviewed by Historic Landmark Commission, their use is very important to retailers. The attractiveness of a display is likely the highest contributing factor to whether or not a pedestrian will enter a store, and its design should be carefully planned.

A projecting sign should appear to be in proportion with the building. It should not overwhelm the appearance of the building or obscure key architectural features. A projecting sign shall provide

a minimum clearance of eight feet between the sidewalk surface and the bottom of the sign. A projecting sign shall be no more than fifteen square feet in size with a maximum sign height of five feet. Additionally, a projecting sign shall in no case project beyond 1/2 of the sidewalk width.

Signs should not obscure the view of any windows, existing signs, and/or adjacent buildings to an unreasonable extent. A large projecting sign is not permitted unless other types of signage are not appropriate for the building. A large projecting sign, if approved, should be mounted higher, and centered on the facade or positioned at the corner of a building. Generally, a projecting sign should not be located above the second floor.

"Blade" signs are considered projecting signs and should follow the guidelines for projecting signs. Any two-sided sign shall be designed to be back to back and in no case shall both sides of the sign be visible at any time to the reader.

An awning or canopy sign shall not exceed one square foot for every one linear foot of facade width. In no case should an awning or canopy sign exceed the size of the awning or canopy surface to which it is applied. The size of an awning or canopy sign shall be calculated by its actual area and shall be included in the calculation for total allowable building signage.

Consider mounting a sign centered on top of a building canopy where a flush-mounted sign would obscure architectural details. A sign mounted on top and affixed to a building canopy, and located perpendicular to the building shall not be allowed. Appearance of a sign as viewed from an upper level must be considered.

Portable signs are intended for the pedestrian walking on the sidewalk. Portable signs include sandwich boards, signs mounted on easels, or free-standing frames with sign inserts.

Temporary signs are used for a special purpose, such as limited-time offer or a sale. Planning and Development Department staff may approve temporary signs for a specified period of time. Special event signs would include area events

of festivals and would include quality color pole banners or large mesh scrim types. Planning and Development Department staff may approve temporary signs for a specified period of time



When utilizing the sign frieze as the sign placement location, it is important to respect the frieze borders.

Wayfinding Sign Systems



Wayfinding refers to the user experience of orientation and choosing a path within the built environment. It can also refer to the set of architectural or design elements that aid orientation, as well as in reference to parking management strategies. Consistent use of colors, symbols, and typography make this graphic communication style a very effective method in directing the visitor or tourist.

Site-Finder signs are found directly in front of their locations, in the areas designated, or along routes and walking trails.

This is especially important in the Historic Area

south of Wyatt Earp Boulevard where new construction, historic preservation, and modern infill coexist with both vehicular and pedestrian traffic requirements.

Well-designed signs and related graphics are needed in the historic District for communication and identifying goods and services available in the District. But signs are artifacts in themselves. They are a significant component of the environment. Signs affect the quality, image, and cohesiveness of the entire historic District.

The placement or location of a sign is a critical factor in maintaining the order and integrity of the Dodge City Historic Overlay District. Consistent placement of signs according to building type, size, location, and even building materials creates a visual pattern that the pedestrian can easily interpret and utilize to the mutual benefit of merchants, tourists, and customers.

Portable signs are intended for pedestrian traffic on the sidewalk and can convey specific information regarding information on products, services or special events such as dining and entertainment offerings. An A-frame or sandwich board sign should be limited to 12 square feet of surface per side and should in no case exceed four feet in height and three feet in width. A portable sign should not interfere with pedestrian traffic.

A portable sign should be secured to the sidewalk. If an eye bolt is used it should be installed by Dodge City and placed below the sidewalk surface, and a steel wire should be used to attach the sign to the bolt. If the sign is not anchored with an eye bolt, then the sign shall be internally weighted rather than secured with sand bags or other external means. Portable signs shall be taken inside when the business being advertised is not open.

A temporary sign (including banners) should be limited to a maximum of twenty-four square feet in area with a maximum height of three feet. A temporary sign, when installed, should not obscure windows or other architectural details of a building. In no case will a temporary sign be allowed to substitute as a permanent sign. Planning and Development Department staff may approve

temporary signs for up to 45 days, a request for a longer time period will be forwarded to the Historic Landmark Commission. Temporary signs should respect the design and color guidelines for permanent signs.

A sign should not in any way obscure or compete with architectural details of an historic building facade. This is especially important for a building with historic significance. A sign should be designed to integrate with the architectural features of a building not distract attention from them.

Policy: A sign should be in character with the material, color, and detail of a building.

- Signs that are out of character with those seen historically and would alter the historic character of the street are inappropriate.
- Animated signs are prohibited.
- Any sign that visually overpowers the building or obscures significant architectural features is inappropriate.
- Murals that include signage may be considered appropriate.
- Murals shall not be painted onto previously unpainted brick or masonry of historical significance.
- Sign materials should be compatible with that of the building facade.
- A simple, easy-to-read sign design is preferred.
- Typefaces that are in keeping with those seen in the area traditionally are encouraged. Select letter styles and sizes that will be compatible with the building front. Generally, these are typefaces with serifs.
- Avoid hard-to-read or overly intricate typeface styles.
- Painted wood and metal are appropriate materials for signs. Their use is encouraged. Unfinished materials, including untreated wood, are discouraged because they are out of character with the context of the Overlay Districts.
- Plastic is not permitted, except for flush, adhesive, professionally installed lettering.
- Highly reflective materials that will be difficult to read are inappropriate.
- Painted signs on blank walls were common historically and may be considered.
- Using a symbol for a sign is encouraged.
- A symbol sign adds interest to the street, can be read quickly and is remembered better than written words.
- Use colors for the sign that are compatible with those of the building front.
- Sign colors should be limited. In general, no more than three colors should be used. For these Guidelines, black and white are not counted as colors.
- The Historic Landmark Commission may consider different shades of a color similar enough to count as one color in the determination of the number of colors being allowed.
- Signs with photo images, including multiple colors, are appropriate on A-frame/sandwich board type signs only.
- Symbol signs add interest to the street, are quickly read, and are remembered better than written.
- Symbol signs, like this barber's pole, were used historically and their use is encouraged today.
- The light for a sign should be an indirect source.
- Light should be directed at the sign from an external, shielded lamp.
- The fixture should have a sense of design, which is coordinated with the sign surface, and appropriate to building style and character.
- A warm light, similar to daylight, is appropriate.
- Light should not shine directly or reflect into the eyes of pedestrians.
- Exposed up-lights are inappropriate.
- If internal illumination is used, it should be designed to be subordinate to the overall building composition.
- Internal illumination of an entire sign panel is discouraged. If internal illumination is used, a system that backlights only the sign text is preferred.

- Neon and other tubular illumination may be considered. However, use neon in limited amounts so it does not become visually obtrusive.
- Internal illumination of an awning is inappropriate.
- Neon signs may be considered in limited situations.
- The use of neon signs is more appropriate to new construction, non-historic structures, and historic structures built after 1930. These signs should have an historic character.
- Sign brackets and hardware should be compatible with the building and installed in a workman-like manner.
- Maintenance of signs shall be required.
- Re-secure sign mounts to the building front.
- Repaint faded graphics.
- Repair worn wiring.
- Replace burned out bulbs.
- Remove non-historic, obsolete signs.
- Preserve historic painted signs in place as decorative features.
- Signage should have a professional quality and a finished appearance.
- Signs that appear to be temporary, unfinished, or homemade are not allowed.
- A change in a portion of a multi-tenant sign should be consistent with the original, approved design.
- Changing tenants in buildings with approved multiple tenant signs.
- Staff may approve sign face changes if they are the style of the approved multi-tenant sign.
- Lighting that is directed at a sign from an external, shielded lamp, is preferred.
- Internal illumination of an entire sign panel is discouraged.

Representative Signage & Wayfinding Examples

Freestanding Signs



Marquee Type Signs



Facade Type Signs



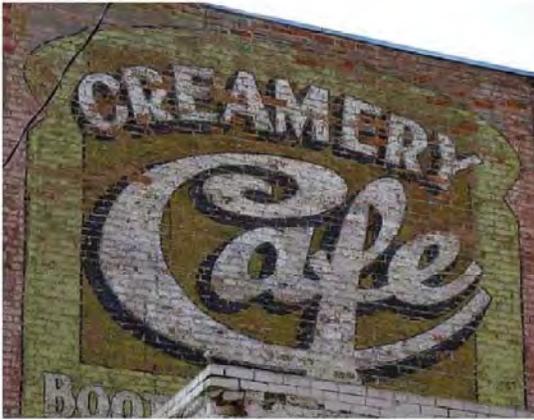
Canopy Type Signs



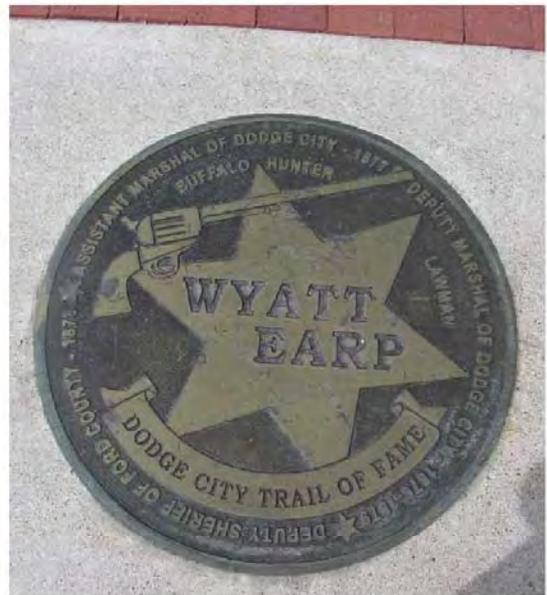
Window Type Signs



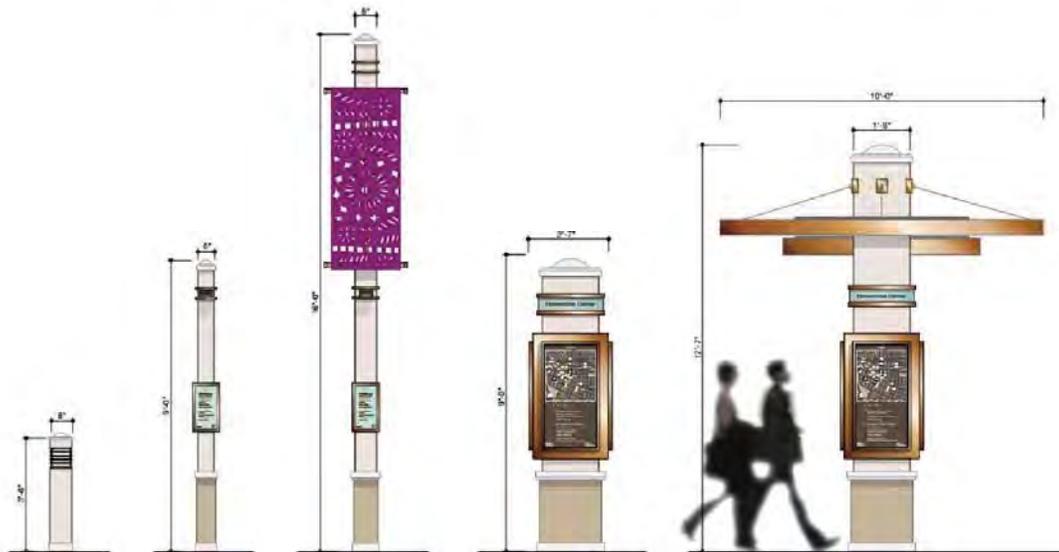
Wall Mural Signs



Site Specific Signs



Wayfinding



SECTION 5 • DESIGN GUIDELINES - SIGNAGE & WAYFINDING



SECTION 6

Design Guidelines - Site Design Landscape & Hardscape

Site Design Guidelines

This section presents design guidelines for site design. The design guidelines are organized into a series of relevant design topics. Within each category, individual policies and design guidelines are presented which the City will use in determining the appropriateness of the work proposed. Note that other standards set forth in the Unified Development Code shall also apply.

Public Streetscape

Fundamentally, streetscape designs should help to establish a sense of visual continuity in an area and they should be compatible with any historic resources found there.



Building and Street Lighting

The character of lighting design and level of intensity of the resulting illumination are key considerations. Traditionally, lights were simple in character and were used to highlight entrances, walkways, and signs. Most fixtures had incandescent lamps that cast a color similar to daylight, were relatively low in intensity, and were shielded with simple shade devices. Although new lamp types may be considered, the overall effect of modest, focused light should be continued.

Mechanical Equipment, Service Areas, and Other Equipment

Utilities that serve properties may include telephone and electrical lines, ventilation systems, gas meters, air conditioners, fire protection, telecommunication and alarm systems. Adequate space for these utilities should be planned in a project from the outset and they should be designed such that their visual impacts are minimized. Service areas for trash and recycling containers and loading facilities

should be carefully planned as an integral part of a site. At the same time, the visual impacts of service areas should be minimized. While solar energy collecting devices might not always be considered as mechanical or service equipment, for the purpose of these Design Guidelines they shall be.

Parking

Public parking lots and garages were not a part of Dodge City's early history. However, cars are a fact of life in the downtown today, and the visual impacts associated with their storage should be carefully planned.

Policy: The public streetscape in Downtown Dodge City should enhance the pedestrian experience without being an obstacle to traffic or commerce.

- The sidewalks, lights, landscaping, and street furnishings all contribute to the pedestrian friendly environment in downtown Dodge City. These elements should be preserved, enhanced, and expanded. Sidewalks vary in construction and quality. While many sidewalks are concrete, some include brick as an accent element, or are completely brick themselves. Curb ramps have also been installed at some corners to facilitate access. Also, while several areas already have amenities in place that enhance the pedestrian experience, additional furnishings should be considered to enhance the area.

6.1 Preserve significant sidewalk features.

- The alignment with other original sidewalks, the street, and overall town grid is of primary importance
- Replace only those portions that are deteriorated beyond repair. Any replacement materials should match the original in color, texture, size, and finish

6.2 When new sidewalks are to be installed, they shall be compatible with the traditional character of the streetscape.

- A new sidewalk should align with those that already exist along a block
- Decorative paving should be used throughout the Downtown Overlay as noted in the

Downtown Master Plan. Such paving shall be of the same design, character, and installation as that already in use by the City in and around the Historic District

- Sidewalks and crosswalks should be consistent with the sidewalk, intersection, and crosswalk designs in the Downtown Master Plan

6.3 Street furniture should be simple in design and historically reminiscent in character.

- Benches, bike racks, planters or pots, statues, and trash receptacles are examples of street furnishings that are appropriate
- Advertising promotions on benches is not allowed under any circumstance
- Individual furnishings should be of designs such that they may be combined with other street furniture in a coherent composition

6.4 Avoid materials that are incompatible with the character of the district.

- Exposed aggregate, plastic, unfinished wood, and polished metal are inappropriate

6.5 Street furniture should be located in areas of high pedestrian activity.

- Locate furniture at pedestrian route intersections and major building entrances and near outdoor gathering places



6.6 Street furnishings should be clustered in "groupings," when feasible.

- Street furnishings and sidewalk displays should not interfere with pedestrian traffic

- For example, use planters and covered or enclosed waste receptacles to frame spaces for benches
- Install benches in high pedestrian traffic areas and/or areas of interest

6.7 Position a bench to provide a sense of comfort.

- Buffer the bench from traffic; for example, position a planter between the bench and the curb
- Avoid locating a bench close to the curb



6.8 Cluster waste receptacles with other furnishings.

- The design of the receptacles should be compatible with other existing furnishings

6.9 When feasible, cluster planters with other furnishings.

- Install freestanding planters on either side of a store entrance, at seating areas, along edges of parking lots, in pedestrian plazas, and in clustered furnishing areas
- A planter should be large enough to be easily seen, but not so large as to cause an obstruction to pedestrian traffic
- Conventional home-style planters, such as those constructed of redwood or ordinary terracotta pottery, as well as over-sized concrete plant tubs are not appropriate

6.10 Outdoor dining and seating areas should be simple in design and compatible with the approved street furniture as detailed in the Downtown Master Plan.

- Furniture and fixtures must not be secured to trees, lampposts, street signs, hydrants, or any other street infrastructure by means of ropes, chains, or any other such devices, whether during restaurant operating hours or at times when the restaurant is closed
- All furniture and fixtures must be maintained in good visual appearance and in a clean condition at all times
- All furniture and fixtures must be durable and of sufficiently sturdy construction as not to blow over with normal winds
- All furniture and fixtures must contribute to the overall atmosphere of the Overlay District and must be complementary in both appearance and quality

6.11 Tables and chairs are allowed without approval of City if they meet the following guidelines. Otherwise, Historic Landmark Commission approval is required based upon the intent of the guidelines.

- Tables and chairs may be colored or of a natural unpainted material (i.e. wood, metal treated to prevent rust, etc.). Tables and chairs are not permitted to be plastic or of any fluorescent or other strikingly bright or vivid color
- Upholstered chairs suitable for outdoor use are permitted, but the upholstery may not be any fluorescent or other strikingly bright or vivid color
- All chairs used within a particular establishment's outdoor seating area must match each other by being of visually similar design, construction, and color
- Other furniture such as serving stations, bar counters, shelves, racks, sofas, televisions, trash receptacles, heaters, and torches are not permitted unless Historic Landmark Commission determines that these items are sufficiently setback or screened from view of the public

6.12 Umbrellas are allowed without approval of a City if they meet the following guidelines. Any proposed umbrella that does not meet the guidelines maybe approved by Historic Landmark Commission if they determine the intent of the guidelines has been met.

- Umbrellas shall be appropriately designed and sized for the location where they will be utilized
- Umbrellas must be free of advertisements and all elements contained within the outdoor dining area, and at the lowest dimension of an extended umbrella must be at least 7 feet above the sidewalk surface and not block the main walking path or create a hazard. Any proposed umbrella signage will need City approval and to be included with the overall sign package for the property
- Any part of an umbrella used in an outdoor seating area may not exceed a height of 120" (10 feet) above the level of the sidewalk
- Umbrellas must blend appropriately with the surrounding built environment. Therefore, umbrella fabric may not be fluorescent or other strikingly bright or vivid colors. In addition, only one fabric color is allowed
- Umbrella fabric must be of a material suitable for outdoor use, and must be canvas-type. No plastic fabrics, plastic/vinyl-laminated fabrics, grass, or rigid materials of any type are permitted for use as umbrellas within an outdoor seating area
- Umbrellas should not block views of building signs or windows, especially those of adjacent properties
- A four foot clear area must be maintained on all sidewalks to allow pedestrian traffic. So, smaller tables and chairs are generally preferred to meet this requirement
- No sidewalk coverings or raised platforms are allowed, unless the outdoor seating area is not located on the sidewalk
- No extra or additional signage is permitted solely as a result of an outdoor seating area. If any signage is proposed it should be included as part of the overall sign package for the property

- Any proposed fence related to an outside eating or sitting area for a nonresidential use is required to have approval

Policy: Using trees and flowering plants is strongly encouraged.

- Trees and flowering plants help provide interest to pedestrians, as well as shaded protection from the summer sun. Therefore, the use of street trees and planters is strongly encouraged



6.13 Use indigenous, native, and drought tolerant plant materials when feasible.

- Locate street trees along edges of sidewalks, maintaining a clearly defined pedestrian travel zone
- Locate street trees in larger planting areas, such as buffer strips adjacent to parking lots and/or pocket parks
- Provide underground irrigation systems where long-term growth will not impact the irrigation system
- Use flowers to provide seasonal colors

6.14 Install new street trees to enhance the pedestrian experience.

- Install new trees where walkway widths permit
- Replace trees that are diseased or have passed their life cycle
- The height of a street tree should be

minimized, however, to avoid blocking views of storefronts and interesting details

6.15 Provide electrical service for string lights in trees.

- Use of string lights should generally be limited to the traditional end of year and New Year holidays and other special occasions where there is a multi-business lighting event scheduled that includes the Downtown Overlay District
- String lights in trees shall not be left in the trees year round to protect the health of the tree
- String lights shall be maintained in appearance and installation
- Unless an approved project by the City, property owners are discouraged from plugging into City owned outlets for personal use of lights
- The use of lights to highlight a building's architecture, canopies, and windows may be appropriate and effective
- Properties are encouraged to provide electrical service for string lights in trees



Policy: Site lighting should be used to enhance the pedestrian experience at night by providing a well-lit environment.

Lighting on a site is important for aesthetics and safety, as well as customer awareness on commercial properties. Traditionally, lights were simple in character and were used to highlight buildings, signs, entrances, first floor details, walkways, and

buildings. Today, the lights are also used to light parking lots. Most fixtures had incandescent lamps that cast a warm color, were relatively low in intensity, and were shielded with simple shade devices. Site lighting should reinforce the visual continuity of downtown. The light fixtures (luminaires) and poles (standards) should be unifying design elements that promote visual interest and variety.

6.16 Use lighting for the following:

- To accent architectural details
- To accent building entrances
- To accent signs
- To illuminate sidewalks and pedestrian routes
- To illuminate parking and service areas, for safety concerns
- To illuminate a state or national flag

6.17 Provide low-scale lighting for pedestrian routes.

- Lighting along the right-of-way should be a combination of pedestrian-scaled street lights and spillover from lights on adjacent buildings. Lighting in this location should be designed to be comfortable to pedestrians
- The position of a lamp in a light fixture on a pedestrian way should not exceed fifteen feet in height

6.18 Streetscape lighting in Area 1- Historic Downtown (Area 1) should be the same as that adopted for use by the City.

6.19 Lighting for parking areas, service areas, buildings, pedestrian routes, and public ways in the area south of Wyatt Earp Blvd (Area 2) shall be shielded to prevent any off-site glare.

- Note that this also applies to parking and service areas in the Downtown Area
- Keep parking area lighting at a human scale

6.20 The light pole, or standard, should be designed to accommodate special decorative accessories.

- In Area 1, mounts for hanging planter baskets and banners, for example, should be included

- In Area 2, the light design should remain simple
- Mounts for seasonal lighting schemes also should be considered

6.21 Minimize the visual impacts of architectural lighting.

- All exterior light sources should have a low level of luminescence
- Wall-mounted flood lamps shall be shielded so that the light source is not visible off-site. Spotlights without shielding devices are not allowed
- Lighting fixtures should be appropriate to the building and its surroundings in terms of style, scale, and intensity of illumination
- Wall-mounted light fixtures should not extend above the height of the wall to which they are mounted

6.22 Minimize the use of non-standard lighting Downtown.

- The use of individual decorative lighting shall not be used outside of the winter holiday season
- Window/door border lighting inside a building is inappropriate

Landscape Features

In the commercial core, landscape designs were historically simple, while a variety of site features appeared in the residential parts of downtown. Wood and metal fences often defined property boundaries. Concrete and brick paved sidewalks were popular and lined many streets. A variety of plantings, including trees, lawns, and shrubbery also occurred. Each of these elements, along with paths, trails, and streams contributed to the historic character of the city. They also added variety in scale, texture, and materials to the street scene, providing interest and shade to pedestrians.

Landscaping shall be comprised of native trees, shrubs, and grasses to resemble plantings found in the country climate of Dodge City. The design will comprise of low maintenance plant cultivars and a xeriscape approach to irrigation coverage. Smaller, ornamental trees shall provide color without sacrificing views of tenants. Splashes of color will be found in annual plantings at entrance thresholds as well as large decorative pots marching along the pedestrian walkways.

Plant Palette

Keeping with the Historic Dodge City Theme, plant materials shall be reminiscent of what one would find in that part of the country, yet hardy enough to survive the winter. Grasses, flowering trees, and colorful perennials shall be used in conjunction with larger shade trees providing shade for parking and pedestrian areas. All landscape material shall meet The American Standard for Nursery Stock (ANSI z60.1-current edition) per The American Association of Nurserymen. The Master Plant Palette is a general reference, outlining accepted plant material. Approved equals (i.e. alternates/substitutions) shall be determined through the preliminary design review process.

Lawn Areas

Manicured lawn areas shall be designed for areas that are easily accessed for maintenance. These areas should be limited to the main public rights of-way, perimeter landscape areas adjacent to buildings and special interest areas within the development. Turf shall not be used on parking medians or islands.

- Landscaping shall be used to distinguish access points, to break up parking, and to define pedestrian access and spaces.
- Landscaping should screen and orient the pedestrian environment.
- A mix of deciduous shade trees and shrubs shall be planted in landscape islands to visually soften views and provide shade.

- Where adjacent to streets, the perimeter of parking lots shall be landscaped with low plant material to provide a visual screen.
- Head-in parking spaces adjacent to streets shall be screened using either: – 30" high earthen berm. Dense shrub plantings at a minimum of 4' o.c.
- Landscaped parking islands and medians shall constitute a minimum of 15% of the overall parking area.
- Trash, service, and loading areas shall be screened from streets, open areas, and pedestrian corridors. Where adjacent to a public right of way or residential areas, a 6' ht. masonry wall designed to be an integral and complementary extension of the building shall be used.

Landscape - Grasses



Northwind Switchgrass



Cassion Fountaingrass



Prairie Dropseed



Shenandoah Switchgrass

Site Furnishings



Bench and Bollards



Benches with Back



Trach Recepticle



Tree Grate

EXHIBIT H

Insurance Specifications

1. Worker's Compensation (as applicable). RCP and Rib Crib may self-insure, to the extent allowed by applicable law. The self-insured retention shall be that which is standard in the industry. RCP and Rib Crib will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. If self-insurance is not available under applicable state law, coverage will be purchased in accordance with the statutory requirements.
2. Comprehensive General Liability. RCP and Rib Crib will purchase and maintain with primary limits of not less than \$2,000,000.
3. Automobile Liability (as applicable). RCP and Rib Crib will purchase and maintain with primary limits of not less than \$1,000,000.
4. Excess Liability. RCP and Rib Crib will purchase and maintain excess liability insurance in an amount not less than \$3,000,000.
5. Special Perils Form Property Insurance. RCP and Rib Crib will purchase on a replacement cost basis. Deductibles and limits will be standard to those in the industry, and the policy shall include an "Agreed Amount" endorsement. Earthquake and flood insurance, as well as fired vessel, boiler and machinery, and underground collapse, may be required by the City as additional perils, but only to the extent required by RCP's and/or Rib Crib's lender for the Project.

EXHIBIT I

LBE PARTICIPATION AGREEMENT – RIB CRIB (CONSTRUCTION OF IMPROVEMENTS)

THIS LBE PARTICIPATION AGREEMENT (the “**Agreement**”), by and among the City of Dodge City, Kansas (the “**City**”); Dodge City Rib Crib, LLC (the “**Rib Crib**”); and RCP Development, LLC (“**RCP**”), sets forth procedures and goals for the utilization of local business, minority and women enterprises in connection with the development of the retail Project in Dodge City, Kansas described in Section 2.3 of the Development Agreement (the “**Project**”), as defined below.

I. SCOPE

A. These procedures are applicable to the construction of the Project, as further described in that certain Development Agreement among the City, Rib Crib and RCP, dated _____, 2019 (the “**Development Agreement**”), whether performed by or on behalf of Rib Crib/RCP, including, but not limited to, all aspects of Construction of the Project and related facilities including labor, materials and supplies, and construction related services whether undertaken by or on behalf of Rib Crib/RCP, but not including Specialized Services.

II. DEFINITIONS

A. “**Construction**” means all aspects of the construction including labor, materials and supplies, and construction related services, whether performed or contracted for by or on behalf of Rib Crib and/or RCP.

B. “**Contractor**” means the Proposer selected by the Rib Crib/RCP for the Project.

C. “**Local Business Enterprise**” (or “**LBE**”) means a business headquartered or which maintains a Substantial Local Office that performs the significant functions of the business in Ford County or a business of which at least 51% of the stock, equity, or beneficial interest is owned, held, or controlled and whose day-to-day management is under the control of an individual residing in Ford County. There is no formal certification process for LBE designation and it is determined and assigned based upon the criteria referenced in this definition and payment of all applicable Ford County taxes and/or licensing fees.

D. “**Project**” means the Construction of a new apartment complex and as legally described in Exhibit 1 to this Agreement.

F. “**Proposer**” means a construction firm that submits a proposal in response to a solicitation for proposals issued by Rib Crib/RCP with respect to the Construction of the Project or with respect to the annual operations of the Project.

G. “**Specialized Services**” means expertise, services, or products that are only available through sole source providers or national vendors, or are unique to the business of the Project.

H. “**Substantial Local Office**” means an office operated and financially supported by a firm that has sufficient space, staff and equipment to carry on the local business of the firm and that is engaged in significant, on-going local involvement with the business community in the City of Dodge City, Kansas. The term “Substantial Local Office” shall specifically exclude any office that has been established for the sole purpose of participating in a specific Project.

III. GOALS FOR LBE/MBE/WBE PARTICIPATION.

Rib Crib/RCP and its Contractor will use their respective best efforts to meet the LBE participation percentage goals listed in the below chart based upon the total cost of the Project. In no event shall Rib Crib/RCP be required to incur higher costs as a result of its commitment to attempt to meet such goals. These goals are not quotas or set asides.

Business Category	Participation Percentage Goal – Percentage of Total Construction Cost for the Project
LBE	20%

It is the intent of the City to give preference to the utilization of LBEs so long as all other factors relating to the award of an individual contract are equal. If the factors relating to an award of an individual contract are equal, the Rib Crib/RCP shall give preference to the utilization of LBEs over others.

IV. INTENTIONALLY OMITTED

V. CONSTRUCTION UTILIZATION

A. The goals set forth in Section III may be met by the expenditure of dollars with approved LBE businesses, contractors, labor suppliers, regular dealers, manufacturers, material suppliers, subcontractors, software vendors, consultants, other Construction-related products, suppliers, and/or services, or through joint ventures with approved LBEs.

B. A joint venture involving an LBE as a partner may be counted towards the applicable goal only to the extent of the dollar amount for which the approved LBE is responsible; provided that if the LBE is the majority partner in such joint venture, then the entire joint venture contract amount shall be counted, less any work subcontracted to the non-LBE joint venture partner. To receive credit, the LBE must be responsible for a clearly defined portion of the work, profits, risks, assets, and liabilities of the joint venture.

C. The LBE must be responsible for the execution of a distinct element of the work by actually performing, managing, or supervising its function in the work identified in the agreement with such LBE. Brokering is not credited.

VI. CONTRACT AWARD COMPLIANCE PROCEDURES

A. **Solicitation Documents.** The solicitation documents, for each contract for which goals are established, shall contain a description of the requirements set forth in this Agreement and the LBE goals. Upon request by the City, Rib Crib/RCP shall submit the solicitation documents and the bid list to the City.

B. **Subcontractor Relations - Documentation of Subcontracting Agreements.** All subcontracting services for LBE businesses shall be evidenced by an agreement which shall include the scope of work to be performed and the amount to be paid for performance of the work. Unit price subcontracts are acceptable if appropriate to the type of work being performed.

VII. THE CITY’S ASSISTANCE TO PROJECT

The City shall use its best efforts to provide assistance to Rib Crib/RCP and its agents so that Rib Crib and/or RCP may fulfill its participation goals as set forth in this Agreement. Rib Crib/RCP assumes

all responsibility for its efforts in meeting the goals and complying with the procedures and processes set forth herein. Examples of such assistance by the City include but are not limited to:

- A. providing information and technical assistance regarding this Project to the Rib Crib/RCP and its agents including the Contractor and any other contractors, subcontractors, LBEs, officials and other interested persons;
- B. assisting with identifying potential LBEs;
- C. frequently reviewing Rib Crib/RCP and the Contractor and any other contractor or subcontractor performance and LBE participation on the Project;
- D. providing advice relative to utilization and compliance matters;
- E. conducting compliance reviews and audits of LBE participation;
- F. assisting the Rib Crib/RCP and its agents in addressing issues related to the goals and procedures set forth in this Agreement;
- G. reviewing complaints from LBEs, and any other interested persons regarding these goals and procedures with Rib Crib/RCP and its agents; and
- H. assisting in Rib Crib's/RCP's development of forms to document compliance with these procedures.

VIII. RIB CRIB/RCP COMPLIANCE; RECORDS AND REPORTS.

A. **Records.** Rib Crib/RCP shall maintain those records as may reasonably be required to demonstrate compliance with the goals and procedures set forth in this Agreement. These records shall be made available to the City at Rib Crib's/RCP's offices during business hours and upon reasonable advance notice.

B. **Construction Utilization Plan Reports.** Rib Crib/RCP shall provide the City with information sufficient to document the participation under this Agreement, which may include periodically providing the Construction Utilization Plan as set forth on Exhibit 2. Such information may include for each LBE whose participation is utilized by Rib Crib/RCP to be applied to the goals set forth herein: business name and address of each LBE; and a brief description of the work to be performed by each such LBE.

C. **Remedies.** If, after review of the Rib Crib's/RCP's construction and related reports by the City, the City determines that the participation goals contained in this Agreement have not been met, then the City shall have such remedies as set forth in Section 9.2 of the Development Agreement.

THE CITY OF DODGE CITY, KANSAS

By: _____
Name: _____
Title: _____
Date: _____

DODGE CITY RIB CRIB, LLC

By: _____
Name: _____
Title: _____
Date: _____

RCP DEVELOPMENT, LLC

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT 1
Legal Description of Project

EXHIBIT 2
Construction Utilization Plan

EXHIBIT J

Prohibited Uses

The City, Rib Crib and RCP hereby expressly understand and agree that the nature of the retail uses for the Site were critical to the City's decision to convey the Rib Crib Property to RCP and the Remaining Space Property to RCP. Accordingly, the parties hereby agree that the following uses shall be prohibited within any portion of the Site during the Term of this Agreement:

- (i) Any use which is relocated to the Site from another site within the City.
- (ii) Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of the shopping center. No oil, gasoline or flammable liquid shall be stored within the Site.
- (iii) A car wash.
- (iv) A facility primarily used as a storage warehouse operation, mini-warehouse, or freight terminal.
- (v) Any pawn shop or flea market.
- (vi) Any store selling discounted tobacco products or tobacco-smoking paraphernalia, including without limitation, smokeless cigarettes, electronic and vapor-smoking devices and ancillary products.
- (vii) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located within the Site.
- (viii) Pay-day or title loan facilities.
- (ix) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an owner of any portion within the Site to determine its own selling prices nor shall it preclude second-hand sales or the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted).
- (x) Any central laundry, or laundromat.
- (xi) Any automobile, truck, trailer or recreational vehicle dealership with outside sales, leasing, or display.
- (xii) Any body shop repair operation, engine repair or vehicle repair facility for all vehicles, including motorcycles.
- (xiii) Any establishment selling or exhibiting sexually oriented materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially-clothed dancers or wait staff; except that this provision shall not be deemed to preclude the operation within the Site of either a nationally or regionally recognized book store, or a drug

store or pharmacy, or a department within a retail store offering for sale its usual or customary inventory of books, magazines and/or related pharmaceutical materials.

(xiv) Any seasonal tax preparation facilities.

(xv) Any precious metals facilities, except for and excluding high quality jewelry stores that purchase precious metals as an ancillary part of their business operations.

(xvi) Any use which is not retail or a restaurant.

The City's Commission may grant variances to the restrictions set forth in this **Exhibit J** from time to time in its sole and absolute discretion.