

# **CITY COMMISSION MEETING AGENDA**

Monday, April 20, 2020

7:00 p.m.

MEETING #5154

This will be an entirely virtual meeting. There are three options to watch and listen to the meeting.

1. Watch live on our Facebook page at [www.facebook.com/cityofdodgecity](http://www.facebook.com/cityofdodgecity)
2. Watch live on Zoom Webinars at <https://zoom.us/j/93782915427>
3. Or for those without internet access or would prefer audio only, call into one of the following numbers: +1 669 900 6833 or +1 346 248 7799 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782  
And use Webinar ID: 937 8291 5427

## **CALL TO ORDER**

## **ROLL CALL**

## **INVOCATION BY**

## **PLEDGE OF ALLEGIANCE**

## **APPROVAL OF AGENDA**

## **PETITIONS & PROCLAMATIONS**

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

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, April 6, 2020,
2. Approval of Special City Commission Meeting, April 13, 2020,
3. Appropriation Ordinance No.7 April 20, 2020;
4. Cereal Malt Beverage License:
  - a. Kwik Shops, 1800 Central Avenue, 1500 W. Wyatt Earp Blvd.
5. Approval of supplemental Agreement #3 with PEC for the NBP Force Main and Sampling Project.
6. Approval of Airport Lease with TSA (Transportation Security Administration),
7. Approval of Airport Lease with Sky West Airlines,

## **ORDINANCES & RESOLUTIONS**

**Resolution No. 2020-08:** A Resolution of the City of Dodge City, Kansas, Authorizing Certain Public Improvements and Providing for the Payment of the Costs Thereof. Report by Finance Director, Nicole May.

**Resolution No. 2020-09:** A Resolution Authorizing and Providing for the Construction of Improvements to an Existing Public Building in the City of Dodge City, Kansas; Providing for the Payment of the Costs Thereof. Report by Finance Director, Nicole May.

**Resolution No. 2020-10:** A Resolution of the City of Dodge City, Kansas, Authorizing Certain Public Improvements and Providing for the Payment of the Costs Thereof. Report by Finance Director, Nicole May.

## **UNFINISHED BUSINESS**

### **NEW BUSINESS**

1. Approval to Reject Bids for the 2020 Asphalt Street Projects. Report by Director of Engineering, Ray Slattery.
2. Approval to Reject Quotes for the Wyatt Earp Blvd. Striping Project. Report by Director of Engineering, Ray Slattery.
3. Approval of Design Services for Iron Rd. and the Iron & 6th Ave. Intersection. Report by Director of Engineering, Ray Slattery.
4. Approval of Change Order #4 for Central Avenue Reconstruction Project. Report by Director of Engineering, Ray Slattery.
5. Approval of the CDBG Local Revolving Loan Fund Requests. Report by Executive Director of Dodge City/Ford County Development Corporation, Joann Knight.
6. Approval of Consulting Services for Phase IV, Levee Accreditation. Report by Director of Engineering, Ray Slattery.

## **OTHER BUSINESS**

### **ADJOURNMENT**

**CITY COMMISSION MEETING MINUTES**

City Hall Commissioner Chambers

You can watch the meeting at

[www.facebook.com/cityofdodgecity](http://www.facebook.com/cityofdodgecity) or <https://zoom.us/j/529604997>

Monday, April 6, 2020

7:00 p.m.

MEETING #5152

**CALL TO ORDER**

**ROLL CALL:** Mayor Joyce Warshaw, Commissioners Kent Smoll, Joseph Nuci, Brian Delzeit, and Rick Sowers were present

**INVOCATION by**

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA**

**PETITIONS & PROCLAMATIONS**

Mayor Joyce Warshaw read the Child Abuse Prevention Month Proclamation and proclaimed the month of April 2020 as Child Abuse Prevention Month.

Mayor Joyce Warshaw read the Fair Housing Month and proclaimed the month of April as Fair Housing 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**

1. Approval of City Commission Minutes, March 16, 2020;
2. Appropriation Ordinance No.6, April 6, 2020;
3. Cereal Malt Beverage License:  
Quick Pick, Inc., 2501 Central Avenue,
4. Ratification of Murfin Property Lease Agreement.

Commissioner Brian Delzeit moved to approve the Consent Calendar as presented. Commissioner Kent Smoll seconded the motion. The motion carried 5 - 0.

**ORDINANCES & RESOLUTIONS**

**UNFINISHED BUSINESS**

**NEW BUSINESS**

1. Commissioner Rick Sowers moved to approve Phase 1 of design development for engineering services with SMH Consultants in the amount of \$42,890 for 6<sup>th</sup>/7<sup>th</sup> Ave. Realignment Design. Commissioner Brian Delzeit seconded the motion. The motion carried 5 – 0.
2. Commissioner Kent Smoll moved to approve the bid from Building Solutions, LLC in the amount of \$91,240 for Memorial Stadium sewer repairs in the south parking lot. Commissioner Joseph Nuci seconded the motion. The motion carried 5 - 0.
3. Commissioner Joseph Nuci moved to approve the final Plat Application for Candletree Unit 6 Plat. Commissioner Brian Delzeit seconded the motion. The motion carried 5 – 0.
4. Commissioner Kent Smoll moved to approve the final Plat Application for Wagon Wheel Unit 3 Plat. Commissioner Rick Sowers seconded the motion. The motion carried 5 – 0.

**OTHER BUSINESS**

Staff Reports

**ADJOURNMENT**

Commissioner Brian Dezleit made a motion to adjourn the meeting. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

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Joyce Warshaw, Mayor

ATTEST:

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Connie Marquez, City Clerk

## **SPECIAL CITY COMMISSION MEETING MINUTES**

This will be an entirely virtual meeting

Thursday, April 16, 2020, 8:00 am

Meeting 5153

**There are three options to watch and listen to the meeting.**

1. Watch live on our Facebook page at [www.facebook.com/cityofdodgecity](http://www.facebook.com/cityofdodgecity)
2. Watch live on Zoom Webinars at <https://zoom.us/j/94828609770>
3. For those without internet access, or would prefer audio only, call in to one of the following numbers: 1-346-248 7799; 1-669-900-6833; 1-312-626-6799; 1-929-205-6099; 1-253-215-8782; 1-301-715-8592 – and use Webinar ID: 948 2860 9770

### **CALL TO ORDER**

**ROLL CALL:** Mayor Joyce Warshaw, Commissioners Kent Smoll, Joseph Nuci, Brian Delzeit, and Rick Sowers were present

### **NEW BUSINESS**

**Resolution 2020-06:** A Resolution of the Governing Body of the City of Dodge City Kansas Determining that the City is Considering Establishing a Rural Housing Incentive District Within the City and Adopting a Plan for the Development of Housing and Public Facilities in Such Proposed District, Establishing the Date and Time of a Public Hearing on Such Matter and Providing for the Giving of Notice on Such Public Hearing (Wagon Wheel #3) was approved on a motion by Commissioner Brian Delzeit. Commissioner Kent Smoll seconded the motion. The motion carried 5 - 0.

**Resolution 2020-07:** A Resolution of the Governing Body of the City of Dodge City Kansas Determining that the City is Considering Establishing a Rural Housing Incentive District Within the City and Adopting a Plan for the Development of Housing and Public Facilities in Such Proposed District, Establishing the Date and Time of a Public Hearing on Such Matter and Providing for the Giving of Notice on Such Public Hearing. (Candletree #6) was approved on a motion by Commissioner Kent Smoll, Commissioner Joe Nuci seconded. The motion carried 5 - 0.

### **ADJOURNMENT**

Commissioner Joe Nuci made a motion to adjourn the meeting. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

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Joyce Warshaw, Mayor

ATTEST:

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Connie Marquez, City Clerk

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): 00486112339 F01

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

Name of Corporation <u>KWIK SHOP, INC.</u>		Principal Place of Business	
Corporation Street Address <u>734 EAST 4th</u>		Corporation City <u>HUTCHINSON</u>	State <u>KS</u>
Date of Incorporation <u>04/01/1960</u>		Zip Code <u>67501</u>	
Resident Agent Name		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Residence Street Address		Phone No.	
City		State	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>Kwik Shop #762</u>		Name <u>Kwik Shop, Inc.</u>	
Business Location Address <u>1811 Central</u>		Address <u>165 Flanders Road</u>	
City <u>Dodge City</u>	State <u>KS</u>	City <u>Westborough, MA</u>	State <u>01581</u>
Zip <u>67801</u>		Zip	
Business Phone No. <u>620-227-8871</u>		<input checked="" type="checkbox"/> Applicant owns the proposed business location. <input type="checkbox"/> Applicant does not own the proposed business location.	
Business Location Owner Name(s) <u>Testimonial Trust / Melba Swaim - 114 Carefree Lane, Dodge City, KS 67801</u>			

**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	Position	Date of Birth	
<u>The Kroger Co.</u>			
Residence Street Address <u>1014 Vine Street</u>	City <u>Cincinnati</u>	State <u>OH</u>	Zip Code <u>45207</u>
Spouse Name	Position	Date of Birth	
Residence Street Address	City	State	Zip Code
Name	Position	Date of Birth	
Residence Street Address	City	State	Zip Code
Spouse Name	Position	Age	
Residence Street Address	City	State	Zip Code
Name	Position	Date of Birth	
Residence Street Address	City	State	Zip Code
Spouse Name	Position	Age	
Residence Street Address	City	State	Zip Code

# 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): 00486 112339F01

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

Name of Corporation <b>KWIK SHOP, INC.</b>		Principal Place of Business	
Corporation Street Address <b>734 EAST 4th</b>		Corporation City <b>HUTCHINSON</b>	State <b>KS</b>
Date of Incorporation <b>04/01/1960</b>		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name		Phone No.	
Residence Street Address	City	State	Zip Code

## SECTION 3 - LICENSED PREMISE

Licensed Premise (Business Location or Location of Special Event)	Mailing Address (If different from business address)
DBA Name <b>Kwik Shop #703</b>	Name <b>Kwik Shop, Inc.</b>
Business Location Address <b>1500 W Wyatt Earp</b>	Address <b>165 Flanders Road</b>
City <b>Dodge City, KS</b>	City <b>Westborough MA</b>
State <b>KS</b>	State <b>MA</b>
Zip <b>67801</b>	Zip <b>01581</b>
Business Phone No. <b>620-669-8504</b>	<input checked="" type="checkbox"/> Applicant owns the proposed business location. <input type="checkbox"/> Applicant does not own the proposed business location.
Business Location Owner Name(s) <b>Dillon Real Estate - Hutchinson, KS</b>	

## 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 <b>The Kroger Co.</b>	Position	Date of Birth
Residence Street Address <b>1014 Vine Street</b>	City <b>Cincinnati</b>	State <b>OH</b>
Spouse Name	Position	Zip Code <b>45207</b>
Residence Street Address	City	Date of Birth
Residence Street Address	City	State
Residence Street Address	City	Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State
Residence Street Address	City	Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State
Residence Street Address	City	Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State
Residence Street Address	City	Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State
Residence Street Address	City	Zip Code

## *Memorandum*

*To: City Manager  
City Commissioners*

*From: Kelli Enlow*

*Date: April 20, 2020*

*Subject: TSA Lease Agreement*

*Agenda Item: Consent Calendar*

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**Recommendation:** To enter into agreement with Transportation Security Administration (TSA) to lease office space in the terminal building.

**Justification:** Attached is the signed lease agreement with TSA. They have agreed to the terms, to lease four hundred ten (410) square feet of upstairs office space at the airport terminal building for a period of fifteen years, five years firm. The amount of the lease is \$521.49 monthly fee for the terminal space. The lease is superseding their previous lease.

The lease will become effective as of April 21, 2020 and end on April 21, 2025. Signatures of both parties will activate the lease. TSA and I have already agreed to the terms and have signed the document. The Commissions approval will complete the process.

**Financial Considerations:** Transportation Security Administration will pay the City a \$521.26 monthly fee for the five year term.

**Legal Considerations:** Legal has reviewed the documents and is in agreement with the terms.

# LEASE NO. GS-06P-LKS00332

On-Airport Lease  
GSA FORM L201D (October 2019)

This Lease is made and entered into between

## The City of Dodge City

The City of Dodge City, whose principal place of business is 806 N. 2<sup>nd</sup> Ave Dodge City, Kansas 67801-4411 United States and whose interest in the Property described herein is that of Fee Owner, and

The United States of America

(Government), acting by and through the designated representative of the General Services Administration (GSA), upon the terms and conditions set forth herein.

Witnesseth: The parties hereto, for the consideration hereinafter mentioned, covenant and agree as follows:

Lessor hereby leases to the Government the Premises described herein, being all or a portion of the Property located at

**Dodge City Regional Airport  
100 Airport Road  
Dodge City, KS 67801**

and more fully described in Section 1, together with rights to the use of parking and other areas as set forth herein, to be used for such purposes as determined by GSA.

## LEASE TERM

To Have and To Hold the said Premises with its appurtenances for the term beginning upon acceptance of the Premises as required by this Lease and continuing for a period of

**15 Years, 5 Years Firm,**

subject to termination and renewal rights as may be hereinafter set forth. The commencement date of this Lease, along with any applicable termination and renewal rights, shall be more specifically set forth in a Lease Amendment upon substantial completion and acceptance of the Space by the Government.

In Witness Whereof, the parties to this Lease evidence their agreement to all terms and conditions set forth herein by their signatures below, to be effective as of the date of delivery of the fully executed Lease to the Lessor.

## FOR THE LESSOR:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Entity: \_\_\_\_\_  
Date: \_\_\_\_\_

## FOR THE GOVERNMENT:

\_\_\_\_\_  
Name: Nick Freeman  
Title: Lease Contracting Officer  
General Services Administration, Public Buildings Service  
Date: \_\_\_\_\_

## WITNESSED FOR THE LESSOR BY:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The information collection requirements contained in this Solicitation/Contract, that are not required by the regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

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## SECTION 1 THE PREMISES, RENT, AND OTHER TERMS

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### 1.01 THE PREMISES (SEP 2015)

The Premises are described as follows:

- A. Office and Related Space: **410** rentable square feet (RSF), yielding **410** ANSI/BOMA Office Area (ABOA) square feet (SF) of office and related Space located on the **2<sup>nd</sup>** floor.
- B. Common Area Factor: The Common Area Factor (CAF) is established as **1.00**. This factor, which represents the conversion from ABOA to rentable square feet, rounded to the nearest whole percentage, shall be used for purposes of rental adjustments in accordance with the Payment Clause of the General Clauses.

### 1.02 EXPRESS APPURTENANT RIGHTS (SEP 2013)

The Government shall have the non-exclusive right to the use of Appurtenant Areas, and shall have the right to post Rules and Regulations Governing Conduct on Federal Property, Title 41, CFR, Part 102-74, Subpart C within such areas. The Government will coordinate with Lessor to ensure signage is consistent with Lessor's standards. Appurtenant to the Premises and included in the Lease are rights to use the following:

- A. Parking: **0** parking spaces reserved for the exclusive use of the Government, of which **0** shall be structured/inside parking spaces and **0** shall be surface/outside parking spaces. In addition, the Lessor shall provide such additional parking spaces as required by the applicable code of the local government entity having jurisdiction over the Property.
- B. Intentionally Deleted

### 1.03 RENT AND OTHER CONSIDERATION (ON-AIRPORT) (OCT 2019)

- A. The Government shall pay the Lessor annual rent payable monthly in arrears at the following rates:

	Years 1-15	
	Annual Rent	Annual Rate / RSF
Shell Rental Rate	\$4,100.00	\$10.00
Operating Costs	\$2,157.88	\$5.263121
<b>Full Service Rate</b>	<b>\$6,257.88</b>	<b>\$15.263121</b>

- B. Intentionally Deleted
- C. Intentionally Deleted
- D. Rent is subject to adjustment based upon a mutual measurement of the Space upon acceptance, not to exceed **410** ABOA SF. based upon the methodology outlined under the "Payment" clause of GSA Form 3517.
- E. Intentionally Deleted
- F. If the Government occupies the Premises for less than a full calendar month, then rent shall be prorated based on the actual number of days of occupancy for that month.
- G. Rent shall be paid to Lessor by electronic funds transfer (EFT) in accordance with the provisions of the General Clauses. Rent shall be payable using the EFT information contained in the System for Award Management (SAM). In the event the EFT information changes, the Lessor shall be responsible for providing the updated information to SAM. Failure by the Lessor to maintain an active registration in SAM may result in delay of rental payments until such time as the SAM registration is activated. This registration service is free of charge.
- H. The Lessor shall provide to the Government, in exchange for the payment of rental and other specified consideration, the following:
- The leasehold interest in the Property described herein in the paragraph entitled "The Premises,"
  - Intentionally Deleted
  - Performance or satisfaction of all other obligations set forth in this Lease; and,
  - All services, utilities, and maintenance required for the proper operation of the Property, the Building, and the Premises in accordance with the terms of the Lease, including, but not limited to, all inspections, modifications, repairs, replacements, and improvements required to be made thereto to meet the requirements of this Lease.

**1.04 TERMINATION RIGHTS (ON-AIRPORT) (SEP 2013)**

A. The Government may terminate this Lease, in whole or in part, at any time during the term of this lease with **30** days' prior written notice to the Lessor if (i) regularly scheduled commercial air services cease, (ii) the airport opts to replace TSA screeners with private contractors, (iii) the checkpoint supported by the leased Space is closed, or (iv) the Government reduces its presence at the airport due to a reduction in enplanements. The effective date of the termination shall be the day following the expiration of the required notice period or the termination date set forth in the notice, whichever is later. No rental shall accrue after the effective date of termination.

B. Intentionally Deleted

**1.05 RENEWAL RIGHTS (OCT 2016) INTENTIONALLY DELETED**

**1.06 DOCUMENTS INCORPORATED IN THE LEASE (ON-AIRPORT) (OCT 2019)**

The following documents are attached to and made part of the Lease:

DOCUMENT NAME	NO. OF PAGES	EXHIBIT
GSA Form 3517B, General Clauses	17	A
Covered Telecommunications Equipment or Services Representation	2	B

**1.07 OPERATING COST BASE (OCT 2016)**

The parties agree, for the purpose of applying the paragraph titled "Operating Costs Adjustment," that the Lessor's base rate for operating costs shall be **\$5.263121** per RSF.

**1.08 LESSOR'S DUNS NUMBER (OCT 2017)**

Lessor's Dun & Bradstreet DUNS Number: **073316721**.

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## SECTION 2 GENERAL TERMS, CONDITIONS, AND STANDARDS

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### 2.01 DEFINITIONS AND GENERAL TERMS (OCT 2016)

Unless otherwise specifically noted, all terms and conditions set forth in this Lease shall be interpreted by reference to the following definitions, standards, and formulas:

- A. Appurtenant Areas. Appurtenant Areas are defined as those areas and facilities on the Property that are not located within the Premises, but for which rights are expressly granted under this Lease, or for which rights to use are reasonably necessary or reasonably anticipated with respect to the Government's enjoyment of the Premises and express appurtenant rights.
- B. Broker. If GSA awarded this Lease using a contract real estate broker, Broker shall refer to GSA's broker.
- C. Building. Building(s) situated on the Property in which the Premises are located .
- D. Commission Credit. If GSA awarded this Lease using a Broker, and the Broker agreed to forego a percentage of its commission to which it is entitled in connection with the award of this Lease, the amount of this credit is referred to as the "Commission Credit."
- E. Common Area Factor. The "Common Area Factor" (CAF) is a conversion factor determined by the Building owner and applied by the owner to the ABOA SF to determine the RSF for the leased Space. The CAF is expressed as a percentage of the difference between the amount of rentable SF and ABOA SF, divided by the ABOA SF. For example 11,500 RSF and 10,000 ABOA SF will have a CAF of 15% [(11,500 RSF-10,000 ABOA SF)/10,000 ABOA SF]. For the purposes of this Lease, the CAF shall be determined in accordance with the applicable ANSI/BOMA standard for the type of space to which the CAF shall apply.
- F. Contract. Contract shall mean this Lease.
- G. Contractor. Contractor shall mean Lessor.
- H. Days. All references to "day" or "days" in this Lease shall mean calendar days, unless specified otherwise.
- I. FAR. All references to the FAR shall be understood to mean the Federal Acquisition Regulation, codified at 48 CFR Chapter 1.
- J. Firm Term/Non-Firm Term. The Firm Term is that part of the Lease term that is not subject to termination rights. The Non-Firm Term is that part of the Lease term following the end of the Firm Term.
- K. GSAR. All references to the GSAR shall be understood to mean the GSA supplement to the FAR, codified at 48 CFR Chapter 5.
- L. Lease Term Commencement Date. The date on which the Lease term commences.
- M. Lease Award Date. The date the LCO executes the Lease and mails or otherwise furnishes written notification of the executed Lease to the successful Offeror (date on which the parties' obligations under the Lease begin).
- N. Premises. The Premises are defined as the total Office Area or other type of Space, together with all associated common areas, described in Section 1 of this Lease, and delineated by plan in the attached exhibit. Parking and other areas to which the Government has rights under this Lease are not included in the Premises.
- O. Property. The Property is defined as the land and Buildings in which the Premises are located, including all Appurtenant Areas (e.g., parking areas) to which the Government is granted rights.
- P. Rentable Space or Rentable Square Feet (RSF). Rentable Space is the area for which a tenant is charged rent. It is determined by the Building owner and may vary by city or by building within the same city. The Rentable Space may include a share of Building support/common areas such as elevator lobbies, Building corridors, and floor service areas. Floor service areas typically include restrooms, janitor rooms, telephone closets, electrical closets, and mechanical rooms. The Rentable Space does not include vertical building penetrations and their enclosing walls, such as stairs, elevator shafts, and vertical ducts. Rentable Square Feet is calculated using the following formula for each type of Space (e.g., office, warehouse, etc.) included in the Premises: ABOA SF of Space x (1 + CAF) = RSF.
- Q. Space. The Space shall refer to that part of the Premises to which the Government has exclusive use, such as Office Area, or other type of Space. Parking areas to which the Government has rights under this Lease are not included in the Space.
- R. Office Area. For the purposes of this Lease, Space shall be measured in accordance with the standard (Z65.1-1996) provided by American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) for Office Area, which means "the area where a tenant normally houses personnel and/or furniture, for which a measurement is to be computed." References to ABOA mean ANSI/BOMA Office Area.
- S. Working Days. Working Days shall mean weekdays, excluding Saturdays and Sundays and Federal holidays.

## **2.02 AUTHORIZED REPRESENTATIVES (OCT 2016)**

Signatories to this Lease shall have full authority to bind their respective principals with regard to all matters relating to this Lease. No other persons shall be understood to have any authority to bind their respective principals, except to the extent that such authority may be explicitly delegated by notice to the other party, or to the extent that such authority is transferred by succession of interest. The Government shall have the right to substitute its Lease Contracting Officer (LCO) by notice, without an express delegation by the prior LCO.

## **2.03 WAIVER OF RESTORATION (OCT 2018)**

Lessor shall have no right to require the Government to restore the Premises upon expiration or earlier termination (full or partial) of the Lease, and waives all claims against the Government for waste, damages, or restoration arising from or related to (a) the Government's normal and customary use of the Premises during the term of the Lease (including any extensions thereof), as well as (b) any initial or subsequent alteration to the Premises regardless of whether such alterations are performed by the Lessor or by the Government. At its sole option, the Government may abandon property in the Space following expiration or earlier termination (full or partial) of the Lease, in which case the property will become the property of the Lessor and the Government will be relieved of any liability in connection therewith.

## **2.04 OPERATING COSTS ADJUSTMENT (JUN 2012)**

A. Beginning with the second year of the Lease and each year thereafter, the Government shall pay annual incremental adjusted rent for changes in costs for cleaning services, supplies, materials, maintenance, trash removal, landscaping, water, sewer charges, heating, electricity, and certain administrative expenses attributable to occupancy.

B. The amount of adjustment will be determined by multiplying the base rate by the annual percent of change in the Cost of Living Index. The percent change will be computed by comparing the index figure published for the month prior to the Lease Term Commencement Date with the index figure published for the month prior which begins each successive 12-month period. For example, a Lease which commences in June of 2005 would use the index published for May of 2005, and that figure would be compared with the index published for May of 2006, May of 2007, and so on, to determine the percent change. The Cost of Living Index will be measured by the Department of Labor revised Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), U.S. city average, all items, (1982 to 1984 = 100) published by the Bureau of Labor Statistics. Payment will be made with the monthly installment of fixed rent. Rental adjustments will be effective on the anniversary date of the Lease; however, payment of the adjusted rental rate will become due on the first workday of the second month following the publication of the Cost of Living Index for the month prior to the commencement of each 12-month period.

C. In the event of any decreases in the Cost of Living Index occurring during the term of the occupancy under the Lease, the rental amount will be reduced accordingly. The amount of such reductions will be determined in the same manner as increases in rent provided under this paragraph.

D. If the Government exercises an option to extend the Lease term at the same rate as that of the original term, the option price will be based on the adjustment during the original term. Annual adjustments will continue.

## **2.05 RELOCATION RIGHTS (JUN 2012)**

If it becomes necessary in the orderly development of the Airport, Lessor may require the relocation of Premises to other space at the Airport which, in the reasonable judgment of Lessor, is similar and suitable for the purposes for which this Lease is entered as such purposes are set forth herein. Should such relocation be necessary, the Lessor shall provide the Government a minimum of 120 days prior written notice. Lessor shall be responsible for all costs for such relocation, including all costs for moving furniture, office equipment, telephone and data lines, and any other costs associated with replicating necessary operational features provided in the space originally leased. The Airport shall provide such relocated Premises at the same rental rate as the original Premises, unless the new Premises are located in an area for which the Airport charges tenants a lower rate, in which event the parties shall negotiate a reduction in the rental rate.

## **2.06 RECITALS FOR TRANSPORTATION SECURITY ADMINISTRATION (ON-AIRPORT) (JUN 2012)**

A. The Transportation Security Administration (TSA) is required, pursuant to 49 U.S.C. 40101—The Aviation and Transportation Security Act (ATSA), to oversee security measures at the Dodge City Regional Airport.

B. TSA is responsible for airline passenger and baggage screening services at the Airport.

C. The U.S. General Services Administration (GSA), on behalf of TSA, leases certain facilities on the Airport premises for administrative offices and/or break rooms in support of airport passenger and baggage screening services by the TSA.

D. Space for TSA to screen passengers and baggage is expressly excluded from this Lease.

## **2.07 ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY (ON-AIRPORT) (MAY 2015)**

A. The Lessor shall provide floor plans for the Space and a valid Certificate of Occupancy (C of O), issued by the local jurisdiction, for the intended use of the Government. If the local jurisdiction does not issue C of O's or if the C of O is not available, the Lessor may satisfy this condition by providing a report prepared by a licensed fire protection engineer that verifies that the Space complies with all applicable local fire protection and life safety codes and ordinances and all fire protection and life safety-related requirements of this Lease.

B. Neither the Government's acceptance of the Premises for occupancy or acceptance of related appurtenances, nor the Government's occupancy of the Premises, shall be construed as a waiver of any requirement or right of the Government under this lease, or as otherwise prejudicing the Government with respect to any such requirement or right, or as an acceptance of any latent defect or condition.

**2.08 ALTERATIONS PRIOR TO ACCEPTANCE (JUN 2012)**

The Government's rights stated under the General Clause "Alterations" also apply to initial build-out of the Premises.

**2.09 SYSTEM FOR AWARD MANAGEMENT (OCT 2019)**

The Offeror must have an active registration in the System for Award Management (SAM), via the Internet at <HTTPS://WWW.ACQUISITION.GOV>, prior to submission of initial proposals. Registration must be for purposes of "All Awards" and include completion of all required representations and certifications within SAM. Registration must be active throughout the life of the Lease. To remain active, the Offeror/Lessor is required to update or renew its registration annually. The Government will not process rent payments to Lessors without an active registration in SAM. No change of ownership of the leased Premises will be recognized by the Government until the new owner registers in SAM.

**2.10 SECURITY UPGRADES DUE TO IMMEDIATE THREAT (APR 2011)**

The Government reserves the right, at its own expense and with its own personnel, to heighten security in the Building under Lease during heightened security conditions due to emergencies such as terrorist attacks, natural disaster, and civil unrest.

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## SECTION 3 CONSTRUCTION STANDARDS AND SHELL COMPONENTS

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### 3.01 BUILDING SHELL REQUIREMENTS (ON-AIRPORT) (SEP 2013)

- A. The Building Shell shall be designed, constructed, and maintained in accordance with the standards set forth herein and completed prior to acceptance of Space. For pricing, fulfillment of all requirements not specifically designated as operating costs or other rent components as indicated shall be deemed included in the Shell Rent.
- B. Base structure and Building enclosure components shall be complete. All common areas accessible by the Government, such as lobbies, fire egress corridors and stairwells, elevators, garages, and service areas, shall be complete. Restrooms shall be complete and operational. All newly installed Building shell components, including but not limited to, heating, ventilation, and air conditioning (HVAC), electrical, ceilings, sprinklers, etc., shall be furnished, installed, and coordinated with TIs. Circulation corridors are provided as part of the base Building only on multi-tenanted floors where the corridor is common to more than one tenant. On single tenant floors, only the fire egress corridor(s) necessary to meet code is provided as part of the shell.

### 3.02 MEANS OF EGRESS (MAY 2015)

- A. Prior to occupancy, the Premises and any parking garage areas shall meet or will be upgraded to meet, either the applicable egress requirements in the National Fire Protection Association, Life Safety Code (NFPA 101), or the International Code Council, International Building Code (IBC), each current as of the Lease Award Date, or use an alternative approach or method that achieves an equivalent level of safety deemed acceptable by the Government.
- B. The Space shall have unrestricted access to a minimum of two remote exits on each floor of Government occupancy.
- C. Interlocking or scissor stairs located on the floor(s) where Space is located shall only count as one exit stair.
- D. A fire escape located on the floor(s) where Space is located shall not be counted as an approved exit stair.
- E. Doors shall not be locked in the direction of egress unless equipped with special locking hardware in accordance with requirements of NFPA 101 or the IBC.

### 3.03 AUTOMATIC FIRE SPRINKLER SYSTEM (SEP 2013)

- A. Any portion of the Space located below-grade, including parking garage areas, and all areas in a Building referred to as "hazardous areas" (defined in National Fire Protection Association (NFPA) 101) that are located within the entire Building (including non-Government areas) shall be protected by an automatic fire sprinkler system or an equivalent level of safety.
- B. For Buildings in which any portion of the Space is on or above the sixth floor, then, at a minimum, the Building up to and including the highest floor of Government occupancy shall be protected by an automatic fire sprinkler system or an equivalent level of safety.
- C. For Buildings in which any portion of the Space is on or above the sixth floor, and lease of the Space will result, either individually or in combination with other Government Leases in the Building, in the Government leasing 35,000 or more ANSI/BOMA Office Area SF of Space in the Building, then the entire Building shall be protected throughout by an automatic fire sprinkler system or an equivalent level of safety.
- D. Automatic fire sprinkler system(s) shall be installed in accordance with the requirements of NFPA 13, Standard for the Installation of Sprinkler Systems that was in effect on the actual date of installation.
- E. Automatic fire sprinkler system(s) shall be maintained in accordance with the requirements of NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems (current as of the Lease Award Date).
- F. "Equivalent level of safety" means an alternative design or system (which may include automatic fire sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic fire sprinkler systems.

### 3.04 FIRE ALARM SYSTEM (SEP 2013)

- A. A Building-wide fire alarm system shall be installed in the entire Building in which any portion of the Space is located on the 3<sup>rd</sup> floor or higher.
- B. The fire alarm system shall be installed in accordance with the requirements of NFPA 72, National Fire Alarm and Signaling Code that was in effect on the actual date of installation.
- C. The fire alarm system shall be maintained in accordance with the requirements of NFPA 72, National Fire Alarm and Signaling Code (current as of the Lease Award Date).

D. The fire alarm system shall transmit all fire alarm signals to the local fire department via any of the following means: directly to the local fire department, to the (911) public communications center, to a central station, to a remote supervising station, or to a proprietary supervising station.

E. If the Building's fire alarm control unit is over 25 years old as of the Lease Award Date, Lessor shall install a new fire alarm system in accordance with the requirements of NFPA 72, National Fire Alarm and Signaling Code (current as of the Lease Award Date), prior to Government acceptance and occupancy of the Space.

### **3.05 ENERGY INDEPENDENCE AND SECURITY ACT (DEC 2011)**

A. The Energy Independence and Security Act (EISA) establishes the following requirements for Government Leases in Buildings that have not earned the ENERGY STAR® Label conferred by the Environmental Protection Agency (EPA) within one year prior to the due date for final proposal revisions ("most recent year").

B. If this Lease was awarded under any of EISA's Section 435 statutory exceptions, the Lessor shall either:

1. Earn the ENERGY STAR® Label prior to acceptance of the Space (or not later than one year after the Lease Award Date of a succeeding or superseding Lease); or
2. Complete energy efficiency and conservation improvements if any, agreed to by Lessor in lieu of earning the ENERGY STAR® Label prior to acceptance of the Space (or not later than one year after the Lease Award Date of a succeeding or superseding Lease).

C. If this Lease was awarded to a Building to be built or to a Building predominantly vacant as of the due date for final proposal revisions and was unable to earn the ENERGY STAR® label for the most recent year (as defined above) due to insufficient occupancy, but was able to demonstrate sufficient evidence of capability to earn the ENERGY STAR® label, then Lessor must earn the ENERGY STAR® label within 18 months after occupancy by the Government.

### **3.06 ACCESSIBILITY (FEB 2007)**

The Building, leased Space, and areas serving the leased Space shall be accessible to persons with disabilities in accordance with the Architectural Barriers Act Accessibility Standard (ABAAS), Appendices C and D to 36 CFR Part 1191 (ABA Chapters 1 and 2, and Chapters 3 through 10). To the extent the standard referenced in the preceding sentence conflicts with local accessibility requirements, the more stringent shall apply.

### **3.07 MECHANICAL, ELECTRICAL, PLUMBING: GENERAL (APR 2011)**

The Lessor shall provide and operate all Building equipment and systems in accordance with applicable technical publications, manuals, and standard procedures. Mains, lines, and meters for utilities shall be provided by the Lessor. Exposed ducts, piping, and conduits are not permitted in office Space.

### **3.08 RESTROOMS (ON-AIRPORT) (JUN 2012)**

Government employees shall have access to all public restroom facilities for men and women in the Airport terminal at all times without additional payment.

### **3.09 HEATING, VENTILATION, AND AIR CONDITIONING (ON-AIRPORT) (APR 2011)**

A. Temperatures shall conform to local commercial equivalent temperature levels and operating practices to maximize tenant satisfaction. These temperatures shall be maintained throughout the leased Premises and service areas, regardless of outside temperatures, during the hours of operation specified in this Lease. The Lessor shall perform any necessary systems start-up required to meet the commercially equivalent temperature levels prior to the first hour of each day's operation. At all times, humidity shall be maintained below 60 percent relative humidity.

B. The Lessor shall conduct HVAC system balancing after all HVAC system alterations during the term of the Lease and shall make a reasonable attempt to schedule major construction outside of office hours.

C. Normal HVAC systems maintenance shall not disrupt tenant operations.

**3.10 TELECOMMUNICATIONS: LOCAL EXCHANGE ACCESS (ON-AIRPORT) (SEP 2013)**

- A. The Government may elect to contract its own telecommunications (voice, data, video, Internet, or other emerging technologies) service in the Space. The Government may contract with one or more parties to have inside wiring (or other transmission medium) and telecommunications equipment installed.
- B. The Lessor shall allow the Government's designated telecommunications providers access to utilize existing Building wiring to connect its services to the Government's Space. If the existing Building wiring is insufficient to handle the transmission requirements of the Government's designated telecommunications providers, the Lessor shall provide access from the point of entry into the Building to the Government's floor Space, subject to any inherent limitations in the pathway involved.
- C. The Lessor shall allow the Government's designated telecommunications providers to affix telecommunications antennas (high frequency, mobile, microwave, satellite, or other emerging technologies), subject to weight and wind load conditions, to roof, parapet, or Building envelope as required.

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## SECTION 4 UTILITIES, SERVICES, AND OBLIGATIONS DURING THE LEASE TERM

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### 4.01 SERVICES, UTILITIES, AND MAINTENANCE (ON-AIRPORT) (OCT 2013)

The Lessor is responsible for providing all utilities necessary for base building and tenant operations and all associated costs are included as a part of the established rental rates. The following services, utilities, and maintenance shall be provided by the Lessor as part of the rental consideration (check all that apply):

<input checked="" type="checkbox"/> HEAT	<input checked="" type="checkbox"/> TRASH REMOVAL	<input type="checkbox"/> ELEVATOR SERVICE	<input checked="" type="checkbox"/> INITIAL & REPLACEMENT LAMPS, TUBES & BALLASTS	<input type="checkbox"/> OTHER (Specify below)
<input checked="" type="checkbox"/> ELECTRICITY	<input checked="" type="checkbox"/> CHILLED DRINKING WATER	<input checked="" type="checkbox"/> WINDOW WASHING	<input checked="" type="checkbox"/> PAINTING FREQUENCY	
<input checked="" type="checkbox"/> POWER (Special Equip.)	<input checked="" type="checkbox"/> AIR CONDITIONING	Frequency: <u>See attached Requirements</u>		
<input checked="" type="checkbox"/> WATER (Hot & Cold)	<input checked="" type="checkbox"/> RESTROOM SUPPLIES	<input checked="" type="checkbox"/> CARPET CLEANING	Space: <u>See attached requirements</u>	
<input checked="" type="checkbox"/> SNOW REMOVAL	<input checked="" type="checkbox"/> JANITORIAL SERV. & SUPP.	Frequency: <u>See attached requirements</u>	Public Areas: <u>See attached requirements</u>	

The Lessor shall have an onsite building superintendent or a locally designated representative available to promptly respond to deficiencies, and immediately address all emergency situations.

### 4.02 PROVISION OF SERVICES, ACCESS, AND NORMAL HOURS FOR AIRPORT OCCUPANCIES (SEP 2013)

The Government shall have access to the Premises and its Appurtenant Areas at all times without additional payment, including the use, during other than normal hours, of necessary services and utilities such as elevators, restrooms, lights, and electric power. Cleaning shall be performed after tenant working hours unless daytime cleaning is specified as a special requirement elsewhere in this Lease. Janitorial Services shall not be required on weekends or Federal holidays. Services, maintenance, and utilities shall be provided from **7:00 AM to 6:00PM, 5 days a week.**

### 4.03 MAINTENANCE AND TESTING OF SYSTEMS (SEP 2013)

A. The Lessor is responsible for the total maintenance and repair of the leased Premises. Such maintenance and repairs include the site and private access roads. All equipment and systems shall be maintained to provide reliable, energy efficient service without unusual interruption, disturbing noises, exposure to fire or safety hazards, uncomfortable drafts, excessive air velocities, or unusual emissions of dirt. The Lessor's maintenance responsibility includes initial supply and replacement of all supplies, materials, and equipment necessary for such maintenance. Maintenance, testing, and inspection of appropriate equipment and systems shall be done in accordance with current applicable codes, and inspection certificates shall be displayed as appropriate. Copies of all records in this regard shall be forwarded to the Government's designated representative.

B. At the Lessor's expense, the Government reserves the right to require documentation of proper operations, inspection, testing, and maintenance of fire protection systems, such as, but not limited to, fire alarm, fire sprinkler, standpipes, fire pump, emergency lighting, illuminated exit signs, emergency generator, prior to occupancy to ensure proper operation. These tests shall be witnessed by the Government's designated representative.

### 4.04 RECYCLING (ON-AIRPORT) (JUN 2012)

Where state or local law, code, or ordinance requires recycling programs (including mercury-containing lamps) for the Space to be provided pursuant to this Lease, the Lessor shall comply with such state and local law, code, or ordinance in accordance with GSA Form 3517, General Clauses, 552.270-8, *Compliance with Applicable Law*. During the lease term, the Lessor agrees, upon request, to provide the Government with additional information concerning recycling programs maintained in the Building and in the Leased Space.

### 4.05 RANDOLPH-SHEPPARD COMPLIANCE (SEP 2013)

During the term of the Lease, the Lessor may not establish vending facilities within the leased Space that will compete with any Randolph-Sheppard vending facilities.

### 4.06 SAFEGUARDING AND DISSEMINATION OF SENSITIVE BUT UNCLASSIFIED (SBU) BUILDING INFORMATION (OCT 2017)

This paragraph applies to all recipients of SBU Building information, including, bidders, awardees, contractors, subcontractors, Lessors, suppliers, and manufacturers.

A. MARKING SBU. Contractor-generated documents that contain Building information must be reviewed by GSA to identify any SBU content, before the original or any copies are disseminated to any other parties. If SBU content is identified, the LCO may direct the contractor, as specified elsewhere in this contract, to imprint or affix SBU document markings to the original documents and all copies, before any dissemination.

B. AUTHORIZED RECIPIENTS. Building information considered SBU must be protected with access strictly controlled and limited to those individuals having a need to know such information. Those with a need to know may include Federal, state, and local government entities, and nongovernment entities engaged in the conduct of business on behalf of or with GSA. Nongovernment entities may include architects, engineers, consultants, contractors, subcontractors, suppliers, and others submitting an offer or bid to GSA or performing work under a GSA contract or subcontract. Contractors must provide SBU Building information when needed for the performance of official Federal, state, and local government functions, such as for code compliance reviews and for the issuance of Building permits. Public safety entities such as fire and utility departments may require access to SBU Building information on a need to know basis. This paragraph must not prevent or encumber the dissemination of SBU Building information to public safety entities.

C. DISSEMINATION OF SBU BUILDING INFORMATION:

1. BY ELECTRONIC TRANSMISSION. Electronic transmission of SBU information outside of the GSA firewall and network must use session (or alternatively file encryption). Sessions (or files) must be encrypted with an approved NIST algorithm, such as Advanced Encryption Standard (AES) or Triple Data Encryption Standard (3DES), in accordance with Federal Information Processing Standards Publication (FIPS PUB) 140-2, Security Requirements for Cryptographic Modules. Encryption tools that meet FIPS 140-2 are referenced on the NIST web page found at the following URL: <http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>. All encryption products used to satisfy the FIPS 140-2 requirement should have a validation certificate that can be verified at the <http://csrc.nist.gov/groups/STM/cmvp/validation.html#02>. (Not all vendors of security products that claim conformance with FIPS 140-2 have validation certificates.) Contractors must provide SBU Building information only to authorized representatives of state, Federal, and local government entities and firms currently registered as "active" in the SAM database at <https://www.acquisition.gov> that have a need to know such information. If a subcontractor is not registered in SAM and has a need to possess SBU Building information, the subcontractor shall provide to the contractor its DUNS number or its tax ID number and a copy of its business license.

2. BY NON-ELECTRONIC FORM OR ON PORTABLE ELECTRONIC DATA STORAGE DEVICES. Portable electronic data storage devices include but are not limited to CDs, DVDs, and USB drives. Non-electronic forms of SBU Building information include paper documents.

a. By mail. Utilize only methods of shipping that provide services for monitoring receipt such as track and confirm, proof of delivery, signature confirmation, or return receipt.

b. In person. Contractors must provide SBU Building information only to authorized representatives of state, Federal, and local government entities and firms currently registered as "active" in the SAM database that have a need to know such information.

3. RECORD KEEPING. Contractors must maintain a list of the state, Federal, and local government entities and the firms to which SBU is disseminated under sections C1 and C2 of this paragraph. This list must include at a minimum

- a. The name of the state, Federal, or local government entity or firm to which SBU has been disseminated;
- b. The name of the individual at the entity or firm who is responsible for protecting the SBU Building information, with access strictly controlled and limited to those individuals having a need to know such information;
- c. Contact information for the named individual; and
- d. A description of the SBU Building information provided.

Once work is completed, or for leased Space with the submission of the as built drawings, the contractor must collect all lists maintained in accordance with this paragraph, including those maintained by any subcontractors and suppliers, and submit them to the LCO.

D. RETAINING SBU DOCUMENTS. SBU Building information (both electronic and paper formats) must be protected, with access strictly controlled and limited to those individuals having a need to know such information.

E. DESTROYING SBU BUILDING INFORMATION. SBU Building information must be destroyed such that the marked information is rendered unreadable and incapable of being restored, or returned to the LCO, when no longer needed, in accordance with guidelines provided for media sanitization available at <http://csrc.nist.gov/publications/PubsTC.html#Forensics>. At the Web site, locate SP 800-88, Guidelines for Media Sanitization, available at [HTTP://CSRC.NIST.GOV/PUBLICATIONS/NISTPUBS/800-88/NISTSP800-88\\_REV1.PDF](http://CSRC.NIST.GOV/PUBLICATIONS/NISTPUBS/800-88/NISTSP800-88_REV1.PDF) and click on the file name NISTSP800-88\_REV1.pdf. From there, you can choose to "Save" or "Download" the file. If SBU Building information is not returned to the LCO, examples of acceptable destruction methods for SBU Building information are burning or shredding hardcopy; physically destroying portable electronic storage devices such as CDs, DVDs, and USB drives; deleting and removing files from electronic recycling bins; and removing material from computer hard drives using a permanent-erase utility such as bit-wiping software or disk crushers.

F. NOTICE OF DISPOSAL. The contractor must notify the LCO that all SBU Building information has been destroyed, or returned to the LCO, by the contractor and its subcontractors or suppliers in accordance with section (e) of this paragraph, with the exception of the contractor's record copy. This notice must be submitted to the LCO at the completion of the contract in order to receive final payment. For Leases, this notice must be submitted to the LCO at the completion of the Lease term.

G. INCIDENTS. All improper disclosures of SBU Building information must be reported immediately to the LCO and the GSA Incident Response Team Center at [gsa-ir@gsa.gov](mailto:gsa-ir@gsa.gov). If the contract provides for progress payments, the LCO may withhold approval of progress payments until the contractor provides a corrective action plan explaining how the contractor will prevent future improper disclosures of SBU Building information. Progress payments may also be withheld for failure to comply with any provision in this paragraph until the contractor provides a corrective action plan explaining how the contractor will rectify any noncompliance and comply with the paragraph in the future.

H. SUBCONTRACTS. The Contractor must insert the substance of this paragraph in all subcontracts.

#### 4.07 INDOOR AIR QUALITY (OCT 2019)

- A. The Lessor shall control airborne contaminants at the source and/or operate the Space in such a manner that indoor air quality action limits identified in the PBS Desk Guide for Indoor Air Quality Management (Companion to GSA Order PBS 1000.8), OSHA regulatory limits, and generally accepted consensus standards are not exceeded. .
- B. The Lessor shall avoid the use of products containing toxic, hazardous, carcinogenic, flammable, or corrosive ingredients as determined from the product label or manufacturer's safety data sheet. The Lessor shall use available odor-free or low odor products when applying paints, glues, lubricants, and similar wet products. When such equivalent products are not available, lessor shall use the alternate products outside normal working hours. Except in an emergency, the Lessor shall provide at least 72 hours advance notice to the Government before applying chemicals or products with noticeable odors in occupied Spaces and shall adequately ventilate those Spaces during and after application.
- C. The Lessor shall serve as first responder to any occupant complaints about indoor air quality (IAQ). The Lessor shall promptly investigate such complaints and implement the necessary controls to address each complaint. Investigations shall include testing as needed, to ascertain the source and severity of the complaint.
- D. The Government reserves the right to conduct independent IAQ assessments and detailed studies in Space that it occupies, as well as in space serving the Space (e.g., common use areas, mechanical rooms, HVAC systems, etc.). The Lessor shall assist the Government in its assessments and detailed studies by:
1. Making available information on Building operations and Lessor activities;
  2. Providing access to Space for assessment and testing, if required; and
  3. Implementing corrective measures required by the LCO. The Lessor shall take corrective action to correct any tests or measurements that do not meet GSA policy action limits in the PBS Desk Guide for Indoor Air Quality Management (Companion to GSA Order PBS 1000.8), OSHA regulatory limits and generally accepted consensus standards.
- E. The Lessor shall provide to the Government safety data sheets (SDS) upon request for the following products prior to their use during the term of the Lease: adhesives, caulking, sealants, insulating materials, fireproofing or firestopping materials, paints, carpets, floor and wall patching or leveling materials, lubricants, clear finish for wood surfaces, janitorial cleaning products, pesticides, rodenticides, and herbicides. The Government reserves the right to review such products used by the Lessor within the Space, common building areas, ventilation systems and zones serving the Space, and the area above suspended ceilings and engineering space in the same ventilation zone as the Space.
- F. The Lessor shall use high efficiency (HEPA) filtration vacuums for cleaning and minimum MERV 10 rated ventilation system filtration whenever feasible.
- G. The Lessor is encouraged to comply with best practices outlined in Appendix D- Indoor Air Quality in GSA Leased Facilities (Best Practices) within the PBS Desk Guide for Indoor Air Quality Management (Companion to GSA Order PBS 1000.8).

#### 4.08 HAZARDOUS MATERIALS (ON-AIRPORT) (OCT 2018)

The leased Space shall be free of hazardous materials, hazardous substances, and hazardous wastes, as defined by and according to applicable Federal, state, and local environmental regulations including, but not limited to, the following:

- A. The leased Space shall be free of all asbestos containing materials, except undamaged asbestos flooring in the Space or undamaged boiler or pipe insulation outside the Space, in which case an asbestos management program conforming to EPA guidance shall be implemented.
- B. The Lessor shall provide Space to the Government that is free from ongoing water leaks or moisture infiltration. The Space and ventilation zones serving the Space shall also be free of visible mold or actionable airborne mold.
1. Actionable mold is either visible mold or airborne mold of types and concentrations in excess of that found in the local outdoor air or non-problematic control areas elsewhere in the same building, whichever is lower. The Lessor shall safely remediate all actionable mold in accordance with sub-paragraph B.2 below
  2. The Lessor shall be responsible for conducting the remediation in accordance with the relevant provisions of the document entitled "Mold Remediation in Schools and Commercial Buildings" (EPA 402-K-01-001, September 2008), published by EPA, as same may be amended or revised from time to time, and any other applicable Federal, state, or local laws, regulatory standards, and guidelines.
  3. The Lessor acknowledges and agrees that the Government shall have a reasonable opportunity to inspect the leased Space after conclusion of the remediation. If the results of the Government's inspection indicate that the remediation does not comply with the plan or any other applicable Federal, state, or local laws, regulatory standards, or guidelines, the Lessor, at its sole cost, expense, and risk, shall immediately take all further actions necessary to bring the remediation into compliance.
  4. If the Lessor fails to exercise due diligence, or is otherwise unable to remediate the actionable mold, the Government may implement a corrective action program and deduct its costs from the rent.

**4.09 OCCUPANT EMERGENCY PLANS (SEP 2013)**

The Lessor is required to cooperate, participate and comply with the development and implementation of the Government's Occupant Emergency Plan (OEP) and if necessary, a supplemental Shelter-in Place (SIP) Plan. Periodically, the Government may request that the Lessor assist in reviewing and revising its OEP and SIP. The Plan, among other things, must include an annual emergency evacuation drill, emergency notification procedures for the Lessor's Building engineer or manager, Building security, local emergency personnel, and Government agency personnel.

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## SECTION 5 ADDITIONAL TERMS AND CONDITIONS

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### 5.01 PAINT

A. Prior to acceptance, all surfaces within the Space which are designated by GSA for painting shall be newly finished in colors and type of paint acceptable to the Government.

### 5.02 CARPET

A. Prior to acceptance, all flooring within the Space which are designated by GSA for Carpeting shall be newly finished in colors and type of flooring acceptable to the government.

B. Broadloom carpet or carpet tiles shall meet the requirements set forth in the specifications below. Floor perimeters at partitions shall have wood, rubber, vinyl, or carpet base. Floor covering shall be installed in accordance with manufacturing instructions to lay smoothly and evenly.

1. Face fiber content. Face yarn must be 100 percent nylon fiber. Loop Pile shall be 100 percent Bulk Continuous Filament (BCF); cut and loop shall be 100 percent BCF for the loop portion and may be BCF or staple for the cut portion; cut pile carpet shall be staple or BCF.

2. Performance requirements for broadloom and modular tile:

- a. Static: Less than or equal to 3.5 kV when tested by AATCC Test Method 134 (Step Test Option).
- b. Flammability: Meets CPSC-FF-1-70, DOC-FF-1-70 Methenamine Tablet Test criteria.
- c. Flooring Radiant Panel Test: Meets NFPA 253 Class I or II depending upon occupancy and fire code when tested under ASTM E-648 for glue down installation.
- d. Smoke Density: NBS Smoke Chamber - Less than 450 Flaming Mode when tested under ASTM E-662.

**NOTE:** Testing must be performed in a NVLAP accredited laboratory.

3. Texture Appearance Retention Rating (TARR). Carpet must meet TARR rating of at least 3.0 TARR for moderate traffic areas such as private offices, and heavy traffic areas such as training space, conference rooms, courtrooms, etc., and at least 3.5 TARR for severe traffic areas, including open office space, cafeteria, corridors and lobbies. The carpet must be evaluated using ASTM D-5252 Hexapod Drum Test as per the commercial carpet test procedure and the TARR classification determined using ASTM D-7330.

4. Carpet reclamation. Reclamation of existing carpet to be determined with potential vendor. When carpet is replaced, submit certification documentation from the reclamation facility to the LCO.

5. Warranty. Submit a copy of the manufacturer's standard warranty to the LCO within the first 60 days of Government occupancy. The Government is to be a beneficiary of the terms of this warranty.

**GENERAL CLAUSES**  
**(Acquisition of Leasehold Interests in Real Property)**

<b>CATEGORY</b>	<b>CLAUSE NO.</b>	<b>48 CFR REF.</b>	<b>CLAUSE TITLE</b>
GENERAL	1		SUBLETTING AND ASSIGNMENT
	2	552.270-11	SUCCESSORS BOUND
	3	552.270-23	SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN
	4	552.270-24	STATEMENT OF LEASE
	5	552.270-25	SUBSTITUTION OF TENANT AGENCY
	6	552.270-26	NO WAIVER
	7		INTEGRATED AGREEMENT
	8	552.270-28	MUTUALITY OF OBLIGATION
PERFORMANCE	9		DELIVERY AND CONDITION
	10		DEFAULT BY LESSOR
	11	552.270-19	PROGRESSIVE OCCUPANCY
	12		MAINTENANCE OF THE PROPERTY, RIGHT TO INSPECT
	13		FIRE AND CASUALTY DAMAGE
	14		COMPLIANCE WITH APPLICABLE LAW
	15	552.270-12	ALTERATIONS
	16		ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY
PAYMENT	17	552.270-33	SYSTEM FOR AWARD MANAGEMENT - LEASING
	18	52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE
	19	552.270-31	PROMPT PAYMENT
	20	52.232-23	ASSIGNMENT OF CLAIMS
	21		PAYMENT
	22	52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT
STANDARDS OF CONDUCT	23	52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT
	24	552.270-32	COVENANT AGAINST CONTINGENT FEES
	25	52-203-7	ANTI-KICKBACK PROCEDURES
	26	52-223-6	DRUG-FREE WORKPLACE
	27	52.203-14	DISPLAY OF HOTLINE POSTER(S)
ADJUSTMENTS	28	552.270-30	PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
	29	52.215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
	30	552.270-13	PROPOSALS FOR ADJUSTMENT
	31		CHANGES
AUDITS	32	552.215-70	EXAMINATION OF RECORDS BY GSA
	33	52.215-2	AUDIT AND RECORDS—NEGOTIATION

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DISPUTES	34	52.233-1	DISPUTES
LABOR STANDARDS	35	52.222-26	EQUAL OPPORTUNITY
	36	52.222-21	PROHIBITION OF SEGREGATED FACILITIES
	37	52.219-28	POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION
	38	52.222-35	EQUAL OPPORTUNITY FOR VETERANS
	39	52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES
	40	52.222-37	EMPLOYMENT REPORTS ON VETERANS
SUBCONTRACTING	41	52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
	42	52.215-12	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA
	43	52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS
	44	52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN
	45	52.219-16	LIQUIDATED DAMAGES—SUBCONTRACTING PLAN
	46	52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST- TIER SUBCONTRACT AWARDS
OTHER	47	52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
	48	552.204-70	REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
	49	52.204-19	INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS

The information collection requirements contained in this solicitation/contract that are not required by regulation have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

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GENERAL CLAUSES  
(Acquisition of Leasehold Interests in Real Property)

**1. SUBLETTING AND ASSIGNMENT (JAN 2011)**

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any subletting or assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

**2. 552.270-11 SUCCESSORS BOUND (SEP 1999)**

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

**3. 552.270-23 SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT (SEP 1999)**

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

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**4. 552.270-24 STATEMENT OF LEASE (SEP 1999)**

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable pre-purchase and pre-commitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

**5. 552.270-25 SUBSTITUTION OF TENANT AGENCY (SEP 1999)**

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

**6. 552.270-26 NO WAIVER (SEP 1999)**

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

**7. INTEGRATED AGREEMENT (JUN 2012)**

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease. Except as expressly attached to and made a part of the Lease, neither the Request for Lease Proposals nor any pre-award communications by either party shall be incorporated in the Lease.

**8. 552.270-28 MUTUALITY OF OBLIGATION (SEP 1999)**

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

**9. DELIVERY AND CONDITION (JAN 2011)**

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit.

(b) The Government may elect to accept the Space notwithstanding the Lessor's failure to deliver the Space substantially complete; if the Government so elects, it may reduce the rent payments.

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## 10. DEFAULT BY LESSOR (APR 2012)

(a) The following conditions shall constitute default by the Lessor, and shall give rise to the following rights and remedies for the Government:

(1) Prior to Acceptance of the Premises. Failure by the Lessor to diligently perform all obligations required for Acceptance of the Space within the times specified, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may terminate the Lease on account of the Lessor's default.

(2) After Acceptance of the Premises. Failure by the Lessor to perform any service, to provide any item, or satisfy any requirement of this Lease, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may perform the service, provide the item, or obtain satisfaction of the requirement by its own employees or contractors. If the Government elects to take such action, the Government may deduct from rental payments its costs incurred in connection with taking the action. Alternatively, the Government may reduce the rent by an amount reasonably calculated to approximate the cost or value of the service not performed, item not provided, or requirement not satisfied, such reduction effective as of the date of the commencement of the default condition.

(3) Grounds for Termination. The Government may terminate the Lease if:

(i) The Lessor's default persists notwithstanding provision of notice and reasonable opportunity to cure by the Government, or

(ii) The Lessor fails to take such actions as are necessary to prevent the recurrence of default conditions,

and such conditions (i) or (ii) substantially impair the safe and healthful occupancy of the Premises, or render the Space unusable for its intended purposes.

(4) Excuse. Failure by the Lessor to timely deliver the Space or perform any service, provide any item, or satisfy any requirement of this Lease shall not be excused if its failure in performance arises from:

(i) Circumstances within the Lessor's control;

(ii) Circumstances about which the Lessor had actual or constructive knowledge prior to the Lease Award Date that could reasonably be expected to affect the Lessor's capability to perform, regardless of the Government's knowledge of such matters;

(iii) The condition of the Property;

(iv) The acts or omissions of the Lessor, its employees, agents or contractors; or

(v) The Lessor's inability to obtain sufficient financial resources to perform its obligations.

(5) The rights and remedies specified in this clause are in addition to any and all remedies to which the Government may be entitled as a matter of law.

## 11. 552.270-19 PROGRESSIVE OCCUPANCY (SEP 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first

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business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

## **12. MAINTENANCE OF THE PROPERTY, RIGHT TO INSPECT (APR 2015)**

The Lessor shall maintain the Property, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this Lease, in good repair and tenantable condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge. Upon request of the Lease Contracting Officer (LCO), the Lessor shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer's warranted operating standards. The Lessor shall maintain the Premises in a safe and healthful condition according to applicable OSHA standards and all other requirements of this Lease, including standards governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc. The Government shall have the right, at any time after the Lease Award Date and during the term of the Lease, to inspect all areas of the Property to which access is necessary for the purpose of determining the Lessor's compliance with this clause.

## **13. FIRE AND CASUALTY DAMAGE (JUN 2016)**

If the building in which the Premises are located is totally destroyed or damaged by fire or other casualty, this Lease shall immediately terminate. If the building in which the Premises are located are only partially destroyed or damaged, so as to render the Premises untenable, or not usable for their intended purpose, the Lessor shall have the option to elect to repair and restore the Premises or terminate the Lease. The Lessor shall be permitted a reasonable amount of time, not to exceed **270 days** from the event of destruction or damage, to repair or restore the Premises, provided that the Lessor submits to the Government a reasonable schedule for repair of the Premises within **60 days** of the event of destruction or damage. If the Lessor fails to timely submit a reasonable schedule for completing the work, the Government may elect to terminate the Lease effective as of the date of the event of destruction or damage. If the Lessor elects to repair or restore the Premises, but fails to repair or restore the Premises within **270 days** from the event of destruction or damage, or fails to diligently pursue such repairs or restoration so as to render timely completion commercially impracticable, the Government may terminate the Lease effective as of the date of the destruction or damage. During the time that the Premises are unoccupied, rent shall be abated. Termination of the Lease by either party under this clause shall not give rise to liability for either party.

Nothing in this lease shall be construed as relieving Lessor from liability for damage to, or destruction of, property of the United States of America caused by the willful or negligent act or omission of Lessor.

## **14. COMPLIANCE WITH APPLICABLE LAW (JAN 2011)**

Lessor shall comply with all Federal, state and local laws applicable to its ownership and leasing of the Property, including, without limitation, laws applicable to the construction, ownership, alteration or operation of all buildings, structures, and facilities located thereon, and obtain all necessary permits, licenses and similar items at its own expense. The Government will comply with all Federal, State and local laws applicable to and enforceable against it as a tenant under this lease, provided that nothing in this Lease shall be construed as a waiver of the sovereign immunity of the Government. This Lease shall be governed by Federal law.

## **15. 552.270-12 ALTERATIONS (SEP 1999)**

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for

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purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

#### 16. ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY (APR 2015)

(a) Ten (10) working days prior to the completion of the Space, the Lessor shall issue written notice to the Government to schedule the inspection of the Space for acceptance. The Government shall accept the Space only if the construction of building shell and TIs conforming to this Lease and the approved DIDs is substantially complete, and a Certificate of Occupancy has been issued as set forth below.

(b) The Space shall be considered substantially complete only if the Space may be used for its intended purpose and completion of remaining work will not unreasonably interfere with the Government's enjoyment of the Space. Acceptance shall be final and binding upon the Government with respect to conformance of the completed TIs to the approved DIDs, with the exception of items identified on a punchlist generated as a result of the inspection, concealed conditions, latent defects, or fraud, but shall not relieve the Lessor of any other Lease requirements.

(c) The Lessor shall provide a valid Certificate of Occupancy, issued by the local jurisdiction, for the intended use of the Government. If the local jurisdiction does not issue Certificates of Occupancy or if the Certificate of Occupancy is not available, the Lessor may satisfy this condition by providing a report prepared by a licensed fire protection engineer that indicates that the Space and Building are compliant with all applicable local codes and ordinances and all fire protection and life safety-related requirements of this Lease to ensure an acceptable level of safety is provided. Under such circumstances, the Government shall only accept the Space without a Certificate of Occupancy if a licensed fire protection engineer determines that the offered space is compliant with all applicable local codes and ordinances and fire protection and life safety-related requirements of this Lease.

#### 17. 552.270-33 SYSTEM FOR AWARD MANAGEMENT – LEASING (FEB 2020)

(a) Definitions. As used in this provision—

“Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

“Registered in the System for Award Management (SAM)” means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into SAM

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b)

(1) An Offeror is required to be registered in SAM prior to award, and shall continue to be registered during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.

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- (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (3) Company physical street address, city, state, and Zip Code.
- (4) Company mailing address, city, state and Zip Code (if separate from physical).
- (5) Company telephone number.
- (6) Date the company was started.
- (7) Number of employees at your location.
- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

**18. 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)**

*This clause is incorporated by reference.*

**19. 552.270-31 PROMPT PAYMENT (JUN 2011)**

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date*—

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

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- (ii) Invoice date.
- (iii) Lease number.
- (iv) Government's order number or other authorization.
- (v) Description, price, and quantity of work or services delivered.
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).
- (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within seven days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the seven day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the seven days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than one year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(d) *Overpayments.* If the Lessor becomes aware of a duplicate payment or that the Government has otherwise overpaid on a payment, the Contractor shall—

(1) Return the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

- (i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
- (ii) Affected lease number; (iii) Affected lease line item or sub-line item, if applicable; and
- (iii) Lessor point of contact.

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- (2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

**20. 52.232-23 ASSIGNMENT OF CLAIMS (MAY 2014)**

(Applicable to leases over the micro-purchase threshold.)

(a) The Contractor, under the Assignment of Claims Act, as amended, [31 U.S.C. 3727](#), [41 U.S.C. 6305](#) (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

**21. PAYMENT (MAY 2011)**

(a) When space is offered and accepted, the amount of American National Standards Institute/Building Owners and Managers Association Office Area (ABOA) square footage delivered will be confirmed by:

(1) The Government's measurement of plans submitted by the successful Offeror as approved by the Government, and an inspection of the space to verify that the delivered space is in conformance with such plans or

(2) A mutual on-site measurement of the space, if the Contracting Officer determines that it is necessary.

(b) Payment will not be made for space which is in excess of the amount of ABOA square footage stated in the lease.

(c) If it is determined that the amount of ABOA square footage actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of ABOA space delivered and the annual rental will be adjusted as follows:

ABOA square feet not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is:  $(1+CAF) \times \text{Rate per RSF} = \text{Reduction in Annual Rent}$

**22. 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT (OCT 2018)**

*This clause is incorporated by reference.*

**23. 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015)**

(Applicable to leases over \$5.5 million total contract value and performance period is 120 days or more.)

*This clause is incorporated by reference.*

**24. 552.270-32 COVENANT AGAINST CONTINGENT FEES (JUN 2011)**

(Applicable to leases over the Simplified Lease Acquisition Threshold.)

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) *Bona fide agency*, as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(1) *Bona fide employee*, as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(2) *Contingent fee*, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(3) *Improper influence*, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

**25. 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)**

(Applicable to leases over the Simplified Lease Acquisition Threshold.)

*This clause is incorporated by reference.*

**26. 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)**

(Applicable to leases over the Simplified Lease Acquisition Threshold, as well as to leases of any value awarded to an individual.)

*This clause is incorporated by reference.*

**27. 52.203-14 DISPLAY OF HOTLINE POSTER(S) (OCT 2015)**

(Applicable to leases over \$5.5 Million total contract value and performance period is 120 days or more.)

(a) Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

- (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
- (ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

**Obtain from**

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

## Poster(s)

GSA Office of Inspector General "FRAUDNET HOTLINE

Contracting Officer

(Contracting Officer shall insert—

- (i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and
- (ii) The website(s) or other contact information for obtaining the poster(s).)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5.5 million, except when the subcontract—

- (1) Is for the acquisition of a commercial item; or
- (2) Is performed entirely outside the United States.

### **28. 552.270-30 PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JUN 2011)**

(Applicable to leases over the Simplified Lease Acquisition Threshold.)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

- (1) Reduce the monthly rental under this lease by five percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover five percent of the rental already paid;
- (2) Reduce payments for alterations not included in monthly rental payments by five percent of the amount of the alterations agreement; or
- (3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis thereof. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

### **29. 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011)**

(Applicable when cost or pricing data are required for work or services over \$750,000.)

*This clause is incorporated by reference.*

### **30. 552.270-13 PROPOSALS FOR ADJUSTMENT (OCT 2016)**

*This clause is incorporated by reference.*

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

### 31. CHANGES (MAR 2013)

(a) The LCO may at any time, by written order, direct changes to the Tenant Improvements within the Space, Building Security Requirements, or the services required under the Lease.

(b) If any such change causes an increase or decrease in Lessor's costs or time required for performance of its obligations under this Lease, whether or not changed by the order, the Lessor shall be entitled to an amendment to the Lease providing for one or more of the following:

- (1) An adjustment of the delivery date;
- (2) An equitable adjustment in the rental rate;
- (3) A lump sum equitable adjustment; or
- (4) A change to the operating cost base, if applicable.

(c) The Lessor shall assert its right to an amendment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, the pendency of an adjustment or existence of a dispute shall not excuse the Lessor from proceeding with the change as directed.

(d) Absent a written change order from the LCO, or from a Government official to whom the LCO has explicitly and in writing delegated the authority to direct changes, the Government shall not be liable to Lessor under this clause.

### 32. 552.215-70 EXAMINATION OF RECORDS BY GSA (JUL 2016)

*This clause is incorporated by reference.*

### 33. 52.215-2 AUDIT AND RECORDS—NEGOTIATION (OCT 2010)

(Applicable to leases over the Simplified Lease Acquisition Threshold.)  
*This clause is incorporated by reference.*

### 34. 52.233-1 DISPUTES (MAY 2014)

*This clause is incorporated by reference.*

### 35. 52.222-26 EQUAL OPPORTUNITY (SEP 2016)

*This clause is incorporated by reference.*

### 36. 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)

*This clause is incorporated by reference.*

### 37. 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUL 2013)

(Applicable to leases exceeding the micro-purchase threshold.)  
*This clause is incorporated by reference.*

### 38. 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)

(Applicable to leases \$150,000 or more, total contract value.)

(a) Definitions. As used in this clause—

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR [22.1301](#).

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

- (b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.
- (c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**39. 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)**

(Applicable to leases over \$15,000 total contract value.)

- (a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.
- (b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**40. 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)**

(Applicable to leases \$150,000 or more, total contract value.)  
*This clause is incorporated by reference.*

**41. 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)**

(Applicable to leases over \$35,000 total contract value.)

*This clause is incorporated by reference.*

**42. 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010)**

(Applicable if over \$750,000 total contract value.)

*This clause is incorporated by reference.*

**43. 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)**

(Applicable to leases over the Simplified Lease Acquisition Threshold.)  
*This clause is incorporated by reference.*

**44. 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (AUG 2018) ALTERNATE III ( JAN 2017)**

(Applicable to leases over \$700,000 total contract value.)  
*This clause is incorporated by reference.*

**45. 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)**

(Applicable to leases over \$700,000 total contract value.)  
*This clause is incorporated by reference.*

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

**46. 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2018)**

(Applicable if over \$30,000 total contract value.)  
*This clause is incorporated by reference.*

**47. 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)**

(a) Definitions. As used in this clause—

“Covered foreign country” means The People’s Republic of China.

“Covered telecommunications equipment or services” means –

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Critical technology” means-

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

(c) Exceptions. This clause does not prohibit contractors from providing-

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

#### **48. 552.204-70 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)**

(a) *Definitions.* As used in this clause-

“Covered telecommunications equipment or services”, “Critical technology”, and “Substantial or essential component” have the meanings provided in FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing-

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Representation.* The Offeror or Contractor represents that it [ ] will or [ ] will not [Contractor to complete and submit to the Contracting Officer] provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, order, or other contractual instrument resulting from this contract. This representation shall be provided as part of the proposal and resubmitted on an annual basis from the date of award.

(d) *Disclosures.* If the Offeror or Contractor has responded affirmatively to the representation in paragraph (c) of this clause, the Offeror or Contractor shall provide the following additional information to the Contracting Officer--

(1) All covered telecommunications equipment and services offered or provided (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

**49. 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014).**

*This clause is incorporated by reference.*

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

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## Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment

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See instructions within the representation regarding whether or not completion of this form is required. If required, complete appropriate boxes, sign the form, and return form, along with any other required disclosure information, to LCO or his/her designee.

NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

### 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (DEC 2019)

The Offeror shall not complete the representation in this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services-Representation, or in paragraph (v) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Items.

(a) *Definitions.* As used in this provision- "Covered telecommunications equipment or services", "critical technology", and "substantial or essential component" have the meanings provided in clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) *Representation.*

The Offeror represents that—

LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

it  will,  will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(e) *Disclosures.* If the Offeror has represented in paragraph (d) of this provision that it “will” provide covered telecommunications equipment or services”, the Offeror shall provide the following information as part of the offer--

(1) A description of all covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

OFFEROR OR LEGALLY AUTHORIZED REPRESENTATIVE	NAME, ADDRESS (INCLUDING ZIP CODE)  <hr/> Signature	TELEPHONE NUMBER  <hr/> Date
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LESSOR: \_\_\_\_\_ GOVERNMENT: \_\_\_\_\_

## Memorandum

*To: City Manager  
City Commissioners*

*From: Kelli Enlow*

*Date: April 20, 2020*

*Subject: SkyWest Airlines Lease Agreement*

*Agenda Item: Consent Calendar*

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**Recommendation:** To enter into agreement with SkyWest Airlines to lease office, garage, and ramp space at the airport terminal building.

**Justification:** Attached is the signed lease agreement with SkyWest Airlines. They have agreed to the terms, to lease terminal space, garage space, ramp space, and a landing fees at the airport terminal building for a period of three years. The amount of the lease is a monthly fee of \$1,500.00 for the terminal/ramp space with an additional \$600 landing fee to bring the monthly total to \$2,100. The lease is comparable to the previous agreement with Boutique Airlines.

The lease will be back dated and start effective February 13, 2020 and end on February 1, 2023. Signatures of both parties will activate the lease. SkyWest and I have already agreed to the terms and have signed the document. The signature of the Mayor and Connie Marquez will complete the process.

**Financial Considerations:** SkyWest Airlines will pay the City a \$2,100.00 monthly fee for the three year term.

**Legal Considerations:** Legal has reviewed the documents and is in agreement with the terms.

CITY OF DODGE CITY AIRPORT LEASE WITH SKYWEST AIRLINES.

LEASE. This lease is made and entered into by and between the City of Dodge City, Kansas, a municipal corporation (City) and SkyWest Airlines. (Lessee):

1. PREMISES. The City, in consideration of the rent, agreements and conditions as set forth herein to be paid and performed by Lessee, does hereby lease to the Lessee, subject to the terms and conditions set forth herein, the land and facilities located at the Dodge City Regional Airport as described in Exhibit A, attached hereto and made a part hereof by this reference, and referred to hereinafter as the "Premises."

2. RENTAL FEE:

A. The sum of Two Thousand, One Hundred Dollars (\$2,100.00), comprised of office rent, garage rent, ramp space and landing fees (One Thousand, Five Hundred Dollars (\$1,500.00) office space, garage rent, ramp rent and Six Hundred Dollars (\$600.00) landing fee). This monthly basic rent includes utilities, janitorial service, snow removal, maintenance, lawn care, counter space, storage area and lobby space.

The first monthly installment of basic rent for the first lease year shall be payable on the 18th day of February 2020; each succeeding monthly installment shall be due on the 18<sup>th</sup> day of each month thereafter.

The monthly basic rent shall be adjusted each year on the anniversary of this lease in proportion to the change in the CPI-U Midwest Urban Cities (Consumer Price Index) over the previous year, but in no event shall any rent increase exceed 2.5%. Adjustments will affect the monthly basic rent for all subsequent years of the lease, including those resulting from any renewals, until its expiration. The City, as a courtesy, will provide written notice of this change at the end of the 1<sup>st</sup> quarter of each calendar year; however this is not a requirement for the implementation of these annual fee changes.

B. All rent shall be paid, without prior demand, at the City's business office, Dodge City Regional Airport, P.O. Box 880, Dodge City, KS 67801.

3. LATE CHARGES. In the event Lessee has failed to pay the rent and other amounts due to the City, on or before the Eighteenth (18th) day of the month due, the Lessee shall owe, as additional rent, a late charge equal to five percent (5%) of the amount of the monthly payment(s) then due.

4. TERM. This lease commences on February 13, 2020 and expires on February 1, 2023 inclusive, a period of three (3) years. This lease may be extended by mutual agreement of the parties or in compliance with any option for renewal provided in Paragraph 5 of this lease.

5. OPTION TO RENEW:

A. Lessee shall have the option to renew this lease for an additional three (3) year term unless the lease has been terminated as a result of voluntary withdrawal, destruction of Premises, or Lessee's default or breach.

B. Lessee shall deliver to the City written notice of its intent to renew at least sixty (60) calendar days prior to the expiration of the original or renewal term then in effect.

C. Except for monthly basic rent, all agreements and conditions in this lease shall remain in full force and effect for the renewal term unless the parties otherwise agree in writing.

6. ACCEPTANCE OF PREMISES, CONDITION REPORT:

A. Lessee acknowledges it has inspected and noted the condition of Premises and accepts said Premises in their present condition and without representation or warranty by the City and without alterations, repairs or additions thereto.

B. A representative of the City shall inspect the Premises not later than five (5) days after City approval of this lease. The Lessee shall have the right to be present at such inspection. The City will prepare a Condition Report as a result of such inspection, which shall inventory the condition of the Premises. The representative of the City and Lessee shall sign the Condition Report and a copy shall be provided to Lessee. Should the Lessee fail or refuse to sign the Report, such fact shall be noted on the Report in lieu of Lessee's signature. This Condition Report will be the basis upon which the City determines whether or not the Premises have been maintained properly under the terms of this lease, and whether or not waste or destruction has occurred. The Condition Report must itemize any personal property on the Premises belonging to the City for which Lessee is responsible.

7. USE OF PREMISES.

A. Lessee shall comply with all Federal, State and Local laws, ordinances and administrative regulations applicable to the Premises and Lessee's use and occupation thereof. Lessee shall also comply with all policies and use restrictions of the City, including subsequent modifications or changes thereto, which are applicable to the Premises, Lessee's use thereof, and all City property.

B. Lessee shall not occupy Premises for any unlawful purpose or for any purpose which constitutes a nuisance, is harmful to, or interferes unreasonably with the rights of any other person including the City and its tenants.

C. Lessee will have roof access of any leased facilities to install microwave antennas, at its own cost, with prior approval from Federal Aviation Administration (FAA), National Oceanic and Atmospheric Association (NOAA), and the Airport Manager, as applicable, which approval is subject to revocation in the event of interference with equipment or services provided by FAA or NOAA.

8. REPAIRS AND MAINTENANCE:

A. Lessee shall make all repairs, whether structural or otherwise, necessary to preserve the Premises in as good of condition as when leased, normal wear and tear excepted, or as otherwise provided for in this lease. The quality of repair work shall be at least equal to that of original construction and in accordance with building codes in affect at the time of such repairs.

B. Lessee shall permit no waste or injury to occur to the Premises, and at all times, shall keep Premises safe and clean and shall comply with all laws and regulations governing care and maintenance of Premises. Lessee shall remove rubbish which may accumulate on Premises all at Lessee's sole expense. Lessee shall not permit materials, supplies or equipment to be stored outside of buildings without the prior written consent of the City.

C. In the event Lessee fails to comply with requirements of this Paragraph, the City shall have the option either to treat such failure as a default and breach and terminate this lease as provided in Paragraph 23 or, after giving notice and opportunity to cure such failure as provided

in Paragraph 24, the City may perform all repairs and maintenance necessary to cure such failure and add the cost thereof to basic rent due in the month following the date such costs are incurred.

D. Notwithstanding any other provision of this lease, in the event:

- 1) Lessee fails to take necessary precautions to protect the Premises or personal property thereon from the elements, or the security thereof;
- 2) Lessee's maintenance or use of the Premises is such that it constitutes a fire hazard or otherwise endangers public health and safety on the Premises; or
- 3) Lessee's conduct endangers public health and safety on property owned by the City, persons on the Premises, or adjacent City property; then the City or its authorized representatives may enter the Premises and take all reasonable and necessary steps to correct such danger or condition. The expenses in making such corrections shall be billed to Lessee and shall be due and payable by Lessee to the City the first of the month subsequent to such billing.

E. The requirements for repairs and maintenance required by this Paragraph shall not make Lessee the agent or trustee of the City for any purpose, and the provisions of Paragraph 7 of this lease shall be controlling. Nothing in Paragraph 7 of this lease concerning the use of Premises or in any other provision of this lease shall be construed to create any such agency or trustee relationship.

#### 9. PERMANENT IMPROVEMENTS TO PREMISES:

A. To the extent allowed by the existing budget environment, the City is obligated to rebuild, replace, maintain, repair, improve, enlarge or remodel Premises. At its sole expense, Lessee may make permanent improvements to Premises either by enlarging or remodeling current improvements or constructing new improvements provided the City gives prior approval in writing, and Lessee submits detailed construction and site plan of proposed improvements for the City's final approval prior to commencement of construction. All permanent improvements shall become part of premise and property of the City and shall conform to the following minimum requirements unless specifically waived by the City in writing.

- 1) Any new buildings or additions to buildings now on Premises shall be restricted to commercial, industrial or warehouse use as approved by the City.
- 2) Outside walls of all new buildings or additions must be of masonry construction, decorative metal or their equivalent.
- 3) All roofs shall be constructed from fire resistant material.
- 4) All signage shall comply with the 2000 Dodge City Zoning Ordinance.
- 5) Lessee shall obtain and pay for all requisite government permits and authorizations related to new construction on Premises prior to commencement thereof; Lessee shall comply with applicable building and zoning laws and ordinances and other government regulations and requirements.
- 6) All construction shall be prosecuted to completion with diligence in a workmanlike manner.

B. Permanent improvements shall be defined as all improvements which attach either to the Premises or any improvements thereon including, without limitation, all structural and nonstructural improvements, plumbing and electrical equipment and fixtures and all property including fixtures, equipment and personal property which cannot be removed without undue damage to Premises or which would be of insignificant value after removal from Premises. Other examples, again without limitation, shall include attached carpet and other floor covering, draperies, light fixtures, wall panel and permanently installed equipment. All such permanent improvements shall become property of the City when installed, unless the City otherwise agrees

in writing. Lessee shall not convey a security interest in any permanent improvements to any creditor.

C. The City's approval of permanent improvements to be made by Lessee shall not make Lessee the agent or trustee of the City for any purpose, and the provisions of Paragraph 12 and Paragraph 8 shall be controlling. The Lessee shall not construe anything in Paragraph 7 of this lease, concerning the use of Premises, or in any other provisions of this lease as written approval by the City for permanent improvements.

#### 10. OWNERSHIP OF PERSONAL PROPERTY AND TRADE FIXTURES:

A. Any personal property, furniture, fixtures, or equipment owned by the City and located on Premises at any time during the term of this lease shall remain the property of the City and shall not be removed from Premises without the City's written consent. Lessee may use such property in the conduct of its business, but shall suffer no waste or injury thereto, reasonable wear and tear excepted, and at all times shall keep such property clean and shall perform ordinary maintenance necessary to the preservation thereof. The City has no obligation either to rebuild, replace, maintain, repair, improve or remodel such personal property, furniture, fixtures or equipment being used by Lessee. Lessee shall repair and maintain such property a Lessee's sole expense. Lessee shall be liable to the City for destruction of such property resulting from Lessee's negligence or misuse thereof.

B. Lessee may replace or install on Premises, at its sole expense, such personal property, furniture, trade fixtures and equipment as it shall deem necessary for the conduct of its business. Lessee shall have the privilege, at any time during the term of this lease, of removing any and all of its personal property, furniture, trade fixtures and equipment except as provided hereafter and only so long as no permanent improvements as defined in Paragraph 9 of this lease shall be removed from Premises without the City's written consent. Lessee shall be liable to the City for all damages to Premises resulting from Lessee's removal of any property.

C. Forthwith upon termination of this lease for any reason, the Lessee shall remove all of its personal property from the Premises. In the event Lessee fails to remove its personal property, then the City may, at the City's option, take possession of the property, store it at Lessee's expense, and sell or otherwise dispose of the same. The City shall, however, provide written notification to Lessee by depositing a copy of a notice thereof in the United States mail, postage prepaid, addressed to Lessee at Lessee's address as specified in this lease. Such notice shall state the name of the Lessee, a brief description of the property and the date that the City intends to sell or otherwise dispose of such property. So long as the City complies with the notice provisions as herein set forth, the City shall not be liable either to Lessee or to any other person who claims any interest in any property sold or otherwise disposed of except as to any secured creditor who gives written notice to the City of his or her interest in the property prior to the time of sale or disposition. In the event the City has taken custody and possession of personal property pursuant to this provision, the Lessee shall have no right to the return thereof unless and until Lessee has paid all rent or other monies due and owing to the City and the reasonable expenses incurred by the City in holding and preparing the property for sale. In the event the City sells the property of Lessee, it shall be applied first to pay the City's expenses, then to reimburse the City for any rents or other monies due, and if any money remains, the City shall return it to the Lessee. Lessee shall protect, indemnify and save the City, its agent and employees harmless from any and all claims for damages to said property while in the City's possession, whether such property is owned by Lessee, it officers, employees, agents or anyone else.

#### 11. TOTAL AND PARTIAL DESTRUCTION OF PREMISES:

Airport Lease SkyWest Airlines. 2020

A. Partial Destruction: In the event Premises covered by this lease are not totally destroyed but are damaged by fire, wind or other occurrence to the extent that such damage is, within the sole opinion of the City, repairable with reasonable diligence within one hundred twenty (120) calendar days after the happening of such destruction or damage, then:

1) The City may, at the City's option, either elect to repair the Premises or to cancel this lease. In the event such lease is canceled, it shall be canceled as of the date of the damage or destruction, and no rent shall be due and payable thereafter. In the event the City elects to have the Premises repaired, the repairs shall be completed as soon as reasonably practicable and all insurance monies covering the Premises shall be available to the City in making such repairs. The City shall not be liable to spend any money on repairs over and above the insurance proceeds. In the event no election to repair is made, then all insurance proceeds on the Premises shall become the sole property of the City.

2) In the event that the Premises are to be repaired, then this lease shall continue in full force and effect, but rent due and owing from the Lessee to the City shall be abated from the date of partial destruction to the date the repairs are completed in the same ratio as that portion of the Premises which is rendered unfit for occupancy bears to the whole.

B. Total Destruction: If, in the sole opinion of the City, there is total destruction of the Premises, or, in the sole opinion of the City, the Premises are so damaged or destroyed so as to render the whole or a substantial part thereof unfit for occupancy, and the same cannot be repaired with reasonable diligence within one hundred twenty (120) calendar days after the happening of such destruction or damage, then:

1) Either party to this lease may terminate this lease by giving the other party written notification of such termination within fifteen (15) calendar days after the occurrence of such damage or destruction (except that the Lessee may not exercise this option if such total destruction is the proximate result of the negligence of Lessee, its agents, servants or employees). In the event of termination, any unearned rent paid in advance by Lessee shall be refunded. In the event of termination by either party, all insurance proceeds applicable to the Premises shall be the sole property of and shall be paid to the City.

2) Should neither party elect to terminate the lease, the City shall have the option to enter into negotiations for a mutually agreeable substitute lease with all insurance proceeds being used for the construction of a substitute building.

3) In no event shall the City, at any time, be required to restore Premises or construct any building the total cost of which shall exceed the insurance available by reason of the destruction of the leased Premises.

12. NO MECHANICS LIENS, NO AGENCY CREATED. Lessee is not the agent, partner or trustee of the City, and by this lease, Lessee acquires no rights to act for or on behalf of the City in regard to the repairs or building of any structure upon the Premises. The City is not, and shall not, be liable for any labor, services or material furnished to Lessee, its officers, employees, agents or anybody claiming under this lease. No materialmen or persons furnishing labor or other services to Lessee shall have the right to file any lien upon the Premises, and no mechanics lien filed by any such materialmen, workers or other persons shall attach to Premises or affect the City's interest as owner of the Premises. Lessee shall not, at any time, hold him/herself out as having any authority to act for and on behalf of the City or create a lien on the Premises. Should any lien be filed against the Premises by reason of any services, materials or work furnished for and on behalf of Lessee, the same shall constitute a breach of this lease by Lessee, and Lessee shall immediately cause the discharge of any such lien.

13. CONTEST OF LIENS:

A. Notwithstanding provisions of Paragraph 12 of this lease, Lessee shall have the right to contest any mechanics lien or other similar lien if Lessee notifies the City in writing of its intention to do so.

B. On demand of the City, Lessee shall provide a bond in the City's favor, the face amount of which shall be at least twice the amount of the lien claim contested to indemnify and protect the City against liability, loss, damage an expense of any nature resulting from said asserted lien and the contest thereof; if Lessee diligently prosecutes such contest, prevents any judicial sale of any part of Premises and pays or otherwise satisfies a final judgment enforcing such contested lien claim and thereafter promptly procures record releases or satisfaction thereof, Lessee shall be discharged and the bond released.

14. INDEMNITY:

A. Lessee shall indemnify, protect, defend and save the City harmless from and against all claims, demands, liabilities and costs, including attorneys fee arising from damage or injury, actual or claimed, of whatever kind or character to property or persons allegedly occurring on or about Premises during this lease term or Lessee's period of actual possession of Premises, whichever is longer. Upon notice from the City, Lessee shall defend the City in any action or proceeding brought in connection with such claims and demands.

B. Nothing in this Paragraph shall require Lessee to indemnify, protect, defend and save the City harmless against claims, demands, liabilities and costs arising from negligence or willful misconduct of the City, its officers, employees, agents, licensees and invitees.

15. INSURANCE:

A. Lessee, at its sole expense, shall maintain public liability insurance to protect against any liability which may arise from accident or injury on or about the Premises; such liability insurance coverage shall have the following minimum requirements:

- 1) This policy shall be on a Comprehensive General Liability form.
- 2) The City shall be an additional insured as Lessor of the Premises.
- 3) Policy limits shall be at least: \$1,000,000 per occurrence, \$2,000,000 aggregate.
- 4) Lessee shall also maintain workers compensation insurance for its employees and agents as required by the laws of the State of Kansas.

B. The City reserves the right to require additional insurance if, in its sole discretion, the City deems such additional coverage to be necessary because of a substantial change in Lessee's operations. The Lessee shall pay the cost of any such additional insurance coverage.

C. Lessee shall procure any insurance coverage required by this lease through companies authorized to write insurance in Kansas as selected by the Lessee. Lessee may include the required insurance coverage under its existing insurance policy, provided each insurance requirement of this lease is fulfilled thereby.

D. All insurance policies described in subparagraph A. and B. of this Paragraph and renewals thereof shall name the City and Lessee as insured parties and shall contain a provision prohibiting cancellation by the insurer without at least ten (10) days prior written notice to the City and Lessee. Lessee shall deliver to the City a certificate of such insurance within ten (10) days after this agreement is executed between the City and Lessee.

E. In the event Lessee fails or neglects to procure and maintain required insurance coverage and pay premiums thereon, the City, at its option, either may treat such failure as a default and breach of this lease or procure such insurance and pay the premiums thereon, and add the cost thereof to basic rent due in the month following the date such costs are incurred.

16. INSPECTION OF PREMISES. Lessee shall permit agents and officers of the City and the Federal Aviation Administration free access to Premises at all reasonable times to examine and inspect the condition thereof and exercise any right reserved to the City in this lease. Except in the case of emergency, the City shall provide Lessee two (2) calendar days' notice prior to entry or inspection. Entry by the City shall be conducted so as not to unreasonably interfere with the conduct of business therein by Lessee.

17. ASSIGNMENT AND SUBLEASES. Lessee shall neither assign, mortgage, pledge, sell nor in any manner transfer, convey or dispose of this lease or any interest therein or part thereof whether voluntary, involuntary or by operation of law, and Lessee shall neither sublet Premises or any part thereof nor permit any licensee or concessionaire to operate thereon without prior written consent of the City in each instance. In the event the City gives such consent, neither sublease nor assignment of this lease by Lessee shall release Lessee from its obligations under this lease. Notwithstanding the forgoing, Lessee may assign this Lease to any wholly owned subsidiary of Lessee, to any entity acquiring all or substantially all the property of Lessee, or to any entity into which Lessee may be merged or consolidated.

18. TAXES. Lessee shall pay to the proper governmental agencies as they become due all taxes, assessments and similar charges which, at any time during the term of this lease, may be taxed, assessed or imposed upon Lessee whether such taxes arise from this lease, the Premises and any permanent improvements thereto or from any other levy or assessment. The City shall not be liable to pay any such taxes. Lessee shall not be considered in default under Paragraph 23 of this Lease if Lessee is withholding payment of a property tax or assessment under protest, provided (i) applicable law does not compel payment during protest, and (ii) Lessee is pursuing its protest diligently.

19. RULES AND REGULATIONS. Lessee, its officers, agents and employees shall comply with all rules and regulations issued from time to time by the City in connection with the management and operation of the Dodge City Regional Airport properties, including land use restrictions.

20. NONDISCRIMINATION ASSURANCES.

A. The Lessee for itself, its subsidiaries, personal representatives, successors in interest, and assignees, as a part of the consideration hereof does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

B. The Lessee, for itself, its subsidiaries, representatives, successors interest, and assignees, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of service thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination, (3) that the Lessee shall use the Premises compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

C. Lessee shall furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, Lessee may make reasonable nondiscriminatory discounts, rebates and similar price reductions to volume purchasers. The City may take action directed by the United States Government to enforce this Paragraph.

#### 21. SUBORDINATION CLAUSE.

A. This lease shall be subordinate to provisions of any existing or future agreement between the City and the United States of America or any agency thereof relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the airport.

B. During time of war or national emergency, the City shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

22. NO EXCLUSIVE USE. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 40103, Chapter 401, Subpart I, Part A, Subtitle VII, Title 49 of the US Code.

#### 23. DEFAULT AND BREACH:

A. Lessee shall be in default of this lease whenever Lessee:

- 1) Fails to perform any duty, agreement or condition required by this lease;
- 2) Fails in the due and punctual payment of rent or any other monies due the City;
- 3) Files a voluntary petition under the bankruptcy act or an involuntary petition under such act is filed against Lessee, and Lessee, after full hearing, is adjudged to be bankrupt, insolvent or unable to pay its debts as they mature;
- 4) Makes an assignment for the benefit of its creditors;
- 5) A trustee or receiver, after full hearing, is appointed or retained to take charge of and manage any substantial part of the assets of Lessee;
- 6) Any execution or attachment shall issue against Lessee whereupon any part either of Premises or of Lessee's interest therein shall be taken or an attempt is made to take the same in contemplation of a judicial sale there under (except that Lessee shall have the right to contest any such attachment or execution in the same manner and to the same extent as Lessee's right to contest liens as set forth in Paragraph 13 hereof); or

7) Abandons Premises. Abandonment shall occur whenever Lessee, its officers, employees and agents all shall be and remain absent from Premises for thirty (30) consecutive calendar days without notice to the City of such absence. At the expiration of such thirty (30) calendar day period, the City shall have the option to issue termination notice as provided in Paragraph 28 of this lease which shall take effect immediately on issuance thereof without providing a ten (10) calendar day period within which to cure this default.

B. Lessee's default in performance of required duties, agreements and conditions shall constitute a breach of this lease. The City may, at its option, terminate this lease in the manner provided in Paragraph 24 on Lessee's default or at any time thereafter while Lessee continues in default.

C. Any waiver by the City of any default or breach of this lease shall neither be construed as a continuing waiver nor as a waiver of a subsequent default or breach and in no event shall imply further indulgence by the City.

#### 24. TERMINATION:

A. This lease shall terminate:

- 1) Automatically at the expiration of its original or any renewal term;
- 2) Immediately after either party exercises the option to terminate provided in Paragraph 11 of this lease;
- 3) Immediately upon the City exercising its option to terminate provided in Paragraph 23 of this lease;
- 4) Upon the occurrence of any default and failure to cure by Lessee, as more particularly set forth in Paragraph 23. In the event of default, City shall use a written notification entitled "Notice to Terminate Lease in Ten (10) Days and Right to Cure." Such right to cure notice shall specify the the nature of Lessee's default and breach, and shall state that the lease shall not terminate should the Lessee cure such default and breach prior to the expiration of the ten (10) calendar days. In the event that Lessee fails to cure any default, the Lease shall terminate automatically on the date specified in the notice.

B. In the event of termination by the City pursuant to the terms hereof, Lessee shall remain liable for payment of the full unpaid balance of all rent due up to and until the date this Lease is terminated, but shall have no further rent obligation after the date of termination. Further, Lessee agrees to return the Premises to the City pursuant to Paragraph 25. Upon termination, the City shall have the immediate and unconditional right to reenter the Premises free of any right, title and interest of Lessee to the use and possession thereof, but such reentry shall not relieve Lessee's duty to comply with all requirements of this lease as specified herein. The remedies conferred upon the City herein shall not be considered exclusive of any other remedy, but shall be in addition to every other remedy available to the City as landlord under this lease and as matter of law. The failure of the City to insist upon a strict performance of any term or condition of this lease shall not be deemed a waiver of any right or remedy that the City may have and shall not be deemed a waiver or any subsequent breach of such term or condition.

C. Notwithstanding the foregoing, Lessee shall have the right to terminate this Agreement by providing written notice to the City at least thirty (30) calendar days before the expiration or termination of any Essential Air Service ("EAS") contract between Lessee and the United States Department of Transportation ("DOT"), whether terminated by Lessee or DOT,

under which such EAS contract Lessee has or had agreed to provide EAS to the City. The City agrees that Lessee is exempt from the requirement at 49 U.S.C. Section 41734(c), to continue to serve the EAS community even after filing a notice to suspend service before a replacement airline begins full EAS.

25. SURRENDER OF POSSESSION.

A. Upon termination, Lessee shall forthwith peacefully surrender Premises to the City in good condition and repair, ordinary wear and tear excepted. Lessee shall be obligated to clean the Premises and immediately clear the Premises of all personal property except that owned by the City whether such property is owned by Lessee or by patrons of Lessee. Lessee shall remain liable to the City for all rent due up to and until the date of termination of the Lease, and shall have no further rent obligation after the date of termination.

B. In the event that Lessee's lease term has expired and Lessee remains on the Premises, even with the concurrence of the City, such acts shall not constitute a renewal of this lease nor require the City to forfeit any of its rights under this lease. In such event, Lessee shall be considered a tenant at will. No payment of money by Lessee to the City subsequent to the termination of this lease shall reinstate, continue or extend the terms of this lease, but Lessee shall remain in full compliance with all such terms and conditions of this Lease during such extended possession.

26. ATTORNEY FEES. If in the sole determination of the City, the services of an attorney are required to enforce any provision of this Lease, the Lessee shall fully indemnify the City for any and all reasonable attorney fees and expenses so incurred in the event the City prevails in its action against Lessee.

27. RELOCATION. In the event City mandates Lessee's relocation, City shall reimburse Lessee for all its reasonable and customary relocation expenses. Both parties agree that such reimbursement will take the form of rent credits associated with this Lease.

28. SERVICE OF NOTICE:

A. All notices and other written documents required or described to issue under this lease shall be served and delivered for all purposes:

Upon the City by delivery to the office of the Airport Manager or by mailing certified or registered mail, postage prepaid, addressed to

Dodge City Regional Airport  
P.O. Box 880  
Dodge City, KS 67801  
or at such other place as the City may designate in writing.

Upon Lessee by delivery in person to Lessee or any of its executive officers or by mailing by certified or registered mail, postage prepaid, addressed to Lessee at

SkyWest Airlines.  
444 S River Rd  
Saint George, UT 84790

or such other place as Lessee may designate in writing to the City.

B. All notices sent by certified or registered mail shall be presumed delivered as of the day following the date they are mailed.

29. COVENANT NOT TO GRANT MORE FAVORABLE TERMS. Except for agreements with other scheduled air carriers for air service enhancements attained through the use of Federal or State grants (e.g. U.S. Department of Transportation Small Community Air Service Development Grant), City agrees not to enter into any lease, contract, or agreement with any other scheduled passenger carrier with respect to Dodge City Regional Airport, containing more favorable terms or to grant to any other scheduled commercial passenger carrier rights, privileges, or concessions with respect to the said Dodge City Regional Airport which are not accorded to the Lessee.

30. AMENDMENTS. This Lease may only be amended in writing and signed by City and Lessee.

31. SEVERABILITY. If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.

32. EXECUTION IN COUNTERPARTS. This Lease may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all of the parties to the counterparts had signed the same instrument. A signature page of any counterpart may be detached therefrom without impairing the legal effect of the other signature(s), if that signature page is attached to any other counterpart that is identical to the first except for having additional attached signature pages executed by other parties to this Amendment.

THIS LEASE shall be binding among heirs, executors, administrators, successors and assignees of the respective parties hereto. This lease constitutes the entire agreement between the parties and shall be modified only upon execution by all parties of a written document setting forth any change or additions and bearing the effective date thereof.

IN WITNESS WHEREOF the respective parties hereto have caused this instrument to be executed on their behalf by their duly authorized officers of the dates indicated below. The lease shall become binding when properly executed by both parties hereto, and the effective date of this lease shall be the date specified in the first paragraph of this lease.

\_\_\_\_\_  
Date By: \_\_\_\_\_  
Lessee or its authorized representative

SkyWest Airlines.  
444 S River Rd  
Saint George, UT 84790

\_\_\_\_\_  
Date By: \_\_\_\_\_  
Kelli Enlow, Airport Manager

\_\_\_\_\_  
Date By: \_\_\_\_\_  
Joyce Warshaw, Mayor

Attest: \_\_\_\_\_  
Connie Marquez, City Clerk

STATE OF KANSAS, CITY OF DODGE CITY, ss:

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, the undersigned Notary Public in and for the County and State aforesaid came, Joyce Warshaw, Mayor and Connie Marquez, Clerk of the City of Dodge City, KS who is personally known to me to be the same person(s) who executed the above lease, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My appointment expires: \_\_\_\_\_

STATE OF UTAH, CITY OF ST GEORGE, ss:

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for the County and state aforesaid came, (Print Name) \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me to be the same person who executed the above lease, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My appointment expires: \_\_\_\_\_

## *Memorandum*

*To: Cherise Tieben, City Manager*  
*From: Nicole May*  
*Date: April 17, 2020*  
*Subject: Resolution No. 2020-08*

*Agenda Item: Ordinances and Resolutions*

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**Recommendation:** I recommend the approval of Resolution No. 2020-08.

**Background:** So that the City can obtain financing for the interior exhibit spaces and previously authorized expenses for the new Boot Hill Museum expansion, the project first needs to be authorized by Resolution of the City of Dodge City. At the March 2, 2020 City Commission meeting the City Commission approved the MOU with Boot Hill Museum setting forth the terms of repayment for the Temp Notes.

**Justification:** To issue Temporary Notes for specific public improvement projects need to be authorized by Resolution.

**Financial Considerations:** Once the projects are authorized, funding will be issued to fund these projects.

**Purpose/Mission:** To maintain and improve the infrastructure in Dodge City.

**Legal Considerations:** None

**Attachments:** Resolution No. 2020-08.

**RESOLUTION NO. 2020-08**

**A RESOLUTION OF THE CITY OF DODGE CITY, KANSAS, AUTHORIZING CERTAIN PUBLIC IMPROVEMENTS AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.**

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**WHEREAS**, K.S.A. 13-1024a, as amended by Charter Ordinance No. 41 (the “Act”) of the City of Dodge City, Kansas (the “City”), provides that for the purpose of paying for any bridge, viaduct, street, sidewalk or pedestrian way improvement, airport, public building or structure, parking improvement, or other public utility or works, including any appurtenances related thereto and the land necessary therefor, for lands for public parks and recreation facilities, including golf courses, stadiums and community centers, and developing and making improvements to the same, within or without the City, for the establishment, development and construction of crematories, desiccating or reduction works, including any appurtenances related thereto and the land necessary therefor, within or without the City, or for the improvement, repair or extension of any waterworks, sanitary sewer facilities, sewage treatment or disposal plant, sewerage system, storm water improvement, electric light plant, crematory, desiccating or reduction works or other public utility plant or works owned by the City, and for the purpose of rebuilding, adding to or extending to the same or acquiring land necessary therefor from time to time, as the necessities of the City may require, or for the acquisition of equipment, vehicles and other personal property to be used in relation to any of the improvements authorized herein, the City may borrow money and issue its general obligation bonds and/or temporary notes for the same; and

**WHEREAS**, the City may issue such general obligation bonds when authorized to do so by the adoption of a resolution by the City Commission (the “Governing Body”) describing the purpose to be provided for and the amount of general obligation bonds to be issued, such bonds to be issued, sold, delivered and retired in accordance with the provisions of the general bond law; and

**WHEREAS**, the Governing Body desires to authorize the issuance of general obligation bonds of the City to finance all or a portion of the public improvements set forth below.

**THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY, KANSAS:**

**Section 1. Public Improvements; Bond Authorization.** The Governing Body hereby authorizes the issuance of general obligation bonds of the City (the “Bonds”) for the following described public improvements (the “Improvements”):

<u>Description</u>	<u>Estimated Cost</u>
Boot Hill Museum improvements – interior exhibits and certain expansion costs	\$850,000

The costs of the Improvements, interest on interim financing and associated financing costs shall be payable from the proceeds of the Bonds issued under authority of the Act.

**Section 2. Reimbursement.** The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation § 1.150-2.

**Section 3. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

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**ADOPTED AND APPROVED** by the governing body of the City of Dodge City, Kansas, on April 20, 2020.

(Seal)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the governing body on April 20, 2020, as the same appears of record in my office.

DATED: April 20, 2020.

\_\_\_\_\_  
Clerk

## *Memorandum*

*To: Cherise Tieben, City Manager*  
*From: Nicole May*  
*Date: April 17, 2020*  
*Subject: Resolution No. 2020-09*

*Agenda Item: Ordinances and Resolutions*

---

**Recommendation:** I recommend the approval of Resolution No. 2020-09.

**Background:** So that the City can obtain financing for the YMCA addition, the project first needs to be authorized by Resolution of the City of Dodge City. At the November 4, 2019 City Commission meeting the City Commission approved the contract with Conant Construction for the YMCA expansion in the amount of \$683,530 with the City paying \$440,000.

**Justification:** To issue Temporary Notes for specific public improvement projects need to be authorized by Resolution.

**Financial Considerations:** Once the projects are authorized, funding will be issued to fund these projects.

**Purpose/Mission:** To maintain and improve the structures owned by the City.

**Legal Considerations:** None

**Attachments:** Resolution No. 2020-09.

**RESOLUTION NO. 2020-09**

**A RESOLUTION AUTHORIZING AND PROVIDING FOR THE CONSTRUCTION OF IMPROVEMENTS TO AN EXISTING PUBLIC BUILDING IN THE CITY OF DODGE CITY, KANSAS; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.**

---

**WHEREAS**, K.S.A. 12-1736 provides, in part, that any city in the State of Kansas may erect or construct, acquire a public building or buildings and procure any necessary site therefor and may alter, repair, reconstruct, remodel, replace or make additions to, furnish and equip a public building or buildings; and

**WHEREAS**, K.S.A. 12-1737 provides, in part, that the governing body of any city may, for the purposes of financing the costs associated with the foregoing, issue general obligation bonds of the City; and

**WHEREAS**, the governing body of the City of Dodge City, Kansas (the “City”), hereby finds and determines it to be necessary to authorize and provide for the construction of improvements to an existing public building in the City, and to provide for the payment of the costs thereof without the necessity of an election, all as provided by said K.S.A. 12-1736 *et seq.*, as amended and supplemented from time to time (the “Act”).

**THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY, KANSAS:**

**Section 1. Project Authorization.** The construction of improvements and additions to the City-owned YMCA building, a public building in the City, and improvements appurtenant thereto, shall be made under the provisions of the Act in accordance with plans and specifications to be approved by the governing body of the City and placed on file with the City Clerk (the “Project”).

**Section 2. Bond Authorization.** The estimated costs of the Project are in the amount of \$514,937. A portion of the costs of the Project in the approximate amount of \$440,000, interest on interim financing and associated financing costs shall be payable from the proceeds of general obligation bonds of the City issued under authority of the Act (the “Bonds”), with the balance of said estimated costs to be paid from available funds of the YMCA.

**Section 3. Reimbursement.** The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation § 1.150-2.

**Section 4. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

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**ADOPTED AND APPROVED** by the governing body of the City of Dodge City, Kansas, on April 20, 2020.

(Seal)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the governing body on April 20, 2020, as the same appears of record in my office.

DATED: April 20, 2020.

\_\_\_\_\_  
Clerk

## *Memorandum*

*To: Cherise Tieben, City Manager*  
*From: Nicole May*  
*Date: April 17, 2020*  
*Subject: Resolution No. 2020-10*

*Agenda Item: Ordinances and Resolutions*

---

**Recommendation:** I recommend the approval of Resolution No. 2020-10.

**Background:** So that the City can obtain financing for construction projects in the form of general obligation bonds or temporary notes, the project first needs to be authorized by Resolution of the City of Dodge City. At the February 3, 2020 City Commission meeting the City Commission approved the 2020 street program and other projects to be financed by General Obligation Bonds. This program included street projects that will need to be financed with General Obligation Bond funding. Those projects are: 6<sup>th</sup> & 7<sup>th</sup> Reconstruction/Realignment in the amount of \$1,600,000, 14<sup>th</sup> Avenue and McArtor Road Improvements in the amount of \$100,000, and Asphalt Street Projects in the amount of \$500,000. In the approval resolution, the public art fund contribution is added to each project instead of a standalone. That is why the amounts in the authorizing resolution are slightly different than what is stated above. Resolution No. 2020-10 formalizes the approval process for bond financing.

**Justification:** To issue General Obligation Bonds for specific street and other public improvement projects need to be authorized by Resolution.

**Financial Considerations:** Once the projects are authorized, funding will be issued to fund these projects.

**Purpose/Mission:** To maintain and improve the infrastructure in Dodge City.

**Legal Considerations:** None

**Attachments:** Resolution No. 2020-10.

**RESOLUTION NO. 2020-10**

**A RESOLUTION OF THE CITY OF DODGE CITY, KANSAS, AUTHORIZING CERTAIN PUBLIC IMPROVEMENTS AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.**

---

**WHEREAS**, K.S.A. 13-1024a, as amended by Charter Ordinance No. 41 (the “Act”) of the City of Dodge City, Kansas (the “City”), provides that for the purpose of paying for any bridge, viaduct, street, sidewalk or pedestrian way improvement, airport, public building or structure, parking improvement, or other public utility or works, including any appurtenances related thereto and the land necessary therefor, for lands for public parks and recreation facilities, including golf courses, stadiums and community centers, and developing and making improvements to the same, within or without the City, for the establishment, development and construction of crematories, desiccating or reduction works, including any appurtenances related thereto and the land necessary therefor, within or without the City, or for the improvement, repair or extension of any waterworks, sanitary sewer facilities, sewage treatment or disposal plant, sewerage system, storm water improvement, electric light plant, crematory, desiccating or reduction works or other public utility plant or works owned by the City, and for the purpose of rebuilding, adding to or extending to the same or acquiring land necessary therefor from time to time, as the necessities of the City may require, or for the acquisition of equipment, vehicles and other personal property to be used in relation to any of the improvements authorized herein, the City may borrow money and issue its general obligation bonds and/or temporary notes for the same; and

**WHEREAS**, the City may issue such general obligation bonds when authorized to do so by the adoption of a resolution by the City Commission (the “Governing Body”) describing the purpose to be provided for and the amount of general obligation bonds to be issued, such bonds to be issued, sold, delivered and retired in accordance with the provisions of the general bond law; and

**WHEREAS**, the Governing Body desires to authorize the issuance of general obligation bonds of the City to finance all or a portion of the public improvements set forth below.

**THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY, KANSAS:**

**Section 1. Public Improvements; Bond Authorization.** The Governing Body hereby authorizes the issuance of general obligation bonds of the City (the “Bonds”) for the following described public improvements (collectively the “Improvements”):

<u>Description</u>	<u>Estimated Cost</u>
Asphalt Street projects:	\$500,000
-Reconstruct E. Spruce Street (Ave. D. to Ave. E)	
-Mill and inlay on Shirlane St. (Doralane Ave. to Donedda Ave.), Mellane St. (Doralane Ave. to Ave. A), Tanglewood Dr. (Cannery Row to Ave. A), Toalson Ave. (Plans St. to Ross Blvd.), Circle Lake Dr. (Circle Lake Dr. to Ave. P), Elbow Bend (Shadow Ln. to Circle Lake Dr.), Fairway Dr. (Comanche St. to Ruth Ann Dr.), Greenwood Ave. (Homewood Ave. to Division St.), Lasalle St. (Division St. to Linn St.), W. Cedar St. (12 <sup>th</sup> Ave. to 14 <sup>th</sup> Ave.), 11 <sup>th</sup> Ave. (W. Ash St. to W. Brier St.), Ave. K. (Wyatt Earp Blvd. to Military Ave.), and Sunflower Ave. (Sycamore St. to Poplar St.)	

6 <sup>th</sup> and 7 <sup>th</sup> Ave. reconstruction and realignment	1,600,000
14 <sup>th</sup> Ave. and McArtor Road improvements	100,000
Trail Street widening and improvements (design)	<u>525,000</u>
<b>Total</b>	<b>\$2,725,000</b>

The costs of the Improvements, interest on interim financing and associated financing costs shall be payable from the proceeds of the Bonds issued under authority of the Act.

**Section 2. Reimbursement.** The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation § 1.150-2.

**Section 3. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**ADOPTED AND APPROVED** by the governing body of the City of Dodge City, Kansas, on April 20, 2020.

(Seal)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the governing body on April 20, 2020, as the same appears of record in my office.

DATED: April 20, 2020.

\_\_\_\_\_  
Clerk

## Memorandum

*To: City Manager  
City Commissioners*

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

*Date: April 13, 2020*

*Subject: 2020 Asphalt Street Projects,  
ST 2001*

*Agenda Item: New Business*

---

**Recommendation:** Reject all bids for the construction of the 2020 Asphalt Street Projects. The Engineer's Estimate for the project was \$536,488.15 and with alternate was \$542,113.15. The low bid from APAC Kansas Inc., Shears Division was \$618,987.24 and with the alternate bid of \$625,114.74. Bids were opened on March 31, 2020.

**Background:** The City had budgeted \$500,000 for the 2020 Asphalt Street Project. General Obligation Bonds (GOB) were to be used to fund this project. Sale of the Bonds has not taken place for 2020 as of yet. It is very unlikely that the City will issue the budgeted amount of GOB due to the COVID-19 Pandemic. The project specifications did allow the City to reduce the bid quantities to meet the budgeted amount if the unit prices were reasonable and just. If it was not for the financial uncertainty caused by COVID-19, this is what staff would have recommended to do along with a Change Order to reduce the project to the budgeted amount.

**Justification:** Due to the financial uncertainty caused by the COVID-19 Pandemic. Staff believes it is best to reject the bids at this time. Once the pandemic has ceased and if the financial atmosphere appears better than anticipated, staff may rebid the project.

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

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

**Legal Considerations:** By rejecting the bid, the city will not have any responsibility to the contractors.

**Attachments:** Bid Tab with the Engineer's Estimate.

CITY OF DODGE CITY, KANSAS  
 BID TABULATION

PROJECT: 2020 Asphalt Streets Project  
 PROJECT #: ST 2001  
 BID DATE: 03/31/20

ENGINEER'S ESTIMATE

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
<b>Street</b>					
1	Mobilization	L.S.	1	\$30,000.00	\$ 30,000.00
2	Pavement Excavation	S.Y.	2027	\$5.50	\$ 11,148.50
3	Sub-Grade Repair	C.Y.	20	\$40.00	\$ 800.00
4	6" Fly-Ash Sub-Grade Preparation	S.Y.	2001	\$10.00	\$ 20,010.00
5	Paving Fabric	S.Y.	2001	\$2.00	\$ 4,002.00
6	4" HMA Base Course	Ton	660	\$76.00	\$ 50,160.00
7	2" HMA Surface Course	Ton	4030	\$75.00	\$ 302,250.00
8	Asphalt Patching	Ton	100	\$125.00	\$ 12,500.00
9	1 1/2" Asphalt Mill	S.Y.	33241	\$1.65	\$ 54,847.65
10	Rem./Repl. 30" Curb & Gutter	L.F.	50	\$50.00	\$ 2,500.00
11	7" Concrete Pavement	S.Y.	26	\$75.00	\$ 1,950.00
12	Manhole Adjustment	Each	1	\$1,000.00	\$ 1,000.00
13	Water Valve Adjustment	Each	2	\$850.00	\$ 1,700.00
14	Traffic Control	L.S.	1	\$10,000.00	\$ 10,000.00
15	Monitoring Well Lid Removal	Each	5	\$1,000.00	\$ 5,000.00
<b>Waterline</b>					
16	Waterline 8" C-900 PVC, installed	LF	343	\$40.00	\$ 13,720.00
17	8" X 4" Reducer, Installed	Each	2	\$750.00	\$ 1,500.00
18	8" Gate Valve, Installed	Each	2	\$1,500.00	\$ 3,000.00
19	6" Gate Valve, Installed	Each	1	\$1,250.00	\$ 1,250.00
20	10" X 6" Tee, Installed	Each	1	\$800.00	\$ 800.00
21	10" X 4" Tee, Installed	Each	1	\$750.00	\$ 750.00
22	4" X 4" Tee, Installed	Each	1	\$650.00	\$ 650.00
23	8" X 6" Tee, Installed	Each	1	\$750.00	\$ 750.00
24	Fire Hydrant Assembly, Installed	Each	1	\$5,000.00	\$ 5,000.00
25	Water Service Connections	Each	8	\$150.00	\$ 1,200.00
<b>Alternate</b>					
26	1 1/2" HMA Surface Course	Ton	75	\$75.00	\$ 5,625.00

TOTAL \$ 536,488.15  
 TOTAL w/  
 ALTERNATE \$ 542,113.15

UNIT PRICE	CONTRACT AMOUNT
\$44,140.00	\$ 44,140.00
\$5.00	\$ 10,135.00
\$40.00	\$ 800.00
\$12.00	\$ 24,012.00
\$2.25	\$ 4,502.25
\$82.00	\$ 54,120.00
\$84.25	\$ 339,527.50
\$145.00	\$ 14,500.00
\$2.14	\$ 71,135.74
\$71.50	\$ 3,575.00
\$228.50	\$ 5,941.00
\$1,000.00	\$ 1,000.00
\$950.00	\$ 1,900.00
\$7,400.00	\$ 7,400.00
\$240.00	\$ 1,200.00
\$31.25	\$ 10,718.75
\$400.00	\$ 800.00
\$2,150.00	\$ 4,300.00
\$1,910.00	\$ 1,910.00
\$1,610.00	\$ 1,610.00
\$1,200.00	\$ 1,200.00
\$1,200.00	\$ 1,200.00
\$360.00	\$ 360.00
\$5,600.00	\$ 5,600.00
\$925.00	\$ 7,400.00
\$81.70	\$ 6,127.50

TOTAL \$ 618,987.24  
 TOTAL w/  
 ALTERNATE \$ 625,114.74  
 BID SECURITY 5%  
 START DATE 6/1/2020

UNIT PRICE	CONTRACT AMOUNT
\$32,000.00	\$ 32,000.00
\$19.00	\$ 38,513.00
\$65.00	\$ 1,300.00
\$7.75	\$ 15,507.75
\$3.75	\$ 7,503.75
\$80.50	\$ 53,130.00
\$80.50	\$ 324,415.00
\$100.00	\$ 10,000.00
\$3.30	\$ 109,695.30
\$91.50	\$ 4,575.00
\$300.00	\$ 7,800.00
\$799.00	\$ 799.00
\$975.00	\$ 1,950.00
\$6,800.00	\$ 6,800.00
\$100.00	\$ 500.00
\$59.50	\$ 20,408.50
\$1,190.00	\$ 2,380.00
\$2,179.00	\$ 4,358.00
\$2,045.00	\$ 2,045.00
\$2,049.00	\$ 2,049.00
\$1,915.00	\$ 1,915.00
\$1,329.00	\$ 1,329.00
\$1,779.00	\$ 1,779.00
\$5,499.00	\$ 5,499.00
\$789.00	\$ 6,312.00
\$80.50	\$ 6,037.50

TOTAL \$ 662,563.30  
 TOTAL w/  
 ALTERNATE \$ 668,600.80  
 BID SECURITY 5%  
 START DATE 6/17/2020

CONTRACTOR:  
 APAC Kansas Inc., Shears Division  
 ADDRESS:  
 PO Box 668  
 CITY: Dodge City  
 STATE: Kansas  
 ZIP: 67801  
 LOW BIDDER

CONTRACTOR:  
 Klotz Sand Co., Inc.  
 ADDRESS:  
 P.O. Box 150  
 CITY: Holcomb  
 STATE: Kansas  
 ZIP: 67851

## Memorandum

*To: City Manager  
City Commissioners*

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

*Date: April 13, 2020*

*Subject: Wyatt Earp Blvd. Pavement  
Markings, ST 2007*

*Agenda Item: New Business*

---

**Recommendation:** Reject all quotes for the installation of new pavement markings on Wyatt Earp Blvd. from Ave. P east to the Flying J Truck Stop. The low quote from Cillessen & Sons, Inc. was \$24,964.50. The Engineer's Estimate for the project was \$25,637.50. Quotes were opened on March 31, 2020.

**Background:** The City had budgeted \$30,000 for the 2020 Replacement of Pavement Markings. Funding for this project comes from the Special Streets Fund. This project would have removed the yellow and white pavement marking on Wyatt Earp Blvd. from Ave. P east to the Flying J Truck Stop.

**Justification:** Due to the financial uncertainty caused by the COVID-19 Pandemic. Staff believes it is best to reject the quotes at this time. Once the pandemic has ceased and if the financial atmosphere appears better than anticipated, staff can ask for new quotes to complete the project.

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

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

**Legal Considerations:** By rejecting the quote, the city will not have any responsibility to the contractors.

**Attachments:** Quote Tab with the Engineer's Estimate.

CITY OF DODGE CITY, KANSAS  
QUOTE TABULATION

PROJECT: Wyatt Earp Blvd. Pavement Markings

PROJECT #: ST 2007

QUOTE DATE 03/31/20

ENGINEER'S ESTIMATE

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
1	4" Yellow Epoxy Line	L.F.	8728	\$1.00	\$ 8,728.00
2	4" Broken Yellow Epoxy Line	L.F.	2182	\$1.00	\$ 2,182.00
3	6" Broken White Epoxy Lane Line	L.F.	2182	\$1.25	\$ 2,727.50
4	Striping Removal	L.S.	1	\$12,000.00	\$ 12,000.00

TOTAL      **\$ 25,637.50**

CONTRACTOR: Cillessen & Sons, Inc.	
ADDRESS: 2300 E. Tigua, P.O. Box 9	
CITY:	<u>Kechi</u>
STATE:	<u>Kansas</u>
ZIP:	<u>67067</u>
<b>LOW BIDDER</b>	
UNIT PRICE	CONTRACT AMOUNT
\$1.25	\$ 10,910.00
\$1.25	\$ 2,727.50
\$2.00	\$ 4,364.00
\$6,963.00	\$ 6,963.00

TOTAL      **\$ 24,964.50**

BID SECURITY      N/A  
START DATE      4/27/2020

CONTRACTOR: Road Safe Traffic Systems	
ADDRESS: 2504 Enterprise Ave.	
CITY:	<u>El Dorado</u>
STATE:	<u>Kansas</u>
ZIP:	<u>67042</u>
UNIT PRICE	CONTRACT AMOUNT
\$1.05	\$ 9,164.40
\$2.10	\$ 4,582.20
\$2.10	\$ 4,582.20
\$23,000.00	\$ 23,000.00

TOTAL      **\$ 41,328.80**

BID SECURITY      N/A  
START DATE      8/1/2020

# Memorandum

*To: City Manager  
City Commissioners*

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

*Date: April 14, 2020*

*Subject: Consulting Service Agreement for West  
portion of Iron & 6<sup>th</sup> Ave. associated  
with Candletree #6 Design, ST 2005*

*Agenda Item: New Business*

---

**Recommendation:** Approve Consulting Design Services Agreement with SMH Consultants, P.A. in the amount of \$57,425.00. This will be to design that portion of Iron Rd. west of Candletree #6 along with the short section of 6<sup>th</sup> Ave. north to Iron Rd.

**Background:** At the Special commission Meeting held on December 30, 2019, the Commission approved to hire SMH to provide design services for the Candletree #6 sub-division along with the design of Iron Rd. from Ave. A to the west edge of the Candletree # 6 sub-division. After consideration and the start of design of Iron Rd. it only made since to complete the design of Iron Rd. so that infrastructure could be tied in properly. It also made since to design the northern most portion of 6<sup>th</sup> Ave. that connects to Iron Rd. SMH actually started gathering the field data for these two selection of roadway so that they had the necessary information to complete the design of Iron Rd. from Ave. A to Candletree #6. With this design, we will be able to bid the construction of all of Iron Rd. along with the connecting piece of 6<sup>th</sup> Ave. to complete the transportation loop in this part of town.

**Justification:** It makes since to connect these two major collector streets in a part of town that is seeing growth with several new housing additions. SMH will provide the necessary services to for the city to bid the Iron Rd. and 6<sup>th</sup> Ave. Project meeting timely schedule.

**Financial Considerations:** The contract with SMH Consutlatns is for a not to exceed amount of \$57,425.00. This is a reimbursable expense through the RHID Program.

**Purpose/Mission:** The completion of this project will enable the City to have additional access to the new housing additions in this part of town.

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

**Attachments:** Proposal, Scope of Services, and Fee Estimate from SMH Consultants.

**CONSULTING SERVICES AGREEMENT**

Client: <u>City of Dodge City</u> Address: <u>806 N. Second Avenue</u> <u>Dodge City, KS 67801</u>	Project: <u>Candletree 6 / Iron Rd.</u> <u>(Additional Services) –</u> <u>Iron Road &amp; 6<sup>th</sup> Avenue</u>
Telephone: <u>620-225-8106</u>	Project Location: <u>Dodge City</u>
Contact: <u>Ray Slattery, Dir. Eng. Ser.</u>	SMH Project Manager: <u>Jennifer Hancock, PE</u>
Client Job No.: _____	SMH Job No.: <u>1911DG4046</u>

This AGREEMENT is made by and between **The City of Dodge City, Kansas**, hereinafter referred to as “CLIENT”, and SMH Consultants, P.A., hereinafter referred to as “CONSULTANT”, for professional consulting services not presently specified under any other agreement between CLIENT and CONSULTANT. CONSULTANT agrees to provide client with requested consulting services more specifically described as follows, hereinafter referred to as the “PROJECT.” The PROJECT is commonly known as:

*Candletree 6 / Iron Road (Additional Services) – Street and water main design for Iron Road from Candletree 6 west boundary to 6<sup>th</sup> Avenue and 6<sup>th</sup> Avenue from Iron Road south to Cervantes Road.*

The following Attachments are hereby incorporated into and made a part of this AGREEMENT:

- GENERAL CONDITIONS
- Attachment A: Scope of Services (Additional Services)
- Attachment B: Personnel and Reimbursable Rates
- Attachment C: Not to Exceed Hourly Fee Estimate
- Other: \_\_\_\_\_

By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay consultant for services described herein upon receipt of invoice by CLIENT.

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
- THE HOURLY ESTIMATED NOT-TO EXCEED COST OF CONSULTANT’S SERVICES IS \$57,425.00

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT.

CLIENT

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

CONSULTANT

By:   
AUTHORIZED REPRESENTATIVE

TITLE: Office Manager

DATE: 04/14/2020

PLEASE SIGN AND RETURN ONE COPY TO SMH CONSULTANTS, P.A.



## **GENERAL CONDITIONS**

### **SECTION I – Services by CONSULTANT**

#### **1.1 Scope of Services**

CONSULTANT shall provide the certain services under this AGREEMENT as such services are described in ATTACHMENT A. The intent of the Scope of Work and the estimate contained in ATTACHMENT A is to identify the services to be provided by CONSULTANT. However, it is specifically understood that by written notice to and with the consent and agreement of CONSULTANT, CLIENT may increase the Scope of Work. These services may include the use of outside services, outside testing laboratories and special equipment.

#### **1.2 Fees**

The Fee Estimate for the above-described services is attached hereto and made a part of this AGREEMENT as ATTACHMENT C. It is mutually understood that the Fee Estimate set forth in ATTACHMENT C is non-binding.

### **SECTION II – Payment to CONSULTANT**

#### **2.1 Payment for Personnel Services**

##### **2.1.1 Payment**

Payment for the services rendered by CONSULTANT's personnel shall be based on the hours of chargeable time and in accordance with CONSULTANT's Personnel and Reimbursable Rates, which is identified, attached hereto, and made a part of this AGREEMENT as ATTACHMENT B.

##### **2.1.2 Chargeable Time**

Chargeable time for CONSULTANT's personnel is that portion of their time devoted to providing services requested by CLIENT. Chargeable time for field personnel located away from CONSULTANT's office for more than one (1) week is a minimum of eight (8) hours per day and five (5) days per calendar week, except for federally declared legal holidays or during an employee's sick leave or vacation time. Travel time from CONSULTANT's office to an assigned work site and return to CONSULTANT's office is chargeable time; or, if more economical for CLIENT, CONSULTANT may lodge its personnel overnight near the PROJECT site in lieu of travelling back to CONSULTANT's office at the end of each day.

##### **2.1.3 Overtime Rates**

The basis for payment to CONSULTANT for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly overtime rate as specified in ATTACHMENT B.

#### **2.2 Payment for Direct Expenses**

##### **2.2.1 Payment**

For expenses incurred directly by CONSULTANT, payment to CONSULTANT by the CLIENT shall be in the form of a reimbursement by the CLIENT for such expenses.

##### **2.2.1 Direct Expenses**

For the purposes of this AGREEMENT, expenses to be contracted and managed by CONSULTANT and payable by CLIENT to CONSULTANT shall include, but shall not be limited to: outside services, including, but not limited to, both the services and reimbursable expenses for firms other than CONSULTANT which are necessary, in CONSULTANT's sole discretion, for the work the CONSULTANT is directed to perform; laboratory tests and related reports necessary for the work the CONSULTANT is directed to perform, either by the CONSULTANT or by an outside service for the CONSULTANT; special equipment expenses, including, but not limited to, the costs of the CONSULTANT locating, acquiring, leasing or renting any equipment and/or facilities not currently owned, leased or rented by CONSULTANT at the time of the request for services which are necessary to enable the CONSULTANT to provide the services requested; vehicles furnished by CONSULTANT for CONSULTANT's authorized travels and for CONSULTANT's field personnel; and per diem expense of actual costs of maintaining CONSULTANT's field personnel on or near the PROJECT site, for each day of field assignment away from CONSULTANT's office.

#### **2.3 Payment Conditions**

**2.3.1** CONSULTANT shall submit monthly invoices for all personnel services and expenses under this AGREEMENT and a final invoice upon completion of services.

**2.3.2** Invoices are due and payable upon receipt by CLIENT. Interest at a rate of one and one-half percent (1.5%) per month or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after the date of invoice. Payment will first be credited to interest and then to principal.

**2.3.3** In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the CLIENT will pay the undisputed portion.

**2.3.4** If CLIENT fails to make payment in full to CONSULTANT within sixty (60) days after the date of the disputed invoice, CONSULTANT may, after giving seven (7) days written notice to CLIENT, suspend services under this AGREEMENT until paid in full, including any and all applicable interest. CONSULTANT shall have no liability of any kind to CLIENT for delays or damages caused by such suspension of services. CLIENT agrees to pay all costs of collection, including reasonable attorneys' fees, incurred by CONSULTANT as a result of CLIENT's failure to make payments in accordance with this AGREEMENT.

**2.3.5** The billing rates specified in ATTACHMENT B for subsequent years may be adjusted annually in accordance with CONSULTANT's costs of doing business, and such adjustments shall be binding on CLIENT.

#### **2.4 Independent Contractor**

**2.4.1** The parties acknowledge and agree that CONSULTANT will be providing services to CLIENT hereunder as an independent contractor and not as an employee. Accordingly, CLIENT shall have no responsibility for the collection or payment of any federal, state or local payroll tax in connection with any fees paid to CONSULTANT pursuant to this AGREEMENT, including, but not limited to, income taxes, Social Security taxes, unemployment compensation taxes, and any other fees, charges or licenses required by law.

**2.4.2** Because CONSULTANT is engaged in its own independent business, neither it nor its employees are eligible for, nor entitled to, and shall not participate in, any of CLIENT's pension, health or other fringe benefit plans, if any such plans exist. Such participation in these fringe benefit plans is limited solely to CLIENT's employees.

**2.4.3** Because CONSULTANT is engaged in its own independent business and is not an employee of CLIENT, CLIENT will not obtain workers' compensation insurance for CONSULTANT or its employees. The CONSULTANT agrees to obtain any legally required workers' compensation for itself and its employees and to furnish a copy of such certificate of workers' compensation insurance to CLIENT, at CLIENT's request.

### **SECTION III – Terms of AGREEMENT**

#### **3.1 Term**

CONSULTANT's obligations to perform under this AGREEMENT shall extend from the date of execution until terminated by either party and/or the completion of the PROJECT, whichever comes first.

#### **3.2 Termination of AGREEMENT**

In the event of breach by either party of the terms and conditions of the AGREEMENT and where such breach has not been rectified by the party in default within thirty (30) days of first being notified of such breach, this AGREEMENT may be terminated by the other party in writing. CLIENT may not terminate such AGREEMENT if CONSULTANT has made a good faith attempt to cure such default within the thirty (30) day period.

If, for any reason of force majeure (i.e., causes beyond the control and without the negligence or malfeasance of the party, including but not limited to: war, civil unrest, government action, flood, earthquake, epidemics) either party considers it no longer possible or safe for the CONSULTANT to carry out the duties specified, or should the AGREEMENT be invalidated for any other reason beyond the control of CLIENT or the CONSULTANT, the AGREEMENT may be terminated by either party without liability of any kind, with fifteen (15) day's written notice, provided that CLIENT will reimburse the CONSULTANT for services

already satisfactorily performed and justifiable expenses incurred prior to communication of notice of termination.

**3.3 Payment for Work Upon Abandonment or AGREEMENT Termination**

If CLIENT terminates this AGREEMENT, CONSULTANT shall be paid on the basis of work completed to the effective date of termination. Payment for the work shall be as established under Section II above.

**3.4 Damages and Injunctive Relief**

The parties hereto recognize, acknowledge and agree that because of the damages that could be done to CONSULTANT by breach of any covenant contained in this Section 3.4 by CLIENT, CONSULTANT shall be entitled, in addition to any other rights or remedies afforded to CONSULTANT by law or under the terms of this AGREEMENT, to enforce these covenants, and all of their provisions, by injunction, specific performance or other relief in a court of law or equity. In the event of any breach or threatened breach by the CLIENT of the covenants contained in this section, CONSULTANT shall therefore be entitled, in addition to any other rights or remedies afforded by law or under this AGREEMENT, to any injunction restraining or prohibiting CLIENT from doing anything that violates the covenants contained in this AGREEMENT. All remedies set forth above shall be construed to be cumulative and not exclusive of other remedies granted to CONSULTANT herein or by law.

**SECTION IV – General Considerations**

**4.1 Assignment and Responsibility for Personnel**

**4.1.1** The assignment of personnel and all phases of the undertaking of the services related to the PROJECT, which CONSULTANT shall provide hereunder, shall be subject to the general oversight and general guidance of CLIENT.

**4.1.2** While upon the premises of CLIENT or property under its control, all employees, agents and subconsultants of CONSULTANT shall be subject to CLIENT's rules and regulations respecting its property and the conduct of its employees thereon, provided such rules and regulations do not interfere with CONSULTANT providing its services to CLIENT.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, CONSULTANT shall be and remain an independent contractor and that the employees, agents or subconsultants of CONSULTANT shall not be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

**4.2 Insurance**

CONSULTANT shall upon request furnish to CLIENT a certificate of insurance showing amounts and types of insurance carried by CONSULTANT.

**4.3 Compliance with Law**

**4.3.1** The CONSULTANT shall not discriminate against any independent contractor, employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin.

**4.4 Ownership and Reuse of Documents**

**4.4.1** All drawings, specifications, test reports and other materials and work products, which have been prepared or furnished by CLIENT prior to the AGREEMENT, shall remain CLIENT's property. CLIENT shall make available to CONSULTANT copies of these materials as is necessary for the CONSULTANT to perform the services requested hereunder.

**4.4.2** All drawing, specifications, test reports and other materials and work products, including computer aided drawings, designs and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect of the PROJECT and CONSULTANT shall retain an ownership and property interest therein whether or not the PROJECT is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the PROJECT by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by

CLIENT or others on extensions of the PROJECT or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by CONSULTANT in performing the services herein, and to the condition or availability of the computer data after an accepted period of thirty (30) days from delivery to CLIENT. Any reuse of such material without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses and expenses including, but not limited to, attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

#### **4.5 Location of Underground Utilities**

It shall be the CLIENT's responsibility to locate and physically mark all underground utilities and structures, which lie within the work area prior to the start of subsurface investigations. If the CLIENT elects not to assume this responsibility, CLIENT shall notify CONSULTANT and shall compensate CONSULTANT for all costs associated with locating and physically marking said underground utilities and structures according to CONSULTANT's billing rates for the PROJECT, which shall be over and above the estimated PROJECT fee set forth on ATTACHMENT C hereto. CLIENT shall indemnify and hold CONSULTANT harmless from any damages or delays resulting from unmarked or improperly marked underground utilities and structures. The parties agree and acknowledge that for reasons of safety, CONSULTANT will not begin work until the location of underground utilities has been accomplished.

#### **4.6 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect cost and/or execution of the PROJECT. These conditions and cost/execution effects are not the responsibility of the CONSULTANT. CLIENT shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from such changes or unanticipated underground conditions.

#### **4.7 CONSULTANT's Personnel at PROJECT Site**

**4.7.1** The presence or duties of the CONSULTANT personnel at the PROJECT site, whether as onsite representatives or otherwise, do not make the CONSULTANT or its personnel in any way responsible for those duties that belong to the CLIENT and/or construction contractor(s) or other entities, and do not relieve construction contractor(s) or any other person and/or entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences and procedures necessary for coordinating and completing all portions of the construction work in accordance with the PROJECT documents and any health or safety precautions required by such construction work. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor(s) or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

**4.7.2** The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed work will conform generally to the PROJECT documents and that the integrity of the design concept as reflected in the PROJECT documents has been implemented and preserved by the contractor(s). CONSULTANT neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s) failure to perform their work in accordance with the PROJECT documents. Contractor(s) shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from changes or unanticipated underground conditions.

#### **4.8 Opinions of Cost, Financial Considerations and Schedules**

In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for the PROJECT, the CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by other, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions. CONSULTANT's opinion of probable total PROJECT costs and construction costs provided for as set forth on ATTACHMENT C hereto are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgments and experience. CONSULTANT makes no warranty that the CLIENT's actual costs will not vary from the CONSULTANT's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of the cost, feasibility or schedule of the PROJECT, CLIENT should employ an independent cost estimator, contractor, or other appropriate advisor at CLIENT's sole expense.

#### **4.9 Disposition of Samples and Equipment**

**4.9.1** No samples and/or materials will be kept by CONSULTANT longer than thirty (30) days after submission of the final report unless agreed otherwise by CLIENT and CONSULTANT in writing.

**4.9.2** In the event that samples and/or materials contain, or are suspected to contain, substances or constituents that are hazardous or detrimental to health, safety, or the environment as defined by relevant federal, state, or local statutes, regulations or ordinances, CONSULTANT will, after completion of testing, return such samples and materials to CLIENT, or have the samples and materials disposed of in accordance with CLIENT's directions and all applicable laws. CLIENT recognizes and agrees that CONSULTANT at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**4.9.3** All laboratory and field equipment contaminated in CONSULTANT's performance of services will be cleaned at CLIENT's expense. Contaminated consumables will be disposed of and replaced at CLIENT's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of CLIENT. At CLIENT's expense, such equipment shall be delivered to CLIENT, or disposed of in the same manner as specified in paragraph 4.9.2 above. CLIENT agrees to pay CONSULTANT the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to CLIENT pursuant to this AGREEMENT.

#### **4.10 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.10.1** If CONSULTANT, while performing services for CLIENT pursuant to this AGREEMENT, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule and the estimated cost of CONSULTANT's services will be reconsidered and that this AGREEMENT shall immediately become subject to renegotiation or termination.

**4.10.2** In the event that the AGREEMENT is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that CONSULTANT shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this AGREEMENT, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.10.3** CLIENT also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for CONSULTANT to take immediate measures to protect the health and safety of CONSULTANT's employees and the public. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated pollutants and/or hazardous substances are suspected or encountered. CLIENT hereby authorizes CONSULTANT to take measures that in CONSULTANT's sole discretion are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of taking such additional precautionary measures to protect CONSULTANT's employees' and the public's health and safety. Notwithstanding the foregoing, this paragraph 4.10.3 is not intended to impose upon CONSULTANT any additional duties or obligations.

## **SECTION V – Professional Responsibility**

### **5.1 Performance of Services**

CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by the members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee regarding the performance of the services in this AGREEMENT is included or intended in this AGREEMENT, or may be implied in any report, opinion, or other document prepared by CONSULTANT.

### **5.2 No Special or Consequential Damages**

CLIENT and CONSULTANT agree that to the fullest extent permitted by law, CONSULTANT will not be liable to CLIENT for any special, indirect, or consequential damages whatsoever, whether caused by CONSULTANT's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or any other cause or causes.

### **5.3 Indemnification**

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify and hold CONSULTANT, its agents, subconsultants, and employees harmless from and against any and all claims, damages, losses and expenses, defense costs including, but not limited to, attorneys' fees, and court arbitration costs and other liabilities arising out of or resulting from, wholly or in part, the performance of CONSULTANT's services on the PROJECT hereunder, including the transport or disposal of hazardous samples or contaminated equipment by CONSULTANT on behalf of CLIENT, or the presence, release, or threatened release of asbestos, hazardous substances, or pollutants on or from the PROJECT property.

### **5.4 Third Party Beneficiaries**

CLIENT and CONSULTANT expressly agree that this AGREEMENT does not confer upon any third party any rights as a beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as a result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it. CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

## **SECTION VI – CONFIDENTIALITY AND NON-DISCLOSURE**

### **6.1 Confidential Information**

"Confidential Information" shall be defined as any and all data and information in any format or form, electronic, written or oral, relating to the business, affairs, personnel and/or operations of the CONSULTANT, which at any time may be communicated or revealed to the CLIENT, either directly or indirectly, including, but not limited to, contracts, reports, memoranda, legal documentation, financial data, present or future business plans or strategies, customer data, technology, design and techniques, personal information, and/or any information related to the negotiations in connection with the PROJECT and/or the underlying reason for entering into the PROJECT.

Confidential Information will not include information which:

- (a) has rightfully been in the possession of the CLIENT prior to the date of disclosure of such information by the CONSULTANT;
- (b) has been in the public domain prior to the date of disclosure of such information by the CONSULTANT;
- (c) later becomes part of the public domain by publication or by other means except by means of an unauthorized act or omission on the part of the CLIENT; or
- (d) is lawfully obtained by the CLIENT from a third party independent of the CONSULTANT who, to the knowledge of the CLIENT, is not under any obligation of confidence to the CONSULTANT.

### **6.2 Relevancy of Confidential Information**

The CLIENT understands that the CONSULTANT has endeavored to include in the Confidential Information those materials which the CONSULTANT believes to be relevant to the PROJECT, but the CLIENT acknowledges that there are no representations or warranties, whether express or implied, as to the accuracy or completeness of the Confidential Information. Nothing herein shall be construed as a commitment by the CONSULTANT to enter into the PROJECT with the CLIENT.

**6.3 Representatives of CLIENT**

The CLIENT agrees to provide the Confidential Information only to those of its directors, officers, employees, attorneys, agents, advisors and/or representatives directly concerned with the evaluation of the PROJECT who need to know the Confidential Information so as to enable the CLIENT to evaluate entering into the PROJECT (collectively, the "Representatives") and who agree to be bound by this AGREEMENT.

**6.4 Use of Confidential Information**

The CLIENT shall receive and maintain the Confidential Information in the strictest of confidence and shall only use the Confidential Information for the limited purpose of enabling the CLIENT to evaluate entering into the PROJECT with the CONSULTANT and for no other purpose or use, and shall not disclose such Confidential Information or any part thereof to any other person or entity except with the CONSULTANT's prior written consent. Also, without the prior written consent of the CONSULTANT, the CLIENT will not disclose the fact that the Confidential Information has been made available to the CLIENT, that discussions or negotiations are taking place, or any other facts with respect to the PROJECT, including the status thereof, except as required by law, and then only upon furnishing the CONSULTANT with prompt written notice to allow the CONSULTANT to oppose such process.

**6.5 Survival of AGREEMENT and Confidentiality**

This AGREEMENT shall survive the cessation of any discussions between the parties with regard to the PROJECT. The restrictions and obligations upon the parties under this AGREEMENT concerning the confidentiality and/or non-disclosure of the Confidential Information shall not expire or terminate.

**6.6 Return of Confidential Information**

At the option of the CONSULTANT and upon its request, the CLIENT shall promptly return or destroy all notes, memoranda, correspondence, documents and any other material containing or derived from Confidential Information, including all copies thereof, either furnished hereunder or prepared by the CLIENT. Any destruction of such Confidential Information shall be confirmed in writing upon the request of the CONSULTANT.

**6.7 Forced Disclosure**

In the event the CLIENT is required by judicial or administrative process to disclose the Confidential Information, the CLIENT shall promptly notify the CONSULTANT and allow the CONSULTANT to oppose such process.

**6.8 No Conveyance of Confidential Information or Rights Therein**

Nothing in this AGREEMENT, nor any action taken by the CLIENT during any discussions or negotiations prior to the consummation of the PROJECT shall be construed to convey to the CLIENT any right, title or interest in the Confidential Information, or any license to use, sell, exploit, copy or further develop in any way any Confidential Information. No license is hereby granted or implied under any patent, copyright or trademark, any application for any of the foregoing, or any trade name, trade secret or other proprietary information, in which the CONSULTANT has any right, title or interest.

**6.9 Enforcement**

Each party retains all rights and remedies with respect to the Confidential Information afforded it under any applicable laws of the State of Kansas and the United States both during and after the term of this AGREEMENT, including, without limitation, any trade secret or other laws designed to protect proprietary or confidential information. This AGREEMENT will be construed, interpreted and applied in accordance with the laws of the State of Kansas. It is hereby agreed that any and all claims, disputes or controversies whatsoever or arising from or in connection with this AGREEMENT shall be commenced, filed and litigated

exclusively in the District Court of Riley County, Kansas or the applicable federal district court in Kansas, as determined by CONSULTANT, and the parties hereby consent to the personal jurisdiction of said court, and waive any objection to such jurisdiction and venue.

## **SECTION VII – Miscellaneous**

### **7.1 Applicable Law**

This AGREEMENT shall be construed in accordance with and governed by the laws of the state of Kansas, without regard to the principles of conflicts of law.

### **7.2 Severability**

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and the AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **7.3 Survival and Further Assurances**

It is the intention of the parties that all covenants, agreements, representations, warranties, and obligations of any kind contained in this AGREEMENT shall survive and continue after the completion of the PROJECT.

### **7.4 Headings**

Headings used in this AGREEMENT are for convenience only and shall not be used to interpret or construe its provisions.

### **7.5 Successors and Assigns**

**7.5.1** CLIENT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this AGREEMENT.

**7.5.2** Neither CONSULTANT nor CLIENT are permitted to assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Notwithstanding the foregoing, nothing contained in this paragraph 7.5.2 shall prevent CONSULTANT from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

### **7.6 Counterparts**

This AGREEMENT shall be binding upon and shall inure to the benefit of each of the parties hereto and to their respective successors, heirs, personal representatives and assigns and may be executed in two (2) or more counterparts each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

### **7.7 Time is of the Essence**

Time shall be considered of the essence in the performance of this AGREEMENT.

### **7.8 Entire Agreement**

This AGREEMENT embodies the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes any and all prior agreements and negotiations between the parties, whether written or oral. There have been and are no agreements, representations or warranties between the parties other than those set forth or provided herein.

### **7.9 Amendment and Modification**

This AGREEMENT may not be modified except in writing and signed by all parties.

### **7.10 Waiver of Breach**

The waiver by either party of a breach of any provision of this AGREEMENT shall not operate or be construed as a waiver of any subsequent breach by either party.

**7.11 Rights not Exclusive to CONSULTANT**

All rights and remedies granted in this AGREEMENT to CONSULTANT shall be cumulative and not exclusive of all the other rights and remedies which CONSULTANT may have at law or in equity, and CONSULTANT may exercise all or any of such rights and remedies at any one or more times without being deemed to have waived any or all other rights and remedies which CONSULTANT may have.

**7.12 Notices**

Unless contrary provisions are expressly set forth herein, all notices of any kind shall be in writing and shall, at the option of the party giving the notice, be

- (i) personally delivered; or
- (ii) delivered by reputable overnight courier; or
- (iii) sent by fax or email; or
- (iv) sent by certified or registered mail, postage prepaid;

to the person entitled to receive the notice at the last address provided in writing by such person to the other signatory hereto. All such notices shall be deemed given on the date the notice is actually received at the address indicated.

**7.13 Authority**

The undersigned agents that signed this AGREEMENT have proper corporate authority to bind their respective companies to the terms and conditions of this AGREEMENT.

**7.14 No Partnership**

The parties do not intend that any partnership or agency relationship be created by this AGREEMENT.



***Candletree 6 Addition – Additional Services for Iron Road  
Dodge City, Kansas  
Additional Iron Road Construction Documents  
Scope of Professional Services for Additional Iron Road Services  
Prepared: March 6, 2020***

***General Project Description:*** Land surveying and civil engineering construction documents for Iron Road from the west boundary of Candletree 6 to 6<sup>th</sup> Avenue and 6<sup>th</sup> Avenue from Iron Road to Cervantes Road in Dodge City, KS. These improvements generally involve street, water main, storm sewer, and drainage improvements.

**SMH Consultants (SMH) will perform the following tasks:**

**Part I - Land Survey**

1. A complete boundary, topographic, and site survey for the entire area that is to be improved along the proposed Iron Road from the west boundary of Candletree 6 to 400 feet west of 6<sup>th</sup> Avenue and then south on 6<sup>th</sup> Avenue to Cervantes Road. The survey will include any necessary boundary information, manmade features on the site, marked utilities, and topography as necessary to develop a digital terrain model for grading.
2. Conversion of the survey into a working drawing that can be used for design.

**Part II - Construction Documents for Iron Road (west boundary of Candltreet 6 to 6<sup>th</sup> Avenue & 6<sup>th</sup> Avenue from Iron Road to Cervantes Road)**

1. Site plan showing all existing and proposed improvements, proposed lot lines, proposed easements, existing easements, right of way and utilities.
2. Water main plan and profile for the extension of water service along the proposed Iron Road from the west boundary of Candletree 6 to approximately 400 feet west of 6<sup>th</sup> Avenue and along 6<sup>th</sup> Avenue from Iron Road to Cervantes Road. The water main plans and profiles shall conform to City of Dodge City standards.
3. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
4. Grading plan for the entire area to depict areas of cut and fill.
5. Roadway plan and profiles for the proposed Iron Road from the west boundary of Candletree 6 to 6<sup>th</sup> Avenue and 6<sup>th</sup> Avenue to Cervantes Road.

6. Intersection details detailing horizontal and vertical design information at each of the proposed intersections.
7. Typical street sections based on City of Dodge City standards and paving details as required by the pavement design.
8. Roadway cross sections for each of the public streets within the final platted subdivision. Roadway cross sections will depict proposed and existing known and discoverable ground conditions, characteristics and improvements, as well as water and sanitary sewer crossings and crown elevations.
9. Stormwater runoff calculations to verify the required stormwater needs of the subdivision including the proper sizing of conduits and inlets, including a drainage map.
10. Storm sewer plan and profile internal to the development. This task includes the replacement of the existing CMP near the 6<sup>th</sup> Avenue and Iron Road intersection. The storm sewer plan and profile shall conform to City of Dodge City Standards.
11. Storm sewer standard details as provided by the City of Dodge City.
12. Erosion and sediment control plan and shall conform to City of Dodge City regulations. Submittal of field check construction documents (electronically and one full size paper set) for review by the City of Dodge City. This task also includes a field check by the Dodge City Office Manager. This task also includes addressing any modifications to the plans required as a result of the field check review by the City of Dodge City.
13. Quality control check by the Project Manager, an independent Project Manager and a Managing Principal Engineer who will provide quality assurance. This review will also include a design charrette involving the most experienced engineers within the company to discuss the design, cost saving opportunities, and the quality of the final plan set.

### **Part III – Contractor Coordination and Project Pricing**

1. Project construction cost estimates to be utilized by the City in preparation of the necessary documentation for both project petitions and the Rural Housing Incentive District.
2. Preparation of a project bid sheet that includes utilities for the developer to utilize in obtaining bids for construction of the project.

3. Responding to questions from bidders regarding the project as they prepare project bids for the developer.

**Services not Rendered by SMH but May be Required**

1. Dumpster enclosure design and details, if required.
2. Structural design services.
3. Geotechnical Investigation.
4. All other services not identified in the above scope of services.

**Notes**

1. There may be studies (i.e. additional traffic, additional drainage, sewer and etc.) not identified in this scope of services that may arise because of the City of Dodge City or other jurisdictional agencies. As the need for these studies arises a separate scope of work will be developed for approval by the client.
2. Any changes to the overall layout of the site, the design constraints, original design intent and so forth made midstream in the project will impact the ability to complete the work within the fee proposed. These changes, if necessary, will constitute a revised and re-negotiated scope of work and fee.
3. All designs shall be provided on SMH title block and provided in PDF format.
4. Any services not identified in the fore mentioned scope of services requested by the architect or owner will be provided at 2019 hourly rates.

## 2019 Personnel and Reimbursable Rates

### SMH Consultants

	<u>Standard Rate</u>	<u>Overtime Rate</u>
<i>Survey Crew</i>	<i>\$125.00/hour</i>	<i>\$167.00/hour</i>
<i>GPS /Robot Crew</i>	<i>\$100.00/hour</i>	<i>\$123.75/hour</i>
<i>CADD Technician</i>	<i>\$85.00/hour</i>	<i>\$110.00/hour</i>
<i>Drone Piloting</i>	<i>\$100/hour</i>	<i>\$130/hour</i>
<i>Drone Processing</i>	<i>\$85/hour</i>	<i>\$110/hour</i>
<i>Managing Principal Professional Surveyor</i>	<i>\$125.00/hour</i>	<i>\$160.00/hour</i>
<i>Professional Surveyor</i>	<i>\$110.00/hour</i>	<i>\$133.00/hour</i>
<i>Managing Principal Engineer</i>	<i>\$165.00/hour</i>	<i>\$215.00/hour</i>
<i>Principal Engineer</i>	<i>\$155.00/hour</i>	<i>\$200.00/hour</i>
<i>Project Engineer</i>	<i>\$135.00/hour</i>	<i>\$175.00/hour</i>
<i>Design Engineer</i>	<i>\$100.00/hour</i>	<i>\$130.00/hour</i>
<i>Landscape Architect</i>	<i>\$105.00/hour</i>	<i>\$135.00/hour</i>
<i>Construction Engineering/Inspection</i>	<i>\$85.00/hour</i>	<i>\$110.00/hour</i>
<i>Proctor</i>	<i>\$300.00/each</i>	
<i>Clerical</i>	<i>\$55.00/hour</i>	<i>\$70.00/hour</i>
<i>Mileage</i>	<i>\$0.58/mile</i>	
<i>Concrete Cylinder Breaks</i>	<i>\$50/each</i>	



## Memorandum

*To: City Manager  
City Commissioners*

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

*Date: April 7, 2020*

*Subject: Central Ave. Reconstruction from  
Vine St. to Comanche St. –  
Paving, Water, & Sanitary Sewer,  
ST 1508 – CO #4*

*Agenda Item: New Business*

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**Recommendation:** Approve Change Order #4 of the Central Ave. Reconstruction Project in the amount of \$48,107.71. This is a culmination of changes to the project through out the construction process to date.

**Background:** At the May 7<sup>th</sup> Commission Meeting the Commission approved the bid from Building Solutions, Inc. for the reconstruction of Central Ave. from Comanche St. to Vine St. As the project proceeded, minor modifications were made in the field to adjust to the real world circumstances. This change order represents field measured quantities. As with any construction project, the starting or ending point of construction varied from what was drawn in the plans to take into account the real world factors. There were cost saving changes implemented like adding changing the transition of the side street tie-ins to 7” concrete instead of brick pavement. This change saved \$51.50 per SY. A change was made to the valley gutter that is between the driving lanes and off street parking. The valley was widening to 30” to give the project a more uniform look and aid in the constructability of the project. This added roughly \$2.20 per LF of valley gutter to the project. Other items added to the project included 265 LF of 6” waterline used to tie into existing waterlines. Fittings for the 16” water line were added to make a smooth transition between the existing water lines and the new 12” waterline on Central Ave. In some high traffic or areas where grass would be difficult to maintain, red concrete or brick pavers were added to give the project a cleaner finished look and help with the long term maintenance by the adjacent property owners. There will more than likely be one more change item to close out the project as some minor work still needs to be completed and the final quantities are reconciled.

**Financial Considerations:** The cost to of Change Order #4 is \$48,107.71. This will be covered by the General Obligation Bonds (GOB) issued for the project. There is approximately \$480,000 remaining for the project, we still have \$65,000 in retainage to pay and some other items to finish up. I am projecting there will be roughly \$400,000 left in the fund once the project is finalized.

**Purpose/Mission:** The completion of this project would align with the City's Core Values of Ongoing Improvement and Working Towards Excellence.

**Legal Considerations:** By approving the Change Order, additional payment will need to be made to Building Solutions, Inc.

**Attachments:** Change Order #4



## *Memorandum*

*To: City Commissioners*

*From: Joann Knight*

*Date: April 15, 2020*

*Subject: CDBG Local Revolving Loan Fund Requests*

*Agenda Item: New Business*

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**Recommendation:** Staff recommends approval of the following CDBG Local Revolving Loan Funds and requests the Mayor to sign the Determination of Level of Review attached for each applicant business. All loans will be a three-year term at 1% interest with the first six months being interest only.

Advanced Laser Clinic - \$20,000

Bartlett & Selzer - \$50,000

JAR Ventures, LLC (Dodge House Restaurant) - \$75,000

New Chance, Inc. - \$60,000

Pruitt Electric, LLC - \$37,000

Quick Bail Bonds & Insurance Express - \$35,000

**Background:** Businesses across the state of Kansas are feeling unprecedented pressures from the economic and health impacts of COVID-19. This situation calls for a strong and creative response from all of us.

The Department of Commerce is encouraging you to use CDBG Revolving Loan Fund monies in your account to assist small businesses with their need for *working capital* and to continue to employ their workers.

The Kansas Department of Commerce CDBG Program is allowing you IMMEDIATE use of your CDBG revolving fund monies to support the working capital needs of businesses in your community. Here are the terms:

1. Loans must be used for working capital. Working capital is defined as salaries and wages, purchase of inventory, utilities, rent, insurance payments, etc.;
2. The term of the loan shall be 3 years or less – the term is determined by the city/county;
3. The interest rate can be determined at the local level but must be less than 4%;
4. Money loaned, when re-paid, will be returned to your accounts;

5. City/county can provide financial assistance in the form of a grant rather than a loan, but be mindful that will reduce the amount in your CDBG Revolving Loan Fund account;
6. Complete the Job Certification Form to prove 51% of the persons impacted are LMI at retention;
7. Cities/Counties do NOT need to require matching funds;
8. Cities/Counties do NOT need to require collateral;
9. Maximum Loan is \$35,000 per job retained;
10. We encourage minimal paperwork. Cities/counties should develop a one or two page application for the loan request from the business;
11. Job retentions will need a letter from the company/business attesting the company is either shut down or will be shut down due to COVID 19;
12. Public Notice of Fund Availability has been reduced to 24 hours. We will allow posting at City Hall, as well as local radio or tv.

The Development Corporation worked with Dodge City, Ford County and Spearville staff to set the rate and terms for each loan fund and promoted the availability of funds through social media and public announcements including an article in the Dodge City Daily Globe, video announcements and social media.

All the applications were reviewed by Great Plains Development and the City LRLF Review Committee consisting of Joann Knight, Gary Johnson and Nannette Pogue.

**Justification:** The funds available will help provide working capital to critical small businesses in our community that may have to close or lay off employees if they do not receive funding. All applicants meet the 51% Low to Moderate (LMI) requirements set by HUD. Following is the LMI of each applicant:

1. Advanced Laser – Owner is only job and meets 100% LMI
2. Bartlett & Selzer – 3 FTE which 100% meet LMI
3. JAR Ventures, LLC – 10.5 FTE which 100% meet LMI
4. New Chance, Inc. – 27.25 FTE which 56% meet LMI
5. Pruitt Electric, LLC – 4.25 FTE which 76.47% meet LMI
6. Quick Bail Bonds – 2 FTE which 100% meet LMI

**Financial Considerations:** The City of Dodge City currently has \$405,000 in the CDBG LRLF account. These loans meet the requirements and qualifications of the program. The loan packages will be administered by Great Plains Development.

**Purpose/Mission:** Provide disaster relief funding to our local small businesses affected by COVID-19.

**Legal Considerations:** Each loan application will require a Determination of Letter of Review signed by Mayor Joyce Warshaw.

**Attachments:**

Kansas Department of Commerce  
Community Development Block Grant (CDBG) Program  
1000 S.W. Jackson St., Suite 100  
Topeka, KS 66612-1354

**DETERMINATION OF LEVEL OF REVIEW**

ENVIRONMENTAL REVIEW RECORD (ERR)

Grantee Name & Project Number: City of Dodge City #88-BF-199-020; Advanced Laser Clinic

Project Location: 120 W. Ross Blvd, Dodge City, KS 67801

Project Description: Loan proceeds for working capital for an existing business. Funds will be used for commercial loan payment, rent and accounts payable. The owner is the only employee and meets the LMI requirement of the funds.

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The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," and the following determination with respect to the project is made:

- Exempt from NEPA review requirements per 24 CFR 58.34(a)(\_\_\_)
- Categorical Exclusion NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(4)
- Categorical Exclusion SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(\_\_\_)
- An Environmental Assessment (EA) is required to be performed.
- An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

Joyce Warshaw, Mayor  
Chief Elected Official (print name/title)

\_\_\_\_\_  
Chief Elected Official's Signature

\_\_\_\_\_  
Date

Kansas Department of Commerce  
 Community Development Block Grant (CDBG) Program  
 1000 S.W. Jackson St., Suite 100  
 Topeka, KS 66612-1354

### DETERMINATION OF LEVEL OF REVIEW

#### ENVIRONMENTAL REVIEW RECORD (ERR)

Grantee Name & Project Number: City of Dodge City #88-BF-199-021; Bartlett and Selzer Collection Services LLC.

Project Location: 100 Military Ave, Ste 208, Dodge City, KS 67801

Project Description: Loan proceeds for working capital for an existing business. Funds will be used for utilities, rent and payroll to retain 3 FTE jobs of which 51% meet the LMI requirement of the funds.

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The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," and the following determination with respect to the project is made:

- Exempt from NEPA review requirements per 24 CFR 58.34(a)(\_\_\_)
- Categorical Exclusion NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(4)
- Categorical Exclusion SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(\_\_\_)
- An Environmental Assessment (EA) is required to be performed.
- An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

Joyce Warshaw, Mayor  
 Chief Elected Official (print name/title)

\_\_\_\_\_  
 Chief Elected Official's Signature

\_\_\_\_\_  
 Date

Kansas Department of Commerce  
 Community Development Block Grant (CDBG) Program  
 1000 S.W. Jackson St., Suite 100  
 Topeka, KS 66612-1354

### DETERMINATION OF LEVEL OF REVIEW

#### ENVIRONMENTAL REVIEW RECORD (ERR)

Grantee Name & Project Number: City of Dodge City #88-BF-199-019; JAR Ventures, LLC.

Project Location: 2408 W. Wyatt Earp, Dodge City, KS 67801

Project Description: Loan proceeds for working capital for an existing business. Funds will be used for utilities, rent and payroll to retain 10 1/2 FTE jobs of which 51% meet the LMI requirement of the funds.

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The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," and the following determination with respect to the project is made:

- Exempt from NEPA review requirements per 24 CFR 58.34(a)(\_\_\_)
- Categorical Exclusion NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(4)
- Categorical Exclusion SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(\_\_\_)
- An Environmental Assessment (EA) is required to be performed.
- An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

Joyce Warshaw, Mayor  
 Chief Elected Official (print name/title)

\_\_\_\_\_  
 Chief Elected Official's Signature

\_\_\_\_\_  
 Date

Kansas Department of Commerce  
 Community Development Block Grant (CDBG) Program  
 1000 S.W. Jackson St., Suite 100  
 Topeka, KS 66612-1354

**DETERMINATION OF LEVEL OF REVIEW**

ENVIRONMENTAL REVIEW RECORD (ERR)

Grantee Name & Project Number: City of Dodge City #88-BF-199-018; New Chance Inc.

Project Location: 2500 E. Wyatt Earp, Dodge City, KS 67801

Project Description: Loan proceeds for working capital for an existing 501c3 business. Funds will be used for payroll to retain 27 1/4 FTE jobs of which 51% meet the LMI requirement of the funds.

The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,” and the following determination with respect to the project is made:

- Exempt from NEPA review requirements per 24 CFR 58.34(a)(\_\_\_)
- Categorical Exclusion NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(4)
- Categorical Exclusion SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(\_\_\_)
- An Environmental Assessment (EA) is required to be performed.
- An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

Joyce Warshaw, Mayor  
 Chief Elected Official (print name/title)

\_\_\_\_\_  
 Chief Elected Official’s Signature

\_\_\_\_\_  
 Date

Kansas Department of Commerce  
Community Development Block Grant (CDBG) Program  
1000 S.W. Jackson St., Suite 100  
Topeka, KS 66612-1354

### DETERMINATION OF LEVEL OF REVIEW

#### ENVIRONMENTAL REVIEW RECORD (ERR)

Grantee Name & Project Number: City of Dodge City #84-BF-388-010; Pruitt Electric, LLC.

Project Location: 100 Military Ave., Ste 222, Dodge City, KS 67801

Project Description: Loan proceeds for working capital for an existing business. Funds will be used for utilities, accounts payable and payroll to retain 4 1/4 FTE jobs of which 51% meet the LMI requirement of the funds.

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The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," and the following determination with respect to the project is made:

- Exempt from NEPA review requirements per 24 CFR 58.34(a)(\_\_\_)
- Categorical Exclusion NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(4)
- Categorical Exclusion SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(\_\_\_)
- An Environmental Assessment (EA) is required to be performed.
- An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

Joyce Warshaw, Mayor  
Chief Elected Official (print name/title)

\_\_\_\_\_  
Chief Elected Official's Signature

\_\_\_\_\_  
Date

Kansas Department of Commerce  
Community Development Block Grant (CDBG) Program  
1000 S.W. Jackson St., Suite 100  
Topeka, KS 66612-1354

**DETERMINATION OF LEVEL OF REVIEW**

ENVIRONMENTAL REVIEW RECORD (ERR)

Grantee Name & Project Number: City of Dodge City #88-BF-199-022; Quick Bail Bonds & Insurance Express

Project Location: 306 W Wyatt Earp, Dodge City, KS 67801

Project Description: Loan proceeds for working capital for an existing business. Funds will be used for utilities, accounts payables and payroll to retain 2 FTE jobs of which 51% meet the LMI requirement of the funds.

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The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," and the following determination with respect to the project is made:

- Exempt from NEPA review requirements per 24 CFR 58.34(a)(\_\_\_)
- Categorical Exclusion NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(4)
- Categorical Exclusion SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(\_\_\_)
- An Environmental Assessment (EA) is required to be performed.
- An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

Joyce Warshaw, Mayor  
Chief Elected Official (print name/title)

\_\_\_\_\_  
Chief Elected Official's Signature

\_\_\_\_\_  
Date

# Memorandum

*To:* City Manager  
City Commissioners  
*From:* Ray Slattery, P.E.  
Director of Engineering Services  
*Date:* April 15, 2020  
*Subject:* Consulting Services to provide  
Accreditation of City's Levee System  
Phase IV, SD 2001  
*Agenda Item:* New Business

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**Recommendation:** Given the importance of maintaining our Levee Certification staff would recommend approval of the Consulting Services for Phase IV, Levee Accreditation, with Wilson & Company to provide professional additional services to assist the city with accreditation of its levee system in the amount of \$172,132. Funds will be taken from the Stormwater Drainage Fund.

**Background:** In April of 2008 the City entered into an agreement with FEMA to determine if our levee system would indeed provide the necessary protection that it was designed to. Should the city not be able to provide this accreditation, then much of Dodge between the BNSF Railroad tracks and Beeson Rd. would be placed in the 100-yr. flood zone and require flood protection insurance. The process of accreditation started when the City Commission signed the PAL (Provisionally Accredited Levee) agreement with FEMA. In September of 2008, Wilson & Company was retained to complete the discovery phase of the levee assessment. In January of 2009, Wilson & Company was retained to complete the assessment necessary to meet FEMA requirements, additional data collection and analysis was collected. From this data the necessary improvements can be designed. In July of 2011, Wilson & Company was retained for Levee Improvement Design. To date Wilson & Company has completed the Improvement Plans to 90%, met with representatives of the USACE, and Kansas Department of Agriculture Water Resources (KDA) on permitting. During the design phase, additional items had been discovered that need to be addressed for the Levee Accreditation and relieve problems due to the levee system. The additional services are required to finalize the Improvement Plans, Ave. D Drain Improvements, assure the City that FEMA will accept the plans, provide on-site construction inspection and documentation, and compile and submit all the necessary documentation for FEMA to Accredite the Levee System. The project was suspended for a few years since there was a moratorium placed on FEMA for the remapping of Flood Zones and Levees. However, during this time the City did proceed with the portion of the project, the excavation of the excess material in the river bed. The mapping project has

now been initiated by FEMA and KDA. Since KDA realizes the City's desire to have the levees accredited and they plan to map all of Ford County at the same time, the mapping project has been delayed until Fiscal Year 2021. At this time KDA expects the City to be well on its way to having the Levees accredited. It is anticipated that the design stage will be completed later this year. The project will be bid shortly after that and should be under construction yet this year.

**Justification:** The completion of this Phase of the Levee Accreditation is necessary to meet the FEMA requirements.

**Financial Considerations:** The cost of the Consulting Services, Phase IV, Levee Improvement Design, is \$172,132. Funds will be taken from the Stormwater Drainage Fund. Funds for construction will be through GOB which were approved earlier this year.

**Purpose/Mission:** The completion of the Levee Accreditation will allow the existing Levee System to meet the FEMA requirements, which will aid in the continued growth of Dodge City.

**Legal Considerations:** By approving the professional services with Wilson & Company the City will enter into a contract with Wilson & Company and be responsible to make payments for the completed work.

**Attachments:** Consulting Services Agreement, Dodge City Levee Assessment Phase IV (Levee Improvement Design and Certification)

## OWNER-ENGINEER AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Dodge City, Kansas (hereafter "Owner"), and Wilson & Company, Inc., Engineers & Architects (hereafter "Engineer"), to perform professional engineering services as described herein. Therefore, for valuable consideration as set forth herein, the Owner and Engineer agree as set forth below.

**PROJECT:** Dodge City Levee Assessment – Phase IV (Levee Improvements Design and Certification)

**ENGINEER'S SCOPE OF SERVICES:** (hereafter referred to as "Services") are generally described as follows, as more fully set out in Engineer's Proposal dated March 27, 2020, attached hereto as **Exhibit A** and incorporated herein by reference:

This agreement includes additional verification and analysis of the construction completed, confirming proposed levee improvements remaining (primarily levee raising and armoring), Final Plans for the levee improvements, bidding/construction support, validation of construction, and final levee certification report.

### **Terms and Conditions**

#### ARTICLE 1 GENERAL

**1.1** Owner employs Engineer as an independent contractor, to perform the Services described herein. The Engineer agrees to accept responsibility for the proper conduct of Engineer's Services performed under this Agreement, whether performed by Engineer's employees or sub-consultants. Engineer shall not subcontract any portion of its work without prior written approval of Owner. Owner approves of the sub-consultants identified in the attached **Exhibit B**.

**1.2** To the extent required by law, all final documents prepared by Engineer or its sub-consultants shall be sealed by a professional licensed in the Project state.

**1.3** The Engineer shall designate a representative authorized to act in the Engineer's behalf. Engineer reserves the right to change representatives as necessary due to availability.

**1.4** The Engineer shall attend necessary meetings with Owner related to the Services. Engineer's base fee includes meetings as outlined in Exhibit A. Meetings in excess of those budgeted shall be Additional Services.

**1.5** The Engineer shall recommend to the Owner the obtaining of such investigations, surveys, tests, analyses and reports as may be necessary for the proper execution of the Engineer's Services.

**1.6** If the Scope of Services requires Engineer to provide Opinions of Probable Construction Cost, Owner acknowledges that since the Engineer has no control over the cost of labor, material or equipment, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, the opinions of construction costs provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's reasonable judgment as a design professional familiar with the construction industry. Engineer cannot, and does not, guarantee that the bids or the project construction costs will not vary from the Opinions of Probable Construction Cost prepared by the Engineer. If Owner desires more accurate information on Project cost, it shall retain the services of a construction estimator.

**1.7** The Engineer represents that it is authorized to practice engineering in the state in which the Project is located.

**ARTICLE 2**  
**ENGINEER'S OBLIGATIONS**

**2.1** Engineer agrees to perform its Services in accordance with the standard of care set out in Article 5.1. Unless otherwise provided herein, Engineer agrees to furnish all materials, supplies, tools, equipment, supervision, labor, drawings and anything else necessary to fully perform all of the Services described herein.

**2.2** The Engineer shall (a) cooperate with the Owner and all other consultants or contractors whose work may relate to the Engineer's Services; and (b) specifically note and promptly advise the Owner of any interference with the Engineer's Services.

**2.3 DESIGN PHASE**

**2.3.1** Based on the program provided by Owner, the Engineer shall prepare a Schematic Design for approval by the Owner, followed by Design Development Documents, for approval by Owner. These shall consist of drawings, specifications and other documents to fix and describe the Project, including materials, equipment, component systems and types of construction.

**2.4 CONSTRUCTION DOCUMENTS PHASE**

**2.4.1** When authorized by the Owner, the Engineer shall prepare from the Design Development Documents approved by the Owner final Drawings and Specifications setting forth in detail the requirements for the construction of the Project, for approval by the Owner.

**2.4.2** The Engineer shall assist the Owner as necessary in connection with the Owner's responsibility for filing the documents concerning the Project required for the approval of governmental authorities having jurisdiction over the Project.

**2.4.3** When authorized by the Owner, the Engineer shall prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, value engineering services and perform or furnish services required to revise studies, reports, final Drawings and Specifications or other applicable documents as a result of such review processes; PROVIDED, HOWEVER, Engineer shall not be required to perform or furnish services, or revise any study, report, final Drawings and Specifications or other applicable document that Engineer, in its professional judgment, would require Engineer to violate its standard of care or any other professional obligation.

**2.5 BIDDING OR NEGOTIATION PHASE**

**2.5.1** If required by the Owner, the Engineer shall assist the Owner in obtaining and evaluating bids or negotiated proposals, and in awarding and preparing contracts for construction.

**2.5.2** The Engineer shall prepare Addenda Documents, interpret Bid Documents and assist the Owner as required with questions from bidders. Engineer shall assist Owner in conducting a pre-bid conference.

**2.6 CONSTRUCTION PHASE**

**2.6.1** The Construction Phase will commence with the award of the Contract for Construction and, together with the Engineer's obligation to provide Basic Services under this Agreement, will terminate when final payment to the Contractor is due or, in the absence of a final Certificate for Payment or of such due date, sixty (60) days after the date Engineer certifies as Substantial Completion of the Work, whichever occurs first.

**2.6.2** Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Engineer shall assist the Owner in the Administration of the Contract for Construction as set forth below and the General Conditions of the Contract for Construction, which are subject to Engineer's approval and must be consistent with this Agreement.

**2.6.3** The Engineer shall at all times have access to the Work wherever it is in preparation or progress. The Engineer shall visit the site at intervals appropriate to the stage of construction, or as set out in the Scope of Services, **Exhibit A**, to become generally familiar with the progress and quality of the Work and to determine in general if such Work is proceeding in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on-site observations, the Engineer shall keep the Owner informed of the progress and quality of the Work and shall endeavor to guard the Owner against defects and deficiencies in such Work of the Contractor.

**2.6.4** The Engineer shall not have control or charge of and shall not be responsible for, construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents. Nothing in this Agreement shall

be construed as making Engineer a Controlling Employer as defined by OSHA for purposes of site safety.

**2.6.5** The Engineer, based on observations at the site and on evaluations of the Contractor's Applications for Payment, shall assist the Owner in determining the amounts owing to the Contractor and shall certify such amounts to the Owner. Such certification shall not expand Engineer's duties and is made for the sole benefit of the Owner and is not intended to be relied upon by others.

**2.6.6** Certification by the Engineer to the Owner of an amount owing to the Contractor shall constitute a representation by the Engineer to the Owner that, based on the Engineer's observations at the site and the data comprising the Contractor's Application for Payment, the Work has progressed to the point indicated; that to the best of the Engineer's knowledge, information and belief, the quality of such Work is in accordance with the Contract Documents (subject to an evaluation of such Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated by the Engineer); and that the Contractor is entitled to payment in the amount certified.

**2.6.7** Upon written request of the Owner, the Engineer shall furnish to the Owner, with reasonable promptness, written interpretations of the Contract Documents prepared by the Engineer.

**2.6.8** The Engineer shall render written recommendations, within reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents. The Engineer shall not be liable for decisions made in good faith in this role of neutral.

**2.6.9** The Engineer shall assist the Owner in determining whether the Owner shall reject Work which does not conform to the Contract Documents or whether special inspection or testing is required.

**2.6.10** The Engineer shall review and approve, or take appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay.

The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**2.6.11** The Engineer shall assist the Owner in preparing Change Orders for the Owner's approval and execution in accordance with the Contract Documents. The Engineer shall recommend to the Owner minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

**2.6.12** The Engineer shall assist the Owner in conducting one (1) inspection to determine the date of Substantial Completion and one (1) inspection to determine the date of Final Completion and shall review and approve, or take other appropriate action on, the Contractor's list of items to be completed or corrected and shall forward the list to the Owner for final disposition.

**2.6.13** The Engineer shall assist the Owner in receiving and forwarding to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Engineer shall issue to the Owner a final certificate in writing with respect to final payment.

## **2.7 TIME**

**2.7.1** The Engineer shall commence its Services within five (5) working days of written Notice to Proceed from the Owner and if such Services are interrupted for any reason, the Engineer shall resume such Services within five (5) working days from the Owner's notice to do so.

**2.7.2** The Engineer shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Engineer shall submit, for the Owner's approval, a schedule for the performance of the Engineer's services which shall be adjusted as required as the Project proceeds, and which shall include allowances for periods of time required for the Owner's and the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project.

**2.7.3** The Engineer will exercise due diligence in the performance of its professional services, but due to the nature of the work, the Engineer cannot guarantee a specific timetable for completion of the Contractor's Work. The Owner waives any right to make any claims against the Engineer for any damages or expenses claims as a result of delays in

the progress of the Work so long as due diligence has been exercised by the Engineer in accordance with Paragraph 5.1, below.

### **ARTICLE 3 OWNER'S OBLIGATIONS**

**3.1** The Owner shall designate a representative authorized to act in the Owner's behalf. Owner reserves the right to change representatives as necessary due to availability.

**3.2** Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.

**3.3** The Owner shall provide the Engineer with a program outlining the scope of the Project, the budget and the schedule.

**3.4** Furnish Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

**3.5** Furnish Engineer with such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services.

**3.6** With respect to all information Owner is required to provide or furnish Engineer, as set forth above in Paragraphs 3.2 through 3.5 inclusive, or any other information Owner provides or furnishes to Engineer pertinent to the Project and upon which it is reasonably anticipated Engineer will rely upon, Owner shall notify, in writing, Engineer of all defects, errors, or omissions in such information known by Owner or for which Owner should reasonably have knowledge.

**3.7** Arrange for right of entry and safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.

**3.8** Furnish Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

**3.9** Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating,

project peer review, value engineering, and constructability review.

**3.10** The Owner shall provide timely input and responses to Engineer with regard to approvals of designs or other inquiries. If the Owner detects any error or omission in Engineer's designs or documents, Owner shall give prompt notice to Engineer of same so that it may be corrected in a timely manner.

**3.11** The Owner shall, at the written request of the Engineer, prior to commencement of Engineer's services and thereafter, furnish to the Engineer reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Engineer's services. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Engineer.

**3.12** If the Owner requires that any assembly, system, product item of material, or design be included in the Project without (or against) the Engineer's recommendation, or if the Owner selects a contractor, subcontractor, or material fabricator, or any assembly, system, product or item of material, without (or against) the Engineer's recommendation, the Engineer shall have no responsibility for such decision by the Owner or for the performance of such owner-specified items or persons, nor shall the Engineer be required to issue any opinion or certificate with respect to such items or the work of such persons. The Owner shall indemnify and hold the Engineer harmless from all claims, damages, loss and expense, including reasonable attorney's fees and defense costs incurred as a result of any such decision by the Owner.

**3.13** In the event that the Owner furnishes the Engineer with documents showing existing conditions, or prior projects or designs for the Engineer's use in connection with the Project, the Owner represents to the Engineer that with regard to all such documents and designs, including the Architectural Works depicted therein, whether in hard copy or on computer disk format (hereafter collectively referred to as the "documents"), the Owner is the true and legal owner, licensee or assignee of the copyrights in and to all such documents and grants Engineer a royalty-free license to copy such documents. Owner recognizes that the use of such documents by Engineer will be at Owner's sole risk and without any liability, risk or legal exposure to the Engineer, and Owner therefore agrees that, to the fullest extent permitted by law, the Owner will indemnify, defend and hold harmless the

Engineer, its subconsultants, and their respective officers, directors, employees and agents from and against any claim of copyright infringement, trademark infringement, unfair competition or other related claim or cause of action brought or asserted by any person or entity claiming to be the lawful owner, assignee or author of such documents, or claiming some other right that has allegedly been violated by the Engineer's use of these furnished documents on this Project.

#### **ARTICLE 4 PAYMENT**

**4.1** The Owner shall pay the Engineer for the services set forth in Exhibit A, as follows;

**4.1.1** An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and the subconsultant's charges, if any.

**4.1.2** The Engineer's Standard Hourly Rates are attached as Exhibit C. The Standard Hourly Rates schedule will be adjusted annually to reflect equitable changes in the compensation payable to the Engineer.

**4.1.3** The total compensation for services defined in Exhibit A is estimated to be \$172,132.00.

**4.1.4** The Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by the Owner.

**4.1.5** The total estimated compensation for the Engineer's services included in the breakdown by phases as noted in Paragraph 4.1.3 incorporates all labor, overhead, profit, reimbursable expenses, and the subconsultant's charges, if any.

#### **4.2 REIMBURSABLE EXPENSES.**

Reimbursable Expenses include expenses incurred by the Engineer in the interest of the Project, as follows.

**4.2.1** Expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approvals of authorities having jurisdiction over the Project.

**4.2.2** Expense of reproductions, postage and handling of drawings, specifications, reports and other documents.

**4.2.3** Expense of renderings, models and mock-ups requested by the Owner.

**4.2.4** Expense of additional insurance coverage or limits, including professional liability insurance, in excess of the requirements of Article 8.

**4.2.5** Reimbursable expenses shall be paid at the direct cost of expenses incurred by the Engineer.

**4.3** Lien Waivers, in a form acceptable to Engineer, shall be furnished if requested by Owner after receipt of each progress payment.

#### **4.4 Application for Payment**

**4.4.1** Applications for progress payments shall be submitted to Owner in writing and shall be based on the cumulative hours charged to the Project during the billing period by each class of the Consultant's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses and the subconsultant's charges, if any.

**4.4.2** Payment shall be made to the Consultant by the Owner within thirty (30) days after receipt of Consultant's invoice. If the Owner fails to make any payment due the Consultant within thirty (30) days after receipt of Consultant's invoice, the amount due the Consultant will be increased at the rate of 1.5% per month from said thirtieth day.

**4.4.2** If Owner disputes an application for payment, whether monthly progress payment of lump sum payment, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.6.

**4.4.3** If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is otherwise entitled under this Agreement.

**ARTICLE 5**  
**STANDARD OF CARE**

**5.1** The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

**5.1.1** Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

**5.1.2** Subject to the standard of care set forth in Paragraph 5.1, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

**5.1.3** Engineer and Owner shall comply with applicable Laws and Regulations.

**5.1.3.1** Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 5.1, and to the extent compliance is not inconsistent with professional practice requirements.

**5.1.3.2** This Agreement is based on laws, statutes, rules, regulations, ordinances, codes, orders of governmental bodies, agencies, authorities, courts having jurisdiction, and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

- a. changes after the Effective Date to Laws and Regulations;
- b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
- c. changes after the Effective Date to Owner-provided written policies or procedures.

**5.1.4** Engineer shall not be required to sign any document, no matter by who requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

**5.1.5** Engineer shall not at any time supervise, direct, control, or have authority over the work of any person or entity performing or supporting construction activities relating to the Project, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any person or entity performing or supporting construction activities relating to the Project, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of any person or entity (not including Engineer, its employees, agents representatives, and consultants) performing or supporting construction activities relating to the Project to comply with laws, statutes, rules, regulations, ordinances, codes, orders of governmental bodies, agencies, authorities, and courts having jurisdiction, applicable to that person or entity's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any person or entity (not including Engineer, its employees, agents representatives, and consultants) performing or supporting construction activities relating to the Project.

**5.1.6** Engineer neither guarantees the performance of any person or entity performing or supporting construction activities relating to the Project nor assumes responsibility for any failure to furnish and perform the Work in accordance with the Construction Contract Documents by any person or entity performing or supporting construction activities relating to the Project.

**5.1.7** Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

**ARTICLE 6**  
**ADDITIONAL SERVICES**

**6.1** If authorized in writing by Owner and agreed to in writing by Engineer, Engineer shall perform services not covered by the Scope of Services under this Agreement and Engineer will be paid for such

additional services by Owner in accordance with Engineer's Hourly Rate Schedule, **Exhibit C**, attached; or by lump sum as agreed by the parties.

**6.1.2** If authorized in advance by the Owner, expense of overtime work, requiring higher than regular rates, shall be paid as Additional Services.

**6.1.3** The following shall constitute Additional Services, which the Owner may assess to Contractor by a deductive Change Order. However, Engineer looks to Owner for payment, not to Contractor for the following:

- a. Review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the parties;
- b. Responses to the Contractor's requests for information (RFI) where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- c. After the Construction Documents Phase, preparation for, coordination with, participation in and responding to structured independent review processes, including, but not limited to, value engineering services or evaluation of substitutions proposed by the Contractor, and performance or furnishing of services required to revise studies, reports, final Drawings and Specifications or other applicable documents as a result of such review processes;
- d. Repeated shop drawing reviews of the same submittal, after the initial review and one (1) resubmittal (e.g. "Revise and Re-submit");
- e. Site visits beyond the number of regularly scheduled site visits that the Engineer has contracted for when such site visits are due to Owners request or Contractor defects in Work or failure to meet the schedule;
- f. Substantial completion inspections beyond one (1) initial inspection;
- g. Final completion inspections beyond one (1) initial inspection.

#### **ARTICLE 7**

#### **USE OF ENGINEER'S DOCUMENTS**

**7.1** The Engineer shall be deemed the author of all documents and designs created and prepared by

the Engineer and shall retain all common law, statutory and other reserved rights, including the copyrights. Subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the documents and designs created and prepared by the Engineer, the Owner shall be permitted to retain copies, including reproducible copies, of the Engineer's drawings, specifications and other documents for information and reference, subject to the following limitations:

**7.1.1** Owner acknowledges that such documents and designs created and prepared by the Engineer are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;

**7.1.2** Any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants;

**7.1.3** Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and,

**7.1.4** Such limited license to Owner shall not create any rights in third parties.

**7.2** The Owner shall not use, modify or assign to others the Engineer's documents or designs on other projects without the Engineer's express written consent.

#### **ARTICLE 8** **INSURANCE**

**8.1** Engineer shall procure and maintain in force, Worker's Compensation Insurance, Commercial General Liability Insurance and Professional Liability Insurance. Owner agrees to look to the proceeds of insurance to satisfy claims against the Engineer and Owner will not hold payment due to the Engineer for claims that are covered by Engineer's insurance. The Engineer's insurance shall be written with limits of liability not less than those set forth below:

<u>TYPE</u>	<u>LIMITS</u>
Workers Compensation	Statutory Amount
Professional Liability	\$1,000,000.
Per Claim and Annual Aggregate	
General Liability:	
Bodily Injury (including death)	
Each Occurrence	\$1,000,000.
Aggregate	\$1,000,000.
Property Damage	
Each Occurrence	\$1,000,000.
Automobile Liability:	
Combined Single Limit	
Each Accident	\$1,000,000.

**8.2** The Engineer shall maintain in effect all insurance coverage required under this Agreement at the Engineer's sole expense. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled, except for non-payment of premium, until at least thirty (30) days prior written notice has been given to the Owner.

#### ARTICLE 9 INDEMNITY

**9.1** To the fullest extent permitted by applicable laws, statutes, rules, regulations, ordinances, codes, orders of governmental bodies, agencies, authorities, and courts having jurisdiction, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, and employees, from actual direct losses, damages, and judgments (including reasonable attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act, error, or omission of Engineer or those for whom Engineer is legally liable in the performance of professional services in this Agreement. Nothing in this paragraph shall obligate Engineer to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Section 12, "Limitation of Liability."**

**9.2** To the fullest extent permitted by applicable laws, statutes, rules, regulations, ordinances, codes, orders of governmental bodies, agencies, authorities, court having jurisdiction, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from any damage, liability, cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Owner's negligent acts, errors, or omissions and those for whom Owner is legally liable and arising from the project that is the subject of this Agreement.

**9.3** To the fullest extent permitted by applicable laws, statutes, rules, regulations, ordinances, codes, orders of governmental bodies, agencies, authorities, courts having jurisdiction, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from any material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

**9.4** The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

**9.5** To the fullest extent permitted by applicable laws, statutes, rules, regulations, ordinances, codes, orders of governmental bodies, agencies, authorities, courts having jurisdiction, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

**9.6** To the fullest extent permitted by applicable laws, statutes, rules, regulations, ordinances, codes, orders of governmental bodies, agencies, authorities, courts having jurisdiction, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

**ARTICLE 10  
DISPUTE RESOLUTION**

**10.1** In the event a dispute shall arise between the parties to this Agreement, then as a condition precedent to any legal action by either party, the parties agree to participate in at least one session of mediation, as needed, in an effort to resolve the dispute. The parties agree to split the mediator's fees equally. The mediation shall be administered by a mutually agreeable mediation service pursuant to mutually agreeable rules and shall be held in a location that is mutually agreed upon.

**ARTICLE 11  
CONTRACT INTERPRETATION**

**11.1** This Agreement shall be governed by the law of the state of **Kansas**.

**11.2** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The invalid provision shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect.

**11.3** This Agreement is solely for the benefit of the parties hereto and represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, bids, or agreements, either written or oral.

**11.4** No modification or amendment of any of the terms and conditions of this Agreement shall be valid unless agreed to in writing and signed by both parties.

**11.5** To the fullest extent permitted by applicable laws, statutes, rules, regulations, ordinances, codes, orders of governmental bodies, agencies, authorities, courts having jurisdiction, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

**ARTICLE 12  
LIMITATION OF LIABILITY**

**12.1** To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer, its officers, directors, employees, agents, and sub-consultants, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) of Engineer, its officers, directors, employees, agents or sub-consultants or any of them, shall not exceed the total compensation actually received by Engineer from Owner under this Agreement. The Owner agrees that specific consideration has been given by the Engineer for this limitation and that it is deemed adequate.

**ARTICLE 13  
SUSPENSION AND TERMINATION**

**13.1** Engineer may, after giving seven (7) days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Article 4.

**13.2** Engineer may, after giving seven (7) days written notice to Owner, terminate this Agreement if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or if Engineer's services for the Project are delayed or suspended for more than ninety (90) days for reasons beyond Engineer's control. In such event, Engineer shall have no liability to Owner on account of such termination.

**ARTICLE 14  
ADDITIONAL TERMS**

*none*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

Owner:

City of Dodge City, Kansas  
806 N. Second Ave.  
P.O.Box 880  
Dodge City KS 67801  
620-225-8106

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

Name: \_\_\_\_\_

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

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

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

Name: \_\_\_\_\_

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

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

Engineer:

Wilson & Company, Inc.,  
Engineers & Architects  
800 E. 101<sup>st</sup> Terr. Suite 200  
Kansas City, MO 64131  
816-701-3100

  
\_\_\_\_\_  
Justin C. Klaudt, PE, Associate Vice President  
Justin.Klaudt@wilsonco.com 4/15/2020

  
\_\_\_\_\_  
Cody D. Porter, PE, Project Manager  
Cody.Porter@wilsonco.com 4/15/2020

**None of the parties shall be legally bound by anything contained herein, or any negotiations pursuant hereto, unless and until the parties have agreed to all terms and this document has been executed and delivered by authorized representatives of each party.**

**EXHIBIT A**  
**Scope of Services**

(Attach Engineer's Proposal here)

## Exhibit A

### Scope of Services

Dodge City, Kansas Levee Assessment – Phase IV  
(Levee Improvements Design and Certification)

ENGINEER – Wilson & Company, Inc., Engineers & Architects (Wilson & Company) (Prime Consultant);  
Wood Environmental & Infrastructure Solutions, Inc. (Wood) (Subconsultant – Geotechnical  
and Engineering Support)

CITY – City of Dodge City, Kansas

USACE – United States Army Corps of Engineers

FEMA – Federal Emergency Management Agency

### Scope of Services

This document defines the ENGINEER's scope of services necessary to take the Levee Certification Project to completion. This includes additional verification and analysis of the construction completed, confirming proposed levee improvements remaining (primarily levee raising and armoring), Final Plans for the levee improvements, bidding/construction support, validation of construction, and final levee certification report.

The ENGINEER shall provide QA/QC check for all of the ENGINEER's work on the sections below. These reviews will include a comprehensive review of the proposed construction drawings for the purpose of verifying that the proposed construction project will make the levee system 44 CFR 65.10 compliant upon completion.

Following is a list of the proposed additional service tasks:

1. Field Inspection
2. Storm Sewer Outfall Video Inspection Review
3. Additional Erosion Field Survey
4. DTM surface creation
5. Hydraulics Analysis Verification
6. Proposed Design Verification and Update
7. Preliminary Plans
8. Agency Coordination
9. Final Plans
10. Bidding/Construction Services
11. Post-Construction Verification and Survey
12. Final Levee Certification
13. Project Management and Quality Control

The following sections describe the scope of each of the additional service Tasks.

#### **1. Field Inspection**

##### ***Scope:***

Purpose of field inspection is for the project team to complete an exterior physical inspection of the levee system (levee, floodwalls, erosion protection, closures, gates, outfall structure, etc). Issues identified through previous annual inspections shall be visited and documented. Specific areas of erosion or other deficiency will be identified for additional survey locations.

## 1.1 Field Inspection

ENGINEER shall coordinate field inspection with CITY and provide two (2) representatives for field inspection. Complete levee system inspection and document field notes and photo documentation. Document observed items of interest using a ground level photographs with GPS location.

## 1.2 Field Inspection Summary

ENGINEER shall complete a field inspection summary documenting inspection and findings. This memo will be provided to the CITY for review and used to identify and mobilize additional survey. These areas will either be incorporated into the construction plans or could be performed by CITY crews.

CITY: Review final inspection summary and advise ENGINEER of any discrepancies and decide which to include in the construction plans or have CITY crews perform.

## 1.3 QC of Field Inspection Summary Memo

The ENGINEER shall provide a quality control check of the memo prior to submitting to the CITY.

**Deliverable:** Field Inspection Summary Memo

## 2. Storm Sewer Outfall Video Inspection

### **Scope:**

The USACE requires that video camera documentation of the interior condition of all storm sewer culverts and discharge pipes through the levee be made available for review every five 5 years. Additionally, this video documentation is necessary for compliance with the requirements of the National Flood Insurance Program (NFIP) regulations as described in Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (44 CFR Section 65.10). Since this documentation has not been completed since 2011, the ENGINEER will perform the necessary video inspections and review.

### 2.1 Video Inspections

The video documentation will consist of a digital video recording showing the interior condition of the conduit, the location of the camera along the conduit in feet. This City has performed and provided the video inspections.

### 2.2 Video Inspection Review and Summary Memo

The ENGINEER will review the video records of each conduit to determine if any repairs are needed. If further design services are required to perform any repairs, this effort will be negotiated as an Additional Service.

### 2.3 QC of Video Inspection Summary Memo

The ENGINEER shall provide a quality control check of the memo prior to submitting to the CITY.

**Deliverable:** Video Inspection Summary Memo

### 3. Additional Field Survey

**Scope:**

Additional Field Survey will include topo of areas noted from Field Inspection Task. These areas are anticipated to be mostly erosion areas that need to be restored. An accurate existing conditions surface is needed to be able to calculate the earthwork volumes needed to make the repairs and get accurate bids. It is anticipated that six (6) areas will be needed and a one (1) man crew can complete the additional field survey in five (5) total days, including travel to the site from Salina. Engineer shall coordinate schedule and access for survey services with CITY prior to survey services commencing.

#### 3.1 Field Survey

#### 3.2. QC of Survey Basemap

The ENGINEER shall provide a quality control check of the survey basemap prior to using for plan production.

**Deliverable:** None

### 4. DTM Surface Creation

**Scope:**

This task includes creating ground surface DTMs (Digital Terrain Models) for use in confirming hydraulic modeling and for use in the construction plans. The various surfaces will be merged to create overall surfaces to suite the need for the modeling and the construction plans. The following list is the source of the data that will be used.

- 2009 Design Surface (Aerial Photogrammetric Mapping and Field Survey)
- 2018 Cross Section Survey
- 2018 Drone Mapping Surface
- 2019 Ave. D Drain Field Survey
- 2020 Additional Field Survey included in this scope.

#### 4.1. Hydraulic Modeling Surface

This is needed to verify the channel excavation was built according to the design. It will be created from merging the 2018 drone surface into the 2009 design surface and cleaning up the model to remove the bridges and obvious errors. A cursory review of the 2018 drone mapping surface in comparison to the 2018 cross section survey has been completed. It appears the drone mapping surface is accurate enough to base the hydraulic modeling and additional improvements on. It will be further evaluated through this surface creation effort. If it is deemed this surface is not accurate enough then a different approach will be needed and it will be negotiated as an additional service. The hydraulic modeling surface will not include the erosion surveys since they are planned to be fixed with the next phase of construction.

#### 4.2 Construction Plans Surface

This is needed to design the proposed improvements, so accurate earthwork quantities will be used for the basis of the bidding. It will be created from merging the 2019 Ave. D Drain survey and the planned 2020 field survey into the hydraulic modeling surface from 4.1.

#### 4.3 QC of Surfaces Created

The ENGINEER shall provide a quality control check of the surfaces before using for analysis and plans.

**Deliverable:** None

## 5. Hydraulics Analysis Verification

### **Scope:**

The hydraulic modeling surface will be compared to the proposed channel improvements in the Arkansas River to ensure the channel excavation work was completed per the 2014 design. A cursory review has been completed and it appears the channel excavation is close to the intended design. Updating the channel model is not anticipated to be needed and if it is discovered to be needed through this verification effort then updating the model will be negotiated as an additional service. There may be some areas that additional channel grading will be needed to ensure the channel matches the intended design.

*Includes Wood Task 3 Hydraulic Model Design Analysis and H&H Report.*

**Deliverable:** H&H Report

## 6. Proposed Design Verification and Update

### **Scope:**

Following the hydraulic analysis verification, the proposed improvements design will be confirmed and updated as needed to meet the CFR 65.10 criteria. This includes the levee raises, channel/bank geometry and armoring, and repairing erosion areas (except Avenue D drain erosion since its effort is covered under its own scope and agreement). If other major design efforts are discovered, the design of those will be negotiated as an additional service.

### 6.1. Levee Raises for Freeboard – *Includes Wood Task 1 Levee Raising Project*

This scope includes confirming the proposed levee raise profiles and cross sections based on the updated hydraulic modeling from the as-built channel excavation. Also, as described in the attached proposal from Wood, the seepage and stability for the value engineered levee raise was previously scoped but not completed due to the project being put on hold. This effort is now needed to be able to certify the seepage and stability portions of the levee.

### 6.2. Channel Geometries and Armoring – *Includes Wood Task 2 Embankment Protection Design and Report Update*

This task includes revisiting and verifying the channel geometries, armoring, and embankment protection measures for the levee system. See the attached proposal from Wood for additional information regarding the embankment protection analysis.

### 6.3. QC of Proposed Improvements

The ENGINEER shall provide a quality control check of the levee design to ensure the improvements meet the criteria in 44 CFR 65.10.

**Deliverable:** None

## 7. Preliminary Plans

### **Scope:**

This task includes bringing all the proposed improvements together in a preliminary plan set. The previously completed plans will be updated to remove the completed channel work, include any new erosion repairs, update the levee raises, and update the channel geometry and armoring as determined from the Task 6 of this scope.

7.1 Preliminary Plans – *Includes Wood Task 4 Design Review Construction Drawings*

The plan set is anticipated to include the following:

- Title Sheet
- General Notes and Summary of Quantities
- General Layout and Survey Control
- Typical Sections
- Plan & Profile of the Channel and Levees
- Erosion Control
- Cross Sections
- Details

7.2 Draft Project Manual– *Includes Wood Task 4 Design Review Specifications*

A project manual consisting of the CITY’s standard up front documents, necessary bid forms, technical specifications, and any needed special provisions will be developed to be used to bid and construct the project. The previously completed project manual will be used as a starting point and then updated where needed.

7.3 Cost Estimate

An engineer’s opinion of probable construction cost will be prepared based on recent bid tabs from the CITY. If certain items have not been recently bid in the CITY then KDOT bid averages will be utilized.

7.4 Field and Plan Review Meeting

Once the preliminary plans are completed a field review meeting and an office review meeting with the CITY will be held to review the plans.

7.5 QC of Preliminary Plan Submittal

The ENGINEER shall provide a quality control check of the preliminary plans, draft project manual, and cost estimate prior to submitting to the CITY.

***Deliverable:*** Preliminary Plans, Draft Project Manual, Cost Estimate

## 8. Agency Coordination

***Scope:***

It is our understanding that the CITY has maintained and renewed all necessary permits from the first phase of construction, therefore the effort needed will be minor. It is anticipated that some effort in coordination with the various agencies will be needed. This task covers that effort for up to 16 hours. If additional time is needed it will be negotiated as an additional service. – *Includes Wood Task 5 Meetings*

***Deliverable:*** None

## 9. Final Plans

***Scope:***

This task includes updating the plans following City and Agency review and advancing them to Final construction documents.

9.1 Final Plans

Address any comments from the CITY or comments noted at the field review meeting and then finalize the plans. Complete all necessary details. The sheet list will be the same as Preliminary Plans.

- 9.2 Project Manual  
Address comments concerning the Project Manual.
- 9.3 Cost Estimate  
Revise the cost estimate based on comments and updated quantities.
- 9.4 QC of Final Plan Submittal  
The ENGINEER shall provide a quality control check of the final plans, project manual, and cost estimate prior to submitting to the CITY.

**Deliverable:** Final Plans, Project Manual, Cost Estimate

## 10. Bidding/ Construction Services

**Scope:**

This task will include the ENGINEER providing support for the CITY's bidding process and construction support.

- 10.1 Bidding Services
  - 10.1.1 Administering the pre-bid meeting
  - 10.1.2 Answering questions during the bidding period
  - 10.1.3 Preparing addendums that may be needed
  - 10.1.4 Reviewing bids
- 10.2 Construction Related Services – *Includes Wood Task 6 Construction Phase Services*
  - 10.2.1 Shop Drawing/ Embankment Compaction Testing Review
  - 10.2.2 Periodic Progress Meetings (assume one person attends three in-person meetings)
  - 10.2.3 Responding to Requests for Information (RFI) (assume 24 hours of effort)

**Deliverable:** Bid Question Responses, Addendums, Shop Drawing Reviews, Compaction Testing Reviews, RFI Responses

## 11. Post-Construction Verification and Survey

**Scope:**

This task will include a field inspection and survey of the completed work. It is intended to confirm the system is built per the design and is fully functional. This is required for certification.

- 11.1 Field Inspection  
ENGINEER shall coordinate field inspection with CITY and provide two (2) representatives for field inspection. Complete inspection of completed improvements and document field notes and photo documentation. Document observed items of interest using a ground level photographs with GPS location.
- 11.2 Field Inspection Summary  
ENGINEER shall complete a field inspection summary documenting inspection and findings. This memo will be provided to the CITY for review and used to document the improvements were constructed per the plans.
- 11.3 QC of Field Inspection Summary Memo  
The ENGINEER shall provide a quality control check of the field inspection summary memo prior to submitting to the CITY.

#### 11.4 As-Built Survey

All critical improvements will be surveyed and the constructed improvements verified against the design. It is anticipated that a two (2) man crew can complete the as-built survey in ten (10) total days including travel to the site from Salina. Engineer shall coordinate schedule and access for survey services with CITY prior to survey services commencing.

#### 11.5 QC of As-Built Survey

The ENGINEER shall provide a quality control check of the As-Built survey prior to using for the As-Is plans.

**Deliverable:** Field Inspection Summary Memo

### 12. Final Levee Certification

#### **Scope:**

This task will include updating and compiling all of the parts for the final levee certification submittal once the post-construction verification and survey has been completed.

The ENGINEER will produce a 44 CFR 65.10 compliant, professionally sealed, certification report once all of the necessary improvements are constructed and the CITY's maintenance items have been addressed to the satisfaction of the certifying ENGINEER. *Includes Wood Task 4 Certification Report*

12.1 The ENGINEER will revise the "As-Is" drawings (previously developed in 2010) following construction activities to reflect post-construction conditions. The "As-Is" plans will depict the current conditions of the levee system at the time of certification and will supplement the USACE As-Built plans. Once completed, the "As-Is" plans can be easily reviewed and updated for future levee assessments. These plans shall include:

12.1.1 Title Sheet

12.1.2 Typical cross sections

12.1.3 2009 aerial photo based plan sheets illustrating the current (post-construction) conditions including:

12.1.3.1 Topography

12.1.3.2 Levee alignments, geometry, and stationing

12.1.3.3 Utilities

12.1.3.4 Outfall structure location, size and type

12.1.3.5 Boring locations

12.1.3.6 Elevation contours

12.1.3.7 Labeled levee features

12.1.3.8 Horizontal and vertical control points and benchmarks

12.1.4 Profile sheets shall be included illustrating the following profiles:

12.1.4.1 Top of levee

12.1.4.2 Base flood

12.1.4.3 Stream channel flow line

12.1.4.4 Riverward levee toe

12.1.4.5 Required freeboard line

12.1.4.6 Levee gap closures

12.1.4.7 Boring locations

12.1.4.8 Underground utilities

12.1.5 Geotechnical boring logs.

12.1.6 The ENGINEER will submit two (2) sets of the completed "As-Is" plans to the CITY and the USACE Tulsa District Commander.

- 12.2 QC of As-Is Plans  
The ENGINEER shall provide a quality control check of the As-Is Plans prior to submitting to the CITY.
- 12.3 O&M Manual Updates  
The ENGINEER will review and update the previously completed O&M Manual Updates.
- 12.4 QC of O&M Manual Update  
The ENGINEER shall provide a quality control check of the O&M Manual update prior to submitting to the CITY.
- 12.5 Detailed Operation Plan (DOP) Update  
The ENGINEER will review and update the previously completed DOP.
- 12.6 QC of DOP Update  
The ENGINEER shall provide a quality control check of the DOP update prior to submitting to the CITY.
- 12.7 Levee Certification Report  
The ENGINEER will perform a final, post-construction, levee walk-through to verify that all items have been addressed for certification (covered under Task 11 above). The ENGINEER will then update the necessary sections of the final certification report.
- 12.5 QC of Levee Certification Package  
The ENGINEER shall provide a quality control check of the Levee Certification Package prior to submitting to the CITY and FEMA.
- 12.5 Package and Submit Report to CITY and FEMA  
The ENGINEER will assemble the levee certification package and submit to the CITY and FEMA for review.
- 12.6 Address Comments from FEMA  
The ENGINEER will respond to comments received by FEMA, and re-submit any corrected or updated information to the CITY and FEMA.
- 12.7 Present CITY with Final Approved Levee Certification  
The ENGINEER will meet with the CITY and present them with the final certification packet.

**Deliverable:** As-Is Plans, O&M Manual Update, DOP Update, and Levee Certification Report

### **13. Project Management and Coordination**

**Scope:** This task will include coordination of the ENGINEER's project team, preparation of the monthly progress reports to the CITY, and providing timely responses to the CITY's inquiries.

**Deliverable:** Progress Reports with every Invoice

**Summary of Additional Service Tasks and Fees**

<b>Task Description</b>	<b>Estimated Task Fee</b>
<b>1. Field Inspection</b>	<b>\$10,403</b>
<b>2. Storm Sewer Outfall Video Inspection Review</b>	<b>\$4,584</b>
<b>3. Additional Field Survey</b>	<b>\$6,886</b>
<b>4. DTM Surface Creation</b>	<b>\$4,708</b>
<b>5. Hydraulic Analysis Verification</b>	<b>\$11,588</b>
<b>6. Proposed Design Verification and Update</b>	<b>\$22,965</b>
<b>7. Preliminary Plans</b>	<b>\$19,664</b>
<b>8. Agency Coordination</b>	<b>\$5,040</b>
<b>9. Final Plans</b>	<b>\$7,668</b>
<b>10. Bidding and Construction Support</b>	<b>\$14,053</b>
<b>11. Post-Construction Verification and Survey</b>	<b>\$32,679</b>
<b>12. Final Levee Certification</b>	<b>\$27,414</b>
<b>13. Project Management and Coordination</b>	<b>\$4,480</b>
<b>Total Additional Services Tasks Fee</b>	<b>\$172,132</b>

**CITY's Responsibilities**

1. Provide list of property owner names and addresses of affected tracts to the ENGINEER. The ENGINEER will use the information for sending letters to each of the property owners along the project corridor to inform them that surveyors will need to have access to their property for the purpose of obtaining property line and topographic information (if needed).
2. Provide the CITY's standard design criteria to the ENGINEER.
3. Provide the CITY's standard details to the ENGINEER.
4. Provide the CITY's standard specifications to the ENGINEER to use in development of the Project Manual.
5. Provide the ENGINEER with copies of all plats requested by the ENGINEER in \*.pdf format, \*.tif format or hard copy as available.
6. Provide the ENGINEER with copies of all drainage and infrastructure plans, reports, studies, survey, etc. along the project area not already provided during previous phases of the levee assessment.
7. Notify all property owners along the project of planned activities and survey in the area.
8. Schedule, notify and provide the facilities for all public meetings and utility meetings (if necessary).
9. Provide the ENGINEER any recent bid tabs to assist in the development of the cost estimates.
10. Acquire any proposed right-of-way and/or easements, if required for construction of improvements.
11. It is our understanding that the CITY has maintained and renewed all necessary permits from the first phase of construction therefor no additional effort is anticipated on the part of the ENGINEER to obtain or renew permits. If it is determined additional permitting effort is required it will be handled as an Additional Service.
12. Provide access necessary for levee field inspection and surveys.

**Items Not Included in the Scope of Services**

1. Any work requested by the CITY that is not included in the basic services described above will be classified as Additional Services. Additional Services shall include, but are not limited to the following:
  - a. Changes in the scope, extent, or character of the project.
  - b. Revisions to the plans when inconsistent with previous approvals or instructions by the CITY or the USACE.
2. Environmental investigations, permits or services except as specifically identified.
3. Full property surveys or setting of new property corners if they are missing.
4. Flagging or staking of any proposed right-of-way and/or easements as part of the appraisal process.
5. Preparation of legal descriptions and/or exhibits for property or easement acquisition.
6. FEMA CLOMR/LOMR is not anticipated due to the concurrent KDA mapping project.



By: CDP

Date: March 20, 2020

Client: Dodge City, KS

Notes: PH IV - Levee Improvements and Certification

**EXHIBIT A  
FEE ESTIMATE WORKSHEET**

Fee Reviewed by:  
JCK  
Date: 03/25/20

TASK I.D.	WORK TASK DESCRIPTION	ESTIMATED MANHOURS											TOTAL HOURS	LABOR EFFORT	EXPENSE EFFORT	TOTAL FEE		
		8620 P6 Operations Manager	8670 P5 QC Manager	8620 P4 Project Manager	8620 P3 Project Engineer	8620 OD4 CADD Technician	1221 FS7 Survey Manager	1221 FS5 Survey Party Chief	1221 FS3 Survey Field Technician	1221 OD4 Survey CADD Technician	LABOR COST	TITLE						
<b>PHASE 01 - Field Inspection</b>																		
1.1	Field Inspection			24														
1.2	Field Inspection Summary	2	2	6	2													
1.3	QC of Field Inspection Summary Memo	2	2	1	1													
	<b>Subtotal</b>	2	24	31	3	0	0	0	0	0	0	0	0	0	60.00	9,113.00	1,290.00	10,403.00
<b>PHASE 02 - Storm Sewer Outfall Video Inspection</b>																		
2.1	Video Inspections																	
2.2	Video Inspections Review and Summary Memo	2	2	4	24										28.00	3,320.00	-	3,320.00
2.3	QC of Video Inspection Summary Memo	2	2	2	2										8.00	1,264.00	-	1,264.00
	<b>Subtotal</b>	2	2	6	26	0	0	0	0	0	0	0	0	0	36.00	4,584.00	-	4,584.00
<b>PHASE 03 - Additional Field Survey</b>																		
3.1	Field Survey									1	38				41.00	5,006.00	1,476.50	6,482.50
3.2	QC of Survey Basemap	0	0	0	0					1	40				4.00	404.00	-	404.00
	<b>Subtotal</b>	0	0	0	0	0	0	0	0	2	78	0	0	45.00	5,410.00	1,476.50	6,886.50	
<b>PHASE 04 - DTM Surface Creation</b>																		
4.1	Hydraulic Modeling Surface			2											18.00	1,560.00	-	1,560.00
4.2	Construction Plans Surface			2											18.00	1,560.00	-	1,560.00
4.3	QC of Surfaces Created	0	4	6	0										14.00	1,588.00	-	1,588.00
	<b>Subtotal</b>	0	4	6	0	40	0	0	0	0	0	0	0	50.00	4,708.00	-	4,708.00	
<b>PHASE 05 - Hydraulic Analysis Verification</b>																		
5.1	Hydraulic Analysis Verification	2	4	2	16										40.00	4,488.00	7,100.00	11,588.00
	<b>Subtotal</b>	2	4	2	16	16	0	0	0	0	0	0	0	40.00	4,488.00	7,100.00	11,588.00	
<b>PHASE 06 - Proposed Design Verification and Update</b>																		
6.1	Levee Raises for Freeboard				8										16.00	1,560.00	8,809.28	10,369.28
6.2	Channel Geometries and Armoring				8										8.00	920.00	6,800.00	7,720.00
6.3	QC of Proposed Improvements	2	8	4	8										30.00	3,876.00	1,000.00	4,876.00
	<b>Subtotal</b>	2	8	4	24	16	0	0	0	0	0	0	0	54.00	6,356.00	16,609.28	22,965.28	
<b>PHASE 07 - Preliminary Plans</b>																		
7.1	Preliminary Plans			2	24										58.00	5,600.00	2,290.00	7,890.00
7.2	Draft Project Manual			4	8										12.00	1,480.00	1,300.00	2,780.00
7.3	Cost Estimate			2	8										14.00	1,520.00	-	1,520.00
7.4	Field and Plan Review Meeting			8	16										24.00	3,576.00	1,290.00	4,866.00
7.5	QC of Preliminary Plan Submittal	2	4	2	8										20.00	2,608.00	-	2,608.00
	<b>Subtotal</b>	2	12	26	48	40	0	0	0	0	0	0	0	128.00	14,784.00	4,880.00	19,664.00	
<b>PHASE 08 - Agency Coordination</b>																		
8.1	Agency Coordination			16											16.00	2,240.00	2,800.00	5,040.00
	<b>Subtotal</b>	0	0	16	0	0	0	0	0	0	0	0	0	16.00	2,240.00	2,800.00	5,040.00	



Proj.: Dodge City Levee Improvements

By: CDP

Date: March 20, 2020

Client: Dodge City, KS

Notes: PH1V - Levee Improvements and Certification

**EXHIBIT A  
FEE ESTIMATE WORKSHEET**

Fee Reviewed by: JCK

Date: 03/25/20

**ESTIMATED MANHOURS**

TASK I.D.	WORK TASK DESCRIPTION	TASK CODE	WCI CLASS	TITLE	ESTIMATED MANHOURS										TOTAL HOURS	LABOR EFFORT	EXPENSE EFFORT	TOTAL FEE
					8620 P6 Operations Manager	8670 P5 QC Manager	8620 P4 Project Manager	8620 P3 Project Engineer	8620 OD4 CADD Technician	1221 FS7 Survey Manager	1221 FS5 Survey Party Chief	1221 FS3 Survey Field Technician	1221 OD4 Survey CADD Technician	1221				
TASK	LABOR COST	\$210.00	\$167.00	\$140.00	\$115.00	\$80.00	\$210.00	\$122.00	\$60.00	\$80.00								
<b>PHASE 09 - Final Plans</b>																		
9.1	Final Plans																	
9.2	Project Manual																	
9.3	Cost Estimate																	
9.4	QC of Final Plan Submittal	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	
	Subtotal	2	4	7	32	24	0	0	0	0	0	0	0	0	0	0	0	
<b>PHASE 10 - Bidding/ Construction Related Services</b>																		
10.1.1	Pre-Bid Meeting																	
10.1.2	Review Bids																	
10.1.3	Answering Questions During Bidding Period																	
10.1.4	Addendums																	
10.2.1	Shop Drawing Review / Embankment Compaction Review																	
10.2.2	Progress Meetings																	
10.2.3	Responding to RFIs																	
	Subtotal	0	19	42	16	0	0	0	0	0	0	0	0	0	0	0	0	
<b>PHASE 11 - Post-Construction Verification and Survey</b>																		
11.1	Field Inspection																	
11.2	Field Inspection Summary																	
11.3	QC of Field Inspection Summary Memo																	
11.4	As-Built Survey																	
11.5	QC of As-Built Survey																	
	Subtotal	2	24	31	3	0	6	84	80	10	240.00	26,221.00	6,458.00	32,679.00				
<b>PHASE 12 - Final Levee Certification</b>																		
12.1	As-Is Drawings																	
12.2	QC of As-Is Plans																	
12.3	O&M Manual Update																	
12.4	QC of O&M Manual Update																	
12.5	DOP Update																	
12.6	QC of DOP Update																	
12.7	Levee Certification Report																	
12.8	QC of Levee Certification Report																	
12.9	Package and Submit Report to CITY and FEMA																	
12.10	Address FEMA comments																	
12.11	Present Final Certification Package to CITY																	
	Subtotal	4	12	46	88	56	0	0	0	0	206.00	23,884.00	3,530.00	27,414.00				
<b>PHASE 13 - Project Management and Coordination</b>																		
13.1	Project Management																	
	Subtotal	0	0	32	0	0	0	0	0	0	32.00	4,480.00	-	4,480.00				
<b>TOTALS</b>		<b>18</b>	<b>113</b>	<b>249</b>	<b>256</b>	<b>192</b>	<b>7</b>	<b>124</b>	<b>80</b>	<b>14</b>	<b>1,053.00</b>	<b>124,829.00</b>	<b>47,303.78</b>	<b>172,132.78</b>				



Proj.: Dodge City Levee Improvements  
By: CDP

Date: March 20, 2020  
Client: Dodge City, KS

Notes: PHIV - Levee Improvements and Certification

**EXHIBIT A  
FEE ESTIMATE WORKSHEET - EXPENSES**

Fee Reviewed by:  
JCK  
Date: 03/25/20

TASK CODE  
UNIT COST

**ESTIMATED EXPENSES**

TASK I.D.	WORK TASK DESCRIPTION	8620 7010 Project Miles Mile \$0.80	8620 MISC Misc. Expenses Unit \$1.00	1221 7020 Survey Miles Mile \$0.95	1221 6010 GPS Equipment Daily/Unit Day \$125.00	1221 MEAL Meals Day \$25.00	1221 LDG Lodging Day \$125.00	8620 SUB1 Wood Unit \$1.00	8620 SUB2 Video Inspection Unit \$1.00	DIRECT EXPENSE SUBTOTAL	SUB EXPENSE SUBTOTAL	EXPENSE EFFORT (\$)
										(\$)	(\$)	(\$)
<b>PHASE 01 - Field Inspection</b>												
I.1	Field Inspection	800.00				6.00	4.00			\$ 1,290.00	\$ -	\$ 1,290.00
I.2	Field Inspection Summary									\$ -	\$ -	\$ -
I.3	QC of Field Inspection Summary Memo									\$ -	\$ -	\$ -
	<b>Subtotal</b>	<b>800.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>6.00</b>	<b>4.00</b>	<b>0.00</b>	<b>0.00</b>	<b>\$ 1,290.00</b>	<b>\$ -</b>	<b>\$ 1,290.00</b>
<b>PHASE 02 - Storm Sewer Outfall Video Inspection</b>												
2.1	Video Inspections									\$ -	\$ -	\$ -
2.2	Video Inspections Review and Summary Memo									\$ -	\$ -	\$ -
2.3	QC of Video Inspection Summary Memo									\$ -	\$ -	\$ -
	<b>Subtotal</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>PHASE 03 - Additional Field Survey</b>												
3.1	Field Survey			370.00	4.00	5.00	4.00			\$ 1,476.50	\$ -	\$ 1,476.50
3.2	QC of Survey Basemap									\$ -	\$ -	\$ -
	<b>Subtotal</b>	<b>0.00</b>	<b>0.00</b>	<b>370.00</b>	<b>4.00</b>	<b>5.00</b>	<b>4.00</b>	<b>0.00</b>	<b>0.00</b>	<b>\$ 1,476.50</b>	<b>\$ -</b>	<b>\$ 1,476.50</b>
<b>PHASE 04 - DTM Surface Creation</b>												
4.1	Hydraulic Modeling Surface									\$ -	\$ -	\$ -
4.2	Construction Plans Surface									\$ -	\$ -	\$ -
4.3	QC of Surfaces Created									\$ -	\$ -	\$ -
	<b>Subtotal</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>PHASE 05 - Hydraulic Analysis Verification</b>												
5.1	Hydraulic Analysis Verification							7100.00		\$ -	\$ 7,100.00	\$ 7,100.00
	<b>Subtotal</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>7100.00</b>	<b>0.00</b>	<b>\$ -</b>	<b>\$ 7,100.00</b>	<b>\$ 7,100.00</b>
<b>PHASE 06 - Proposed Design Verification and Update</b>												
6.1	Levee Raises for Freeboard							8809.28		\$ -	\$ 8,809.28	\$ 8,809.28
6.2	Channel Geometries and Armoring							6800.00		\$ -	\$ 6,800.00	\$ 6,800.00
6.3	QC of Proposed Improvements							1000.00		\$ -	\$ 1,000.00	\$ 1,000.00
	<b>Subtotal</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>16609.28</b>	<b>0.00</b>	<b>\$ -</b>	<b>\$ 16,609.28</b>	<b>\$ 16,609.28</b>
<b>PHASE 07 - Preliminary Plans</b>												
7.1	Preliminary Plans							2290.00		\$ -	\$ 2,290.00	\$ 2,290.00
7.2	Draft Project Manual							1300.00		\$ -	\$ 1,300.00	\$ 1,300.00
7.3	Cost Estimate									\$ -	\$ -	\$ -
7.4	Field and Plan Review Meeting	800.00				6.00	4.00			\$ 1,290.00	\$ -	\$ 1,290.00
7.5	QC of Preliminary Plan Submittal									\$ -	\$ -	\$ -
	<b>Subtotal</b>	<b>800.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>6.00</b>	<b>4.00</b>	<b>3590.00</b>	<b>0.00</b>	<b>\$ 1,290.00</b>	<b>\$ 3,590.00</b>	<b>\$ 4,880.00</b>
<b>PHASE 08 - Agency Coordination</b>												
8.1	Agency Coordination							2800.00		\$ -	\$ 2,800.00	\$ 2,800.00
	<b>Subtotal</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2800.00</b>	<b>0.00</b>	<b>\$ -</b>	<b>\$ 2,800.00</b>	<b>\$ 2,800.00</b>





March 27, 2020

Cody D. Porter, P.E.  
Wilson & Company, Inc., Engineers & Architects  
800 East 101<sup>st</sup> Terrace, Suite 200  
Kansas City, MO 64131

Re: Levee Design Certification Phase IV Scope of Services  
Dodge City Local Flood Protection Project  
Dodge City, Kansas

Cody,

The purpose of this letter is to provide you with a scope of services for Phase IV levee certification services for the Dodge City Levee Project. We previously completed a significant portion of our pieces of the original Phase II levee certification report, and Phase III design services scope for this project, before the project was put on hold by the City in 2013 due to lack of construction funding. This scope of services includes design review for the necessary design updates and coordination with Wilson & Company, performing additional geotechnical analyses for areas with insufficient freeboard where a levee raise is required, updating the embankment protection design to reflect any changed conditions since 2013, updating the Arkansas River H&H model and updating the H&H report, updating the levee certification report's geotechnical and embankment protection sections and reviewing the final draft of the comprehensive levee certification report compiled by Wilson & Company.

We performed the geotechnical analyses during our original Phase III study assuming that the freeboard deficiencies would be corrected by constructing a new pilot channel along the river centerline. The design at that time did not include any modifications to the existing levee embankments. However, through value engineering the proposed design now includes adding up to 1.3 feet of new fill along about three miles of embankment to increase freeboard. The areas requiring new fill are generally located along the north and south levees, east of the 2<sup>nd</sup> Avenue crossing. Additional geotechnical analyses are necessary to evaluate the stability and settlement of the embankment as a result of the planned levee raising.

This scope of services is based on the design drawings submitted to the USACE Tulsa District in 2013, which was subsequently approved by the District. It assumes that minor changes to the channel grading plan may be necessary, but that there are no substantial design changes from those drawings. It also assumes that the USACE will be notified that the project will now be moving forward, but the changes are minor enough that no new approvals including a detailed 408 review process where comments are required to be addressed will be necessary. It is also assumed that FEMA Region VII will have the local STARR PTS provider review the final certification report out of Kansas City, and that no CLOMR or LOMR will be required as part of this project. Finally, this project is separate from the D Avenue Drain design. It is assumed that all updates associated with the D Avenue Drain will be completed under that project, where Wood is also a sub-contractor to Wilson & Company.

As part of the overall contract, we assume the City of Dodge City will retain Wilson & Company to perform construction phased services and as-built drawings, which will be necessary for levee certification. It is assumed that Wood's role will be limited to reviewing compaction testing and specific soils information as part of this project, which is a specific task in this Scope of Services.

## **PROPOSED SCOPE OF SERVICES – PHASE IV**

### **Task 1 - Levee Raising Project**

The geotechnical analysis for the levee raising will involve utilizing existing data to perform slope stability, seepage, and settlement analyses for the proposed embankment modifications.

We will perform seepage analyses using SEEP/W, a finite element software program that can perform both transient and steady-state seepage modeling. We will perform a steady state seepage analysis relative to the base flood elevation at each of our critical sections located in the area that will receive new fill.

We will also perform slope stability analysis of levee embankments using SLOPE/W, a computer program that can perform a variety of limit equilibrium stability analysis methods (Bishops, Janbu, Morgenstern-Price, etc.) under both static and pseudo-static loading conditions. Slope stability will be evaluated in accordance with the methodology outlined in USACE Engineering Manual EM 1110-2-1913. Each critical section will be analyzed for slope stability in each of the following cases:

- End of construction
- Normal pool
- Rapid draw-down

We will estimate long-term settlement potential by a method appropriate to the subsurface conditions including standard penetration test (SPT) correlations and laboratory consolidation tests.

After completion of the geotechnical analyses, we will revise our Phase III report to incorporate the findings from these additional analyses. We will update the Phase II levee certification report based on the final design and will be responsible for producing a 65.10 compliant sealed embankment protection submittal for the overall levee certification report produced by Wilson & Company. Our report will specifically address the requirements for embankment stability and embankment settlement required by 44 CFR 65.10. We understand that the levee raising project has already been approved by the USACE and that no further review will be required from this modeling. Our scope does not include follow-up reporting, response to comments, etc. that may be associated with this type of permitting.

While unlikely, if it is determined that design changes to the levee raise typical sections are necessary to achieve under seepage, through seepage, or embankment stability minimum factors of safety for the previously stated loading conditions, we will communicate these findings to Wilson & Company. If the design solution is simple and straight forward, we will communicate the required changes to Wilson & Company. However, in the unlikely event these changes required additional modeling or alternatives analysis, then additional services will be required for an additional fee, which would be negotiated at that time prior to beginning the work. Finally, this task assumes that no stop log structures, or flood gates are modified or constructed as part of this project.

Task 1 is based on the following additional assumptions:

- A maximum of four critical sections will require additional geotechnical analyses;
- Our scope does not include evaluating potential borrow source materials. Wood will provide an earth fill material specification in the Phase III report that will describe the soil properties required for the fill material used to construct the levee raise. The description will include allowable USCS soil type, minimum dry density, and plasticity index range.;
- Our scope does not include any reporting other than updating our previously submitted draft sections of the certification report and ultimately finalizing the report. Our scope does not include preparing a separate report for submittal to the USACE

### **Task 2 – Embankment Protection Design and Report Updates**

During Phase II it was determined that the potential for effective flows between the steel jacks and the top of the levee is possible during the 1% chance flood event. The proposed solution was to cutoff effective flows using riprap or some other materials to prevent effective flow from occurring at these locations. During Phase III, Wood coordinated with WCI to determine placement of these structures during the design process. In addition, Wood included these cutoff structures in our hydraulic model to reflect the ineffective flows.

During Phase IV, Wood will coordinate with Wilson & Company to make any design revisions necessary based on the existing conditions design updates. It is assumed that Wilson & Company will be responsible for all drafting, permit or regulatory coordination, sediment and erosion control designs, and completing construction documents for these structures. Wood will review the final design and specifications to ensure the proposed design and specifications are FEMA 65.10 compliant.

Wood will be responsible for final modeling and documentation of embankment protection of the levee system. We will update the Phase II levee certification report based on the final design and will be responsible for producing a 65.10 compliant sealed embankment protection submittal for the overall levee certification report produced by Wilson & Company.

### **Task 3 – Hydraulic Model Design Analysis and H&H Report**

If necessary, Wood will revise the hydraulic analysis for the Arkansas River beginning a sufficient distance upstream of the Dodge City levee system and ending a sufficient distance downstream of the City levee system to provide an accurate water surface profile for the entire levee system. Wilson & Company will be responsible for providing a digital proposed grading plan in GIS or CAD format for updating the modeling. If necessary, only one model revision is anticipated to account for the channel grading design changes and the embankment protection design revision changes. In addition to the 100-yr water surface profile, Wood will model the 10-yr, 25-yr, 50-yr, and 500-yr flows so that the analysis is compliant with FEMA requirements. The floodway will be updated, and profiles and a floodway data table will be updated. Final modeling will be completed in a FEMA DCS compliant format. Wood will provide a final hydrology and hydraulics report that will be updated to reflect any modeling changes. It is assumed that Wilson & Company will produce a top of levee profile/100-yr WSE profile for freeboard comparison

purposes as well as the final freeboard report for levee certification. Wood will provide ITR of these profiles and report and will be responsible for sealing the H&H report which is assumed to be an Appendix of the overall Freeboard section of the certification report which will be sealed by Wilson & Company.

#### **Task 4 – Certification Report and Design Review**

The responsible parties for the documentation are as follows:

1. Overview/compiling levee certification report – WCI (Wilson & Company)
2. H&H modeling – Wood
3. Freeboard Documentation – WCI
4. Closure Structure Documentation – WCI
5. Seepage and Stability - Wood
6. Settlement – Wood
7. Embankment Protection – Wood
8. Interior Drainage – WCI
9. Operations and Maintenance – WCI
10. Construction Drawings – WCI
11. Specifications – WCI
12. Bid Package – WCI
13. Construction Phased Services – WCI (Wood will review compaction testing and embankment materials)

Wood will be responsible to reviewing the final certification report, construction drawings and specifications to ensure overall FEMA 65.10 compliance. This includes review of the final levee certification walk through, that will be performed by Wilson & Company prior to construction, to ensure all levee deficiencies needing addressed for levee certification are addressed in the construction drawings and specifications. Wood will not participate in the final levee assessment but will be responsible for providing feedback in the report. We will provide all review comments to Wilson and Company in the form of review memorandums.

#### **Task 5 – Meetings**

Wood's project manager (Joe File) will participate in up to 16 hours of meetings. This may include one trip to Dodge City which, if required, would use 6 of the 16 hours in round trip travel time. Wood will review meeting minutes provided by Wilson & Company as part of this task and will provide comments and any suggested changes to the minutes.

#### **Task 6 – Construction Phased Services**

Wilson & Company will be responsible for construction phase services. However, in order to ensure that embankment compaction is completed in accordance with design and all factors of safety computed for 65.10 compliance, Wood will review all compaction and density testing to ensure the locations, frequency of testing, and testing results are in compliance with the specifications. This will ensure that Wood will be able to seal the geotechnical report upon completion of construction, without any additional geotechnical investigations. Rather than perform this review at the end of the project, we recommend performing this task periodically during construction of the levee embankment, to ensure

that any problems are addressed early and prior to full embankment modifications. Wood assumes it will take no more than 20 hours to review embankment testing and the final as-built plans, so we can ultimately sign off on our sections of the final certification report.

### **ESTIMATED COSTS**

Attachment 1 presents our cost estimates for each task, based upon our understanding of the proposed design at this time and upon the assumptions stated in this proposal. We will perform this work for Time and Materials based on Wood's 2020 Standard Rate Schedule, not to exceed \$36,229.28.

### **SCHEDULE**

Schedule will be negotiated with Wilson & Company as part of this project. Task 1 will be completed within 90 days from NTP. In general, each remaining task can be completed within 30 days of setting an agreed upon timeline for each task.

### **CLOSURE**

We look forward to working with you on this project, and we will be happy to discuss any questions that you may have.

Sincerely,  
**Wood Environment & Infrastructure**



Joe D. File, PE, CFM  
Senior Associate/Project Manager



Tyler P. Jones  
Vice President, Central Gulf Coast  
Region Manager

**Attachment 1 - Phase IV Estimated Costs**

<b>1.0 Geotechnical Efforts</b>	<b>Wood</b>
Stability/Seepage Analysis	\$4,455.84
Settlement Analysis	\$1,233.44
Peer Review	\$1,000.00
Update Report	\$3,120.00
<b>1.0 Geotechnical Efforts Total</b>	<b>\$9,809.28</b>

<b>2.0 Embankment Protection Analysis &amp; Report</b>	<b>Wood</b>
Design Updates	\$3,300.00
Certification Report	\$3,500.00
<b>2.0 Embankment Protection Analysis &amp; Report Total</b>	<b>\$6,800.00</b>

<b>3.0 Hydraulic Model Design and H&amp;H Report</b>	<b>Wood</b>
Hydraulic Analysis	\$7,100.00
<b>3.0 Hydraulic Model Design and H&amp;H Report Total</b>	<b>\$7,100.00</b>

<b>4.0 Certification Report and Design Review</b>	<b>Wood</b>
Certification Report Review	\$2,970.00
Design Review	\$2,290.00
Specifications Review	\$1,300.00
<b>4.0 Certification Report and Design Review Total</b>	<b>\$6,560.00</b>

<b>5.0 Meetings</b>	<b>Wood</b>
Attend up to 16 hours in meetings (includes travel)	\$2,800.00
<b>5.0 Meetings Total</b>	<b>\$2,800.00</b>

<b>6.0 Construction Phased Services</b>	<b>Wood</b>
Provide up to 20 hours construction phased services	\$3,160.00
<b>6.0 Construction Phased Services Total</b>	<b>\$3,160.00</b>

<b>Totals</b>	<b>\$36,229.28</b>
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**EXHIBIT B**  
**Sub-Consultants**

Owner approves of the use of the following sub-consultants by Engineer:

Name

Discipline

Wood Environment & Infrastructure Solutions, Inc.

Geotechnical & Civil Engineering

**EXHIBIT C**  
**Hourly Rate Schedule**

The following rates are subject to increase on January 1 of each year based on Engineer's annual rate adjustments.

Employee Title	Rate
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**EXHIBIT C**  
**2019 Hourly Rates**



<b>LABOR RATES</b>		<b>REGULAR BILL RATE</b>	<b>OVERTIME BILL RATE</b>
A1	Intern Architect, Job Captain (Unlicenced)	\$ 88.00	\$ 88.00
A2	Intern Architect, Job Captain (Unlicenced)	\$ 96.00	\$ 96.00
A3	Intern Architect, Job Captain (Unlicenced)	\$ 115.00	\$ 115.00
A4	Architect (Licenced)	\$ 140.00	\$ 140.00
A5	Architect (Licenced)	\$ 167.00	\$ 167.00
A6	Architect (Licenced)	\$ 210.00	\$ 210.00
A7	AVP, VP, Ops Manager	\$ 240.00	\$ 240.00
AD1	Receptionist/File Clerk	\$ 42.00	\$ 63.00
AD2	Administrative Assistant II/Receptionist	\$ 54.00	\$ 81.00
AD3	Administrative Assistant III/Receptionist	\$ 66.00	\$ 99.00
AD4	Administrative Assistant IV/Executive Assistant IV	\$ 72.00	\$ 108.00
AD5	Senior Administrative Assistant V/Executive Assistant V	\$ 90.00	\$ 135.00
FC1	Junior Construction Observer	\$ 50.00	\$ 75.00
FC2	Construction Observer/Inspector	\$ 60.00	\$ 90.00
FC3	Construction Observer/Inspector	\$ 70.00	\$ 105.00
FC4	Construction Observer/Inspector	\$ 80.00	\$ 120.00
FC5	Senior Construction Observer/Inspector	\$ 110.00	\$ 110.00
FC6	Senior Construction Observer/Inspector	\$ 140.00	\$ 140.00
FS1	Survey Tech I	\$ 46.00	\$ 69.00
FS2	Survey Tech II	\$ 53.00	\$ 80.00
FS3	Survey Tech III	\$ 60.00	\$ 90.00
FS4	Crew Chief, Senior Crew Chief	\$ 88.00	\$ 132.00
FS5	Chief Surveyor (Licensed)	\$ 122.00	\$ 122.00
FS6	Survey Manager (Licensed)	\$ 152.00	\$ 152.00
FS7	Operations Manager (Licenced)	\$ 210.00	\$ 210.00
IA1	Intern I	\$ 36.00	\$ 54.00
IA2	Intern II	\$ 50.00	\$ 75.00
IA3	Intern III	\$ 60.00	\$ 90.00
OD1	CADD Technician (entry level)	\$ 44.00	\$ 66.00
OD2	CADD Technician	\$ 52.00	\$ 78.00
OD3	CADD Technician	\$ 65.00	\$ 97.50
OD4	CADD Technician	\$ 80.00	\$ 120.00
OD5	Senior CADD Technician/CADD Manager	\$ 90.00	\$ 135.00
OP1	Apprentice Stereo Operator	\$ 48.00	\$ 72.00
OP2	Stereo Operator	\$ 60.00	\$ 90.00
OP3	Stereo Operator/GIS Analyst	\$ 75.00	\$ 112.50
OP4	Stereo Operator/GIS Analyst	\$ 98.00	\$ 147.00
OP5	Chief Photogrammetrist	\$ 112.00	\$ 112.00

**EXHIBIT C**  
**2019 Hourly Rates**



<b>LABOR RATES</b>		<b>REGULAR BILL RATE</b>	<b>OVERTIME BILL RATE</b>
OP6	Chief Photogrammetrist	\$ 146.00	\$ 146.00
OP7	Chief Photogrammetrist	\$ 230.00	\$ 230.00
P1	Graduate Enginner (Unlicensed)	\$ 88.00	\$ 88.00
P2	Graduate Enginner (Unlicensed)	\$ 96.00	\$ 96.00
P3	Staff Detail Designer (Unlicensed)	\$ 115.00	\$ 115.00
P4	Staff Detail Designer (Licensed)	\$ 140.00	\$ 140.00
P5	Project Designer (Licensed)	\$ 167.00	\$ 167.00
P6	Project Designer (Licensed)	\$ 210.00	\$ 210.00
P7	Department Head, Principal (Licensed)	\$ 240.00	\$ 240.00
PL1	Junior Planner (Unlicensed)	\$ 60.00	\$ 90.00
PL2	Junior Planner (Unlicensed)	\$ 78.00	\$ 117.00
PL3	Planner (Unlicensed)	\$ 100.00	\$ 150.00
PL4	Senior Planner (Licensed)	\$ 140.00	\$ 140.00
PL5	Senior Planner/Project Mgr (Licensed)	\$ 186.00	\$ 186.00
PL6	Senior Planner/Project Manager (Licensed)	\$ 210.00	\$ 210.00
PL7	AVP, VP, Ops Manager	\$ 240.00	\$ 240.00
PD1	CADD Designer	\$ 74.00	\$ 111.00
PD2	CADD Designer	\$ 78.00	\$ 117.00
PD3	CADD Designer	\$ 96.00	\$ 144.00
PD4	Senior CADD Designer	\$ 101.00	\$ 101.00
PD5	Senior CADD Designer	\$ 128.50	\$ 128.50
RP1	Junior Railroad Technician	\$ 88.00	\$ 88.00
RP2	Railroad Technician	\$ 96.00	\$ 96.00
RP3	Railroad Technician/Specialist	\$ 115.00	\$ 115.00
RP4	Senior Railroad Specialist	\$ 140.00	\$ 140.00
RP5	Senior Railroad Specialist, RR Project Manager	\$ 167.00	\$ 167.00
RP6	Senior Railroad Specialist, RR Project Manager	\$ 210.00	\$ 210.00
SP1	Junior RE Specialist/Consultant	\$ 60.00	\$ 90.00
SP2	RE Specialist/Public Involvement/Consultant	\$ 78.00	\$ 117.00
SP3	Planner/ROW Agent/Project Manager	\$ 100.00	\$ 150.00
SP4	Senior RE Specialist/Planner/Senior ROW Agent/Project Mgr	\$ 140.00	\$ 140.00
SP5	Senior RE Specialist/Planner/Senior ROW Agent/Project Mgr	\$ 160.00	\$ 160.00
SP6	Senior RE Specialist/Planner/Project Manager	\$ 195.00	\$ 195.00
SP7	AVP, VP, Ops Manager	\$ 220.00	\$ 220.00