

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, September 21, 2020

7:00 p.m.

MEETING #5166

This will be an entirely virtual meeting, and there are two ways to watch and listen in real-time:

1. Watch live on our Facebook page at www.facebook.com/cityofdodgecity

2. Or watch it on our Vimeo page at www.vimeo.com/cityofdodgecity.

Comments on these streams will be open to be utilized for the Visitors Section. The meeting will be archived on both sites to be viewed after the live video has ended.

CALL TO ORDER

ROLL CALL

INVOCATION BY

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

SUBMIT QUESTIONS OR COMMENTS

PETITIONS & PROCLAMATIONS

Light the Night for Fallen Firefighters Proclamation

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

City Loyalty Oath Ceremony - Police Chief, Francis Drew - Fire Chief, Ken Spencer

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, September 8, 2020
2. Approval of City Commission Meeting Minutes, August 17, 2020.
3. Appropriation Ordinance No.18, September 21, 2020;

4. Approval for Water Service for Truck Center, 1502 Minneola Rd.

ORDINANCES & RESOLUTIONS

Ordinance No. 3739: : An Ordinance Regulating Traffic within the Corporate Limits of the City of Dodge City, Kansas; Incorporating by Reference the “2020 Standard Traffic Ordinance for Kansas Cities” and Repealing Ordinance No. 3720. Report by City Clerk/Finance Technician, Connie Marquez.

Ordinance No. 3740: An Ordinance Regulating Public Offenses within the Corporate Limits of the City of Dodge City, Kansas; Incorporating by Reference the “2020 Uniform Public Offense Code for Kansas Cities” and Repealing Ordinance No. 3721. Report by City Clerk/Finance Technician, Connie Marquez.

Ordinance No. 3741: An Ordinance Amending and Replacing Certain Sections of Ordinance No. 3733 of the City of Dodge City, Kansas. Report by City Attorney, Brad Ralph.

Resolution No. 2020-25: A Resolution in Support of an Application for Funding Through the Moderate Income Housing Program Offered Through the Kansas Housing Resources Corporation to the Utilized for the Abandoned Housing Program in Dodge City, Kansas. Report by Special Projects Coordinator, Mollea Wainscott.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval to Accept the 2019 Audited Financial Statement. Report by Director of Finance, Nicole May.
2. Approval of League of Kansas Municipalities Voting Delegates. Report by City Clerk/Finance Technician, Connie Marquez.
3. Approval of Bids for two Wing Deck Mowers and three Mid-Mount Mowers. Report by Director of Administration, Ryan Reid.
4. Approval of StandGuard Aquatics Management Agreement Extension. Report by Director of Parks & Facilities, Troy Brown
5. Approval of Contract and Scope of Services for the Downtown Streetscape Project. Report by City Engineer, Tanner Rutschman.

OTHER BUSINESS

STAFF REPORTS

EXECUTIVE SESSION

Discuss Legal Advice from Counsel Regarding Potential Claims against the City

ADJOURNMENT

PROCLAMATION

Whereas, the United States Congress and the President of the United States have designated the day of the annual National Fallen Firefighters Memorial Service as a day to honor firefighters and emergency services personnel who have sacrificed their lives to save others by lowering the American flag on all federal buildings to half-staff; and Whereas, an average of 80 firefighters courageously make the ultimate sacrifice in the line of duty each year; and

Whereas, firefighters and emergency services personnel play an essential role in the protection of lives and property in our local community; and

Whereas, the America's Tribute to Fallen Firefighters marks the beginning of the Fire Prevention Week 2020 observance; and

Whereas, it is of major importance that we increase our efforts to reduce deaths, injuries, and property losses from fire;

Therefore, I Mayor of the City of Dodge City, now call upon all citizens of the City of Dodge City and upon all patriotic, civic, and educational organizations to observe the day of October 4, 2020, in recognition of the patriotic service and dedicated efforts of our fire and emergency services personnel by lowering American flags on all buildings to half-staff.

I respectfully encourage these same organizations as well as the citizens of the City of Dodge City to remember all fire and emergency personnel who have made the ultimate sacrifice in service to their community and to pay respect to the survivors of our fallen heroes by participating in Light the Night for Fallen Firefighters. I invite everyone to light your building or house in red to honor America's fallen heroes from September 27th- October 4, 2020.

At noon October 4th 2020 the Dodge City Fire Department will Ring the Bell at Fire Station 1 and sound their sirens as a final tribute of the week. As you hear this, please take a moment of silence to remember those who have lost their lives to save others.

SEAL

Joyce Warshaw, Mayor

Connie Marquez, City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Tuesday, September 8, 2020

7:00 p.m.

MEETING #5165

This will be an entirely virtual meeting, and there are two ways to watch and listen in real-time:

1. Watch live on our Facebook page at www.facebook.com/cityofdodgecity

2. Or watch it on our Vimeo page at www.vimeo.com/cityofdodgecity.

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CALL TO ORDER

ROLL CALL Joyce Warshaw, Rick Sowers, Kent Smoll, Brian Delzeit, Joseph Nuci, Brian Delzeit

INVOCATION by

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Commissioner Kent Smoll moved to accept the agenda as presented. Commissioner Rick Sowers seconded the motion. The motion carried 5 - 0.

SUBMIT QUESTIONS AND COMMENTS

There were no questions or comments from public

PETITIONS & PROCLAMATIONS

Mayor Joyce Warshaw read the Dodge City Community College Proclamation. The college will be having an event on October 18th at 3:00 pm.

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

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes, August 17, 2020;
2. Approval of City Commission Meeting Minutes, August 17, 2020;
3. Approval of Special City Commission Meeting Minutes, August 24, 2020;
4. Appropriation Ordinance No.17, September 8, 2020;

5. Cereal Malt Beverage License:
 - a. Dillons Store, 1700 14th Avenue.
 6. Approval of Change Order #1 for 1st Avenue Reconstruction (Hickory to Cedar St).
 7. Approve of Change Order #1 for the 2020 Chip Sealing Project.
- Commissioner Brian Delzeit moved to accept the consent calendar as presented.
Commissioner Joseph Nuci seconded the motion. The motion carried 5 - 0.

ORDINANCES & RESOLUTIONS

UNFINISHED BUSINESS

NEW BUSINESS

1. Commissioner Kent Smoll moved to allow to authorize the City Manager to approve to execute the purchase of items utilizing the SPARKS Funding. Commissioner Brian Delzeit seconded the motion. The motion carried 4 – 1 with Rick Sowers voting no.
2. Commissioner Kent Smoll moved to approve the bids from Shor-Line in the amount of \$56,792.62 for the Animal Shelter Animal Cages. Commissioner Brian Delzeit seconded the motion. The motion carried 5 - 0.
3. Commissioner Brian Delzeit moved to approve the Crossing Agreement with Iron Wind Star Project. Commissioner Kent Smoll seconded the motion. The motion carried 5 - 0.

OTHER BUSINESS

STAFF REPORTS

EXECUTIVE SESSION

At 7:30 pm Commissioner Rick Sowers made a motion that the City Commission recess into executive session pursuant to the preliminary discussions relating to the acquisition of real property, exception found in K.S.A. 75-4319(b) (6). Commissioner Kent Smoll seconded the motion. The motion carried 5 - 0. The meeting will reconvene in 5 minutes at 7:35 pm. The session will include Commissioners, City Manager, Nick Hernandez and City Attorney, Brad Ralph. The commission will take no action upon returning to the open session and prior to adjournment.

EXECUTIVE SESSION

At 5:35 pm Commissioner Kent Smoll made a motion that the City Commission recess into executive session pursuant to the preliminary discussions relating to the Discuss Legal Advice from Counsel Regarding Potential Claims against the City exception found in K.S.A.

75-4319(b) (6). Commissioner Brian Delzeit seconded the motion. The meeting will reconvene in 15 minutes at 5:45pm. The session will include Commissioners, City Manager, Nick Hernandez and City Attorney, Brad Ralph. The commission will take no action upon returning to the open session and prior to adjournment. Commissioner Kent Smoll made a motion to extend the session for 5 minutes from 5:46 to 5:51 pm. Commissioner Brian Delzeit seconded the motion. The motion carried 5 – 0.

ADJOURNMENT

Commissioner Rick Sowers made a motion to adjourn the meeting. Commissioner Brian Delzeit seconded the motion. The motion carried 5 – 0.

Joyce Warshaw, Mayor

ATTEST:

Connie Marquez, City Clerk



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Ray Slattery, PE, Director of Engineering Services
Date: September 15, 2020
Subject: Contract for Water Service for Truck Center, 1502 Minneola Rd.
Agenda Item: Consent Calendar

Recommendation: Approve Contract for Water Service.

Background: The City has allowed County Residents/Business/Property Owners located adjacent to a City waterline to connect service lines once a Contract has been approved between the Resident/Business/Property Owner and the City. The Truck Center is currently building a new building at this location for their business. They are requesting a domestic and fire service from the City's line on S. 2nd Ave.

Justification: By allowing these connections, the Residents/Businesses/Property Owners have access to a potable water supply when their private well becomes non-operational, has other issues, like contaminations, or they just want a secure water supply. The connection provides a safe supply of potable water for the Resident/Business/Property Owner.

Financial Considerations: The cost for the installation of the fire line, service, and meter will be paid for by the property owner. The property owner will also be responsible for the fees to file the Water Contract with the Register of Deed's Office.

Purpose/Mission: This project aligns with the City's Core Value of "Safety". Together we endeavor to provide a safe potable water supply for the Residents/Businesses/Property Owners around Dodge City.

Legal Considerations: None

Attachments: Contract for Water Service



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Connie Marquez, City Clerk/Finance Technician
Date: September 18, 2020
Subject: Ordinance No. 3739
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the approval of Ordinance No. 3739

Background: **Ordinance No. 3739** adopts the “2020 Edition of the Standard Traffic Ordinance” by reference. There were no changes to the 2020 Standard Traffic Ordinance.

Justification: Each year the State Legislature passes numerous statutes that affect the laws of the State as well as those of the individual cities. The League of Kansas Municipalities compiles a small booklet which incorporates all of the laws in Kansas that deal with traffic offenses. This booklet constitutes the “2020 Standard Traffic Ordinance for Kansas Cities”. Cities are allowed to adopt this ordinance by reference, so the entire traffic code is not included in the adopting ordinance. Each employee who deals with any of these offenses is furnished access to reference when necessary.

Financial Considerations: The cost of the booklets for the pertinent employees’ use is approximately \$9.00 per booklet.

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

Legal Considerations: None

Attachments: Ordinance No.3739. The 2020 Standard Traffic Ordinance for Kansas Cities. The booklets are available in my office if anyone would like to review them.

ORDINANCE NO. 3739

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; INCORPORATING BY REFERENCE THE "2020 STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES" AND REPEALING ORDINANCE NO. 3720

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

Section 1: INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by Reference for the purpose of regulating traffic within the corporate limits of the City of Dodge City, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities", prepared and published in book form by the League of Kansas Municipalities, Topeka Kansas. One copy of said Standard Traffic Ordinance shall be marked or stamped "Official Copy as Adopted by Ordinance No. 3739" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the City charged with enforcement of the ordinance shall be supplied, at the cost of the City, such number of official copies of said Standard Traffic Ordinance similarly marked, as may be deemed expedient.

Section 2: TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.

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

Section 3: REPEAL. Ordinance No. 3720 is hereby repealed.

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

Passed by the governing body of the City of Dodge City, Kansas, this 21st day of September, 2020.

MAYOR

ATTEST:

CITY CLERK



Memorandum

To: City Manager, Nick Hernandez and City Commissioners
From: Connie Marquez, City Clerk/Finance Technician
Date: September 18, 2020
Subject: Ordinance No. 3740
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the approval of Ordinance No. 3740

Background: Ordinance No. 3740 adopts the “2020 Uniform Public Offense Code for Kansas Cities” by reference. The following sections were added or modified to the 2020 Uniform Public Offense Code for Kansas Cities during the 2020 legislative session:

- Definition of Explosives will be added
- Section 5.7 - Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor
- Section 6.24 - Typo Corrected
- Section 10.1 - Changes to the Weapons Code
- Section 10.29 - Violation of a Public Health Order

Justification: Each year the State Legislature enacts numerous statutes that affect the laws of the State as well as those of the individual cities. The League of Kansas Municipalities compiles a small booklet which incorporates all of the laws in Kansas that deal with public offenses. This is the “Uniform Public Offense Code”. Cities are allowed to adopt this code by reference, so the entire code is not included in the adopting ordinance. Each employee who deals with any of these violations is furnished a book to reference when necessary.

Financial Considerations: The cost of the booklets for the pertinent employees’ use is approximately \$9.00 per booklet.

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

Legal Considerations: None

Attachments: Ordinance No. 3740 The 2020 Uniform Public Offense Code for Kansas Cities booklets are available in my office if anyone would like to review them.

ORDINANCE NO. 3740

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; INCORPORATING BY REFERENCE THE "2020 UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES" AND REPEALING ORDINANCE NO. 3721

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

Section 1: INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by Reference for the purpose of regulating public offenses within the corporate limits of the City of Dodge City, Kansas, that certain code known as the "2020 Uniform Public Offense Code for Kansas Cities", prepared and published in book form by the League of Kansas Municipalities, Topeka Kansas. One official copy of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 3740" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

Section 2: REPEAL. Ordinance No. 3721 is hereby repealed.

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

Passed by the governing body of the City of Dodge City, Kansas, this 21st day of September 2020.

MAYOR

ATTEST

CITY CLERK

Memorandum

*To: City Commissioners
City Manager*
From: Brad Ralph, City Attorney 
Date: September 21, 2020
Subject: Amendment of Ordinance 3733
Agenda Item: New Business

Recommendation: Staff recommends approval of the Ordinance amending Ordinance 3733 to correct a legal description.

Background: The City passed Ordinance 3733 approving the creating a Rural Housing Improvement District (Wagon Wheel 3). This occurred in May 2020. A portion of the described legal description was incomplete and required correction to avoid any confusion with the mapped area as contained in the original ordinance.

Justification: Passage of the amendment will ensure no confusion will occur at any time in the future as to the Commission's actions.

Financial Considerations: None

Purpose/Mission: Promoting economic development within the community.

Legal Considerations: None, as the mapped property remains the same.

Attachments: 1) Proposed Ordinance 3741.

ORDINANCE NO. 3741

**AN ORDINANCE AMENDING AND REPEALING CERTAIN SECTIONS OF
ORDINANCE 3733 OF THE CITY OF DODGE CITY, KANSAS**

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

**Section 1: Section 2 of Ordinance 3733 is hereby amended to read as follows by
repealing the current Section 2 of said Ordinance and replacing said Section with
the following:**

Section 2. Creation of Rural Housing Incentive District. A Rural Housing
Incentive District is hereby created within the City in accordance with the provisions of
the Act, which shall consist of the following described real property in the Development,
an addition to the City of Dodge City, Ford County, Kansas:

A tract of land in the Southwest Quarter of Section 13, Township 26 South, Range 25 West of the
Sixth Principal Meridian, Ford County, Kansas described as follows:

Beginning at the Northeast Corner of Lot 9, Wagon Wheel Addition, City of Dodge City, Ford
County, Kansas; thence

N00°28'57"W 551.22 feet to a point on the South Line of Kliesen Hills Addition, City of Dodge
City, Ford County, Kansas; thence

S89°41'14"E 853.00 feet along the South Line of the said Kliesen Hills Addition and the South
Line of Kliesen Subdivision, City of Dodge City, Ford County, Kansas; thence

S00°28'58"E 1194.15 feet; thence

N89°43'15"W 853.00 feet to the Southeast Corner of Lot 4, Wagon Wheel Addition, City of
Dodge City, Ford County, Ks; thence

N00°28'57"W 643.43 feet to the point of beginning, containing 23.4 acres.

And

A tract of land in Lot 9, Block 14, Kliesen Subdivision and in the Southwest Quarter of
Section 13, Township 26 South, Range 25 West of the Sixth Principal Meridian, Ford
County, Kansas described as follows:

Beginning at a point that is S 89°43'59" E 39.65 feet from the Northwest Corner said Lot
9, Block 14, Kliesen Subdivision, in the Southwest Quarter of said Section 13, Ford

County, Kansas; thence S00°30'40"E 209.57 feet to the South Line of said Lot 9, Block
14, Kliesen Subdivision; thence S89°35'11"E 1.94 feet along the South Line of said Lot

9; thence S26°07'35"E 66.33 feet to the Southwesterly Corner of said Lot 9; thence

S06°28'24"E 60.45 feet to the South right of way line of Kliesen Street; thence

N89°23'28"W 97.25 feet; thence N00°27'19"W 348.46 feet to the South Line of Wagon
Wheel Addition, Unit Two, City of Dodge City, Ford County, Kansas; thence

S89°43'15"E 60.00 feet along the South Line of said Wagon Wheel Addition; thence

S00°30'40"E 20.00 to the Point of Beginning, containing 0.55 acres.

Subject to easements and restrictions of record.

The boundaries of the District do not contain any property not referenced in Resolution
No. 2020-06, which provided notice of public hearing on the creation of the District and
adoption of the Plan.

Section 2: This ordinance shall be effective on _____, 2020, and following the publication of the summary ordinance once in the official city newspaper.

Mayor

Attest:

Connie Marquez, City Clerk

Memorandum

*To: City Manager
City Commissioners*

*From: Mollea Wainscott
Special Projects Coordinator*

Date: 09/21/20

*Subject: Resolution in Support of Application
Funding Through the MIH Program*

Agenda Item: Resolution No. 2020-25

Recommendation: Staff recommends the approval of Resolution No. 2020-25 which indicates the City of Dodge City's support of the Community Housing Association of Dodge City's (CHAD) application to the Kansas Housing Resources Corporation (KHRC) for funding through the Moderate Income Housing (MIH) Program.

Background: In April 2018, the City and County received the CHAT report which provided the community with a housing needs and analysis. The report showed that our community housing needs were substantial. The report also indicated that there was a need for housing on many different income levels.

The MIH Program allows applicants to apply for loans or grants for infrastructure necessary to support housing or actual housing development of moderate income housing in rural areas.

Justification: Housing continues to be a constant challenge in the Dodge City/Ford County area. The approval of this Resolution will allow the developer to apply for funding through the MIH program offered through the KHRC for development of housing targeted towards moderate income units.

Financial Considerations: None at this time.

Purpose/Mission: This resolution will assist Staff in supporting CHAD who is working to bring much needed housing opportunities to our community, therefore, improving the quality of life for our citizens.

Legal Considerations: None.

Attachments: Resolution No. 2020-25

RESOLUTION NO. 2020-25

A RESOLUTION IN SUPPORT OF AN APPLICATION FOR FUNDING THROUGH THE MODERATE INCOME HOUSING PROGRAM OFFERED THROUGH THE KANSAS HOUSING RESOURCES CORPORATION TO BE UTILIZED FOR THE ABANDONED HOUSING PROGRAM IN DODGE CITY, KANSAS

WHEREAS, the City of Dodge City, Kansas has received a request by Community Housing Association of Dodge City (CHAD) reflecting its desire to submit a Moderate Income Housing application in partnership with the City of Dodge City, Kansas; and,

WHEREAS, said application is prepared and ready to be filed with the Kansas Housing Resources Corporation for the Abandoned Housing Program; and,

WHEREAS, the City of Dodge City, Kansas updated a CHAT Report (Community Housing Assessment) in 2018 which indicates the continued need for owner and renter occupied housing.

NOW THEREFORE BE IT RESOLVED, that the Governing Body of the City of Dodge City by adoption of this Resolution indicates their support, approval, coordination and partnership with CHAD and its application for grant funding to the Kansas Housing Resources Corporation through the Kansas Moderate Income Housing Program for the aforesaid housing project in the amount of Two Hundred Fifty Thousand Dollars (\$250,000).

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR, this 21st day of September 2020.

City of Dodge City, Kansas

Mayor

ATTEST:

City Clerk



Memorandum

To: Nick Hernandez, City Manager
From: Nicole May, Finance Director
Date: September 17, 2020
Subject: Acceptance of 2019 Audit Financial Statements
Agenda Item: New Business

Recommendation: I recommend the City Commission formally accept the 2019 Audit Financial Statements.

Background: The 2019 audited financial statements will be presented by John Hendrickson of Kennedy McKee at the work session prior to the regular meeting. He will go through the highlights and give the City Commission a chance to ask any questions.

Justification: Annually the City is required to have their financial statements audited.

Financial Considerations: The audit cost is budgeted annually.

Purpose/Mission: We strive for high service standards.

Legal Considerations: None

Attachments: A hard copy of the audit will be available to each City Commissioner. The PDF version will be on the website.



Memorandum

To: City Commission
From: Ryan Reid, Director of Administration
Date: 2020 09 14
Subject: Mowers
Agenda Item: New Business

Recommendation: On September 1st, 2020 Staff opened bids for two wingdeck mowers and three mid mount mowers. Staff is recommending purchase of the two Jacobsen HR600 mowers from Kansas Golf and Turf for \$117,800. Staff also recommends purchase of the three midmount mowers (grasshopper 335B/61) from Moridge Manufacturing (sold through local distributor B&S Trailers). The total for the three is \$29,802.75.

Background: These mowers will be used by multiple Parks and Facilities Divisions to maintain the over 400 acres of parks, the Cemetery, athletic fields, and right of ways, throughout the City.

Justification: They are used heavily for three quarters of the year-often 8 hours per workday. These models were selected with special attention to reliability, expected life of the units, and size of the decks.

In regards to the rangewing mower recommendation, the Jacobsen model is the lowest price bid with an 11' deck. This larger mowing surface can make staff more efficient in acres mowed per hour (by up to 35%). Additionally this model is a diesel. Prior experience with these units lead Staff to expect more reliability and long useful life of the unit. Additionally, the Jacobsen is the only unit that includes "tilt sensor technology" which staff believes is a helpful safety feature.

Financial Considerations: One rangewing and two midmount mowers were budgeted for this year. The other rangewing and midmount is budgeted for next year but it is needed now. The replaced units will be used for backups, parts, or sold to auction.

Attachments: (1): bid tab and breakdown of locations

Grasshopper 335B/61 Mowers (60" deck, mid mount)



Jacobsen HR600 Mowers (11' deck)



2020 Parks and Facilities Mowers

<u>Division</u>	<u>Type of Mower</u>	<u>Budgeted?</u>
Parks and Facilities	Midmount	Yes, 2020
Cemetery	Midmount	Yes, 2020
Athletic Field Maintenance (AFM)	Midmount	2021
Parks and Facilities	Rangewing	Yes, 2020
Athletic Field Maintenance (AFM)	Rangewing	2021

City of Dodge City

Bid/RFP Tabulation

Mid Mount Mowers

2020 09 01

<u>Bidder</u>	<u>Description</u>	<u>\$ Total (3)</u>	<u>Special</u>
Professional Turf Products	Toro Z Master 6000 72967	\$37145.97	
American Implement	Hustler Super Z 941377	\$34,092	
Moridge Manufacturing	Grasshopper 335B/61RD	\$29,802.75	Recommended bid (3)
Logan County Implement	Bushhog HDZ3861ECV4	\$29,850	Fuel tank exception
Logan County Implement	Bushhot HDZ3161FX4	\$27,450	Fuel tank and cutting height exception
Logan County Implement	Toro 72946 6000 Series	\$36,750	
Logan County Implement	Toro 72967 6000 Series My Ride	\$35,400	
Logan County Implement	Toro 72960 6000 Series 60"	\$33,300	
Hi Plains Farm Equip	Bad Boy Outlaw Rogue 61"	\$26,472.00	
Hi Plains Farm Equip	Bad Boy Outlaw 72"	\$27,772.00	

<u>Bidder</u>	<u>Description</u>	<u>\$ Total</u>	<u>Special</u>
Hi Plains Farm Equip	Bad Boy Outlaw Rogue 61”	\$27,672	
Hi Plains Farm Equip	Bad Boy Outlaw Rogue 72”	\$27,972	
Sutherland’s Dodge City	Hustler X)NE 60”	\$24,409.86	
Sutherland’s Dodge City	Hustler Super Z 60”	\$30,222.60	
Southwest Hardware	Bushhog hdz3161	\$25,500	Bid exceptions
Kanamak	Hustler Hyperdrive 60”	\$36,993	
Kanamak	Hustler Super Z	\$32,274	

City of Dodge City

Bid/RFP Tabulation

Wingdeck

2020 09 01

<u>Bidder</u>	<u>Description</u>	<u>\$ Total (for two)</u>	<u>Special</u>
Professional Turf Products	Toro GroundsMaster 4000 30609	\$121,019.48	
American Implement	Hustler Super 104 939470	\$50,824	
Kansas Golf and Turf	Jacobsen HR600	\$117,800	Recommended bid (2 for \$117,800)
Kansas Golf and Turf	Exmark Lz588cdym96rw0	\$67,198	
Kansas Golf and Tuf	Hustler 939470	\$47,666.08	
Sutherland's Dodge City	Hustler Vanguard Big Block 939462	\$42,006	
Kanamak	Hustler Super 104	\$49,284	



Memorandum

To: Nick Hernandez, City Manager
City Commissioners

From: Troy Brown, Director of Parks and Facilities

Date: September 18, 2020

Subject: Approval StandGuard Aquatics Management Agreement Extension

Agenda Item: New Business

Recommendation: Staff recommends approving the amendment of the extension management agreement with StandGuard Aquatics.

Background: The City of Dodge City and Ford County entered into a Management Agreement with StandGuard Aquatics, LLC in February of 2016 for the management of Long Branch Lagoon. The term of the agreement was from March 1, 2016 through September 1, 2019. In August of 2019 the agreement was extended (1st Extension) through October 1, 2020. The City and County staff and StandGuard Aquatics wish to extend the current agreement for another one year agreement until October 1, 2021.

Justification: Current management agreement expires October 1, 2020.

Financial Considerations: The cost of the current agreement will not change during this one year extension. (2nd Extension)

Legal Considerations: The extension has been reviewed by the City Attorney and County Attorney

Attachments: 2nd Extension Management Agreement

SECOND EXTENSION - StandGuard Management Agreement

This SECOND EXTENSION ("Extension"), is made by and between the City of Dodge City, Kansas ("**City**") and the County of Ford County, Kansas ("**County**"), together and independently referenced herein as "**OWNER**" and StandGuard Aquatics, Inc., a Georgia domestic profit corporation, with offices at 5665 Atlanta Hwy, Suite 103-168, Alpharetta, GA, 30004 ("**STANDGUARD**") (collectively the "Parties").

WHEREAS, **OWNER** has engaged **STANDGUARD** to perform certain management operations and food and beverage services of the Facility, and **STANDGUARD** has previously accepted such engagement pursuant to the terms and conditions contained within the StandGuard Management Agreement dated March 1, 2016; and,

WHEREAS, the Parties have previously extended the term of said StandGuard Management Agreement by a First Extension dated August 14, 2019; and,

WHEREAS, the Parties desire to extend the term of said StandGuard Management Agreement a second time for an additional thirteen (13) months.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other considerations, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The StandGuard Management Agreement dated March 1, 2016 as modified by this SECOND EXTENSION shall be referred to as the "Management Agreement".
2. All other terms of the Management Agreement not amended hereby shall remain in full force and effect. In the event of any inconsistency between the terms of this SECOND EXTENSION and the Management Agreement, the terms of this SECOND EXTENSION shall govern and control.
3. The first sentence of Article 2 of the Management Agreement will now read "The

term of this Agreement shall begin March 1, 2016, and continue through October 1, 2021” The second sentence of Article 2 in the Management Agreement is hereby deleted.

IN WITNESS WHEREOF, the parties hereto have caused this SECOND EXTENSION to be executed on the day and year first above written.

For **OWNER**
City of Dodge City

County Commission of Ford County

Joyce Warshaw, Mayor

Ken Snook

Chris Boys

Shawn Tassett

ATTEST:

Connie Marquez, City Clerk

Debbie Cox, County Clerk

For **STANDGUARD AQUATICS, INC,**

By: Matt Satterly
Its: President

DATE



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Tanner Rutschman, PE, City Engineer
Date: September 17, 2020
Subject: Discovery Phase Scope of Services for Downtown Street Scape Design,
CA 2003
Agenda Item: New Business

Recommendation: Approve the Contract and Scope of Services for the Downtown Streetscape Project, Front St. from 3rd Ave. to Central Ave. from the building face to Wyatt Earp Blvd. along with 1st Ave. from Wyatt Earp Blvd. to Gunsmoke St., 2nd Ave. from Front St. to Gunsmoke St., 3rd Ave. from Wyatt Earp Blvd. to Gunsmoke, and Central Ave. from Wyatt Earp Blvd. to Vine St. with TranSystems/LK Architecture for \$224,751.00.

Background: From the beginning of the STAR Bond Development, renewing the downtown streetscape along Front St. has been the project at the top of the list. Now that the retail projects have been completed or are far enough underway, there are funds available to start design and then construction of the streetscape project. This project will not only provide a new look to Front St., but it will provide updated infrastructure to this first phase of the project and set the ground work for the continuation of the streetscape and infrastructure improvements for the rest of downtown. In December of 2018, requests for services to provide a concept of what the new downtown streetscape could look like was advertised. The City received six proposals. SMH Consultants was chosen to provide concept drawings of Front St. to be used to gather public comment as to what the citizens and visitors would like Front St. to look like and amenities to have available. Ideas and concepts were discussed from this point until early this year among the consultant, City Staff, and Main Street. At which time renderings of the concept were drawn and were ready to be presented to groups, organizations, businesses, and the citizens. However, just as we were planning to have these meetings, the COVID-19 Pandemic hit the area and everything was put on hold.

In late May, the concept was presented virtually through a survey to get opinions of what Front St. could/should look like. Due to the overwhelming responses from the survey that was conducted, the concept needed to change dramatically. A majority of the responses of the survey wanted to see or maintain a western feel of the Front St. Streetscape. The original concept was one to provide a sidewalk café/retail zone, a pedestrian area, and an amenity zone with a look more traditional to that of the turn of the century into the Roaring '20's. The concept for the Streetscape was revised to provide a more western theme, but still maintain the café/retail zone, pedestrian area, and an amenity zone. While the survey was underway, Requests for Qualifications (RFQ) for the design of the Downtown Streetscape were advertised. The RFQ submittal date was delayed one week to provide the firms interested in submitting more time to adjust to the revisions in streetscape concept. On July 31st, the City received 7 proposals. A selection committee made up of representatives from City Administration, Parks,

Engineering, Developmental Services, and Main Street reviewed and scored each firm's proposal. In the end, 3 firms were chosen to interview. Interviews were held the week of August 24th. As a result of these interviews and discussion among the selection committee, the team of TranSystems and LK Architecture was selected to provide the design services for the Downtown Streetscape project.

During the Scoping Meeting with TranSystems & LK Architecture it was determined it would be beneficial for the design of the project to be broken into two phases, a Discovery Phase and Final Design Phase. TranSystems/LK have provided a contract with scope of services for the Discovery Phase. This phase will include data collection of the current infrastructure, underground vaults, parking analysis, coordination with the utility companies, etc. along with a conceptual design and cost estimate. With the completion of this phase, the actual construction plans will be at 30%-40% or just below what could be considered Field Check status. Once this phase is completed, TranSystems/LK and the City will negotiate an agreement for Phase II, Final Design, Bidding, and possible Inspection Services. To meet the stipulations of the STAR Bond funds, we are requesting that final plans be provided by the end of June 2021, the Construction Project will be advertised in mid-July 2021, with award of the project to a contractor in September 2021.

Justification: With this project Front St. will receive a "face lift". New and improved infrastructure will be available for the businesses along Front St. The project will also generate a new feel and provide a better experience for the tourists that come to Dodge City for the western appeal.

Financial Considerations: This phase of the design with TranSystems/LK is for \$244,751.00. Funding for the design work will be from the STAR Bonds.

Purpose/Mission: This project aligns with the City's Core Value of Ongoing Improvements and Safety.

Legal Considerations: The City will be entering into a contract with TranSystems and will be bound by the provisions of this contract.

Attachments: Contract with Scope of Services for the Discovery Phase with TranSystems.

**AGREEMENT BETWEEN
City of Dodge City and
TRANSYSTEMS CORPORATION
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this _____ day of _____, 2020, by and between **City of Dodge City, KS** (hereafter referred to as "CLIENT") and **TranSystems Corporation** (hereafter referred to as "TRANSYSTEMS").

Whereas CLIENT intends to design and construct the following described project:

Dodge City Streetscape along Front Street from 3rd Avenue to Central Avenue (hereinafter collectively called the "Project").

Whereas CLIENT desires to engage TRANSYSTEMS to provide and perform certain professional services in connection with the Project and TRANSYSTEMS desires to provide and perform said professional services, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and their mutual covenants hereinafter set forth, CLIENT and TRANSYSTEMS agree as follows:

**SECTION 1
BASIC SERVICES OF TRANSYSTEMS**

Section 1.1 Basic Services. In connection with the Project, TRANSYSTEMS shall provide for CLIENT the professional services and perform, furnish or obtain from others the work and services expressly described in, referred to and limited to those set forth in Exhibit A, attached hereto and incorporated herein by reference (collectively the "Basic Services"). TRANSYSTEMS shall provide the Basic Services for CLIENT in all phases of the Project to which this Agreement applies, all as more particularly set forth in Exhibit A.

Section 1.2 TRANSYSTEMS' Duties. In addition to the general duties, obligations and responsibilities set forth elsewhere in this Agreement, the specific duties and responsibilities of TRANSYSTEMS in performing the Basic Services under this Agreement are set forth in Exhibit A. In addition to the specific duties and responsibilities of TranSystems in performing the basic services under this Agreement as set forth in Exhibit A, the following specific provisions shall apply to TranSystems' duties.

SECTION 2 ADDITIONAL SERVICES OF TRANSYSTEMS

Section 2.1. Additional Services. In connection with the Project, TRANSYSTEMS may be called on to perform, provide, furnish or obtain from others services or work which are not part of, or are in addition to, the Basic Services ("Additional Services"). If authorized in writing by CLIENT and agreed to by TRANSYSTEMS, TRANSYSTEMS shall perform, provide, furnish or obtain from others the agreed upon Additional Services. TRANSYSTEMS shall not be obligated to perform, provide, furnish or obtain any Additional Services without the prior written authorization of CLIENT. Except to the extent expressly provided otherwise in Exhibit A or as otherwise agreed in writing by the parties hereto, compensation to TRANSYSTEMS for Additional Services will be paid for by CLIENT as indicated in Section 5.

Additional Services may be any service or work not included as part of the Basic Services and may include, but are not limited to, services or work in connection with environmental or funding assistance, investigations not specifically required herein, services resulting from changes in the scope, extent or character of the project providing renderings or computer models, services to develop alternate bids or sequencing of work, outside CONSULTANT services not specifically required herein, out-of-town travel, and preparing to serve or serving as a CONSULTANT or witness in any litigation, arbitration or other legal or administrative proceeding. "Basic Services" and "Additional Services" are sometimes collectively referred to herein as "Services".

Section 2.2 Changes in the Services.

Section 2.2.1 Agreed Upon Changes in the Services. It is the desire of the parties to keep changes in the Scope of Services at a minimum, but the parties recognize that such changes may become necessary and agree that CLIENT may initiate deletions, modifications or changes to the Services by advising TRANSYSTEMS in writing of the change believed to be necessary. As soon thereafter as practicable, TRANSYSTEMS shall prepare a cost estimate of the change and shall inform CLIENT of the adjustment in the compensation due TRANSYSTEMS under Section 5 hereof ("TRANSYSTEMS' Compensation") and/or the Completion Date set forth in Section 4 hereof, if any, applicable to such requested change. CLIENT shall then advise TRANSYSTEMS in writing of its approval or disapproval of the change. If CLIENT approves the change, a written contract amendment shall be executed by both parties and TRANSYSTEMS shall perform the Services as changed and the adjustment in TRANSYSTEMS' Compensation and/or the Completion Date set forth in the executed contract amendment shall become effective. TRANSYSTEMS may initiate changes in the Services by advising CLIENT in writing that in its opinion a change is necessary. If CLIENT approves, it shall so advise TRANSYSTEMS and, thereafter, the change shall be handled as if initiated by CLIENT. If a change is not approved, or if a written contract amendment is not executed, by both CLIENT and TRANSYSTEMS, the change shall not become effective and TRANSYSTEMS shall not be obligated to perform the change.

Section 2.2.2 Constructive Changes and Other Additional Costs. In the event of (1) the CLIENT's addition to, modification or change of or deletion from the Services to be performed by TRANSYSTEMS (other than additions, modifications, changes or deletions handled through the provisions of Section 2.1 or Section 2.2.1 above); (2) a request for or approval from CLIENT of performance of Services in excess of TRANSYSTEMS' standard work day or work week or such shorter times as are provided by applicable collective bargaining agreements, or on a holiday customarily observed by TRANSYSTEMS; (3) the discovery of any subsurface or other conditions, which differ materially from those shown in or reasonably inferable from the documents or other information on which this Agreement is based and/or those ordinarily encountered and generally recognized as inherent in the locality of the Project; (4) a modification of applicable

law by which TRANSYSTEMS is required to pay increased or additional taxes, government-regulated transportation costs, insurance or other amounts which are not required as of the date of this Agreement; (5) delay, suspension of, acceleration of or interference with, TRANSYSTEMS' performance of the Services by CLIENT or by any other person or entity including, but not limited to national, state or local governments; (6) wage, benefit or payroll tax increases due to governmental action or area agreements; (7) modification to or delay in furnishing design criteria or other information supplied by any person or entity, other than TRANSYSTEMS, if TRANSYSTEMS' performance of the Services under this Agreement depends upon such criteria or information; and/or (8) any other increase in TRANSYSTEMS' costs, or the time required for completion of the Services due to "Force Majeure Event" as set forth in Section 4 hereof, a change in applicable law or any other cause beyond TRANSYSTEMS' reasonable control, then the TRANSYSTEMS' Compensation and/or the Completion Date, if any, shall be equitably adjusted and TRANSYSTEMS shall be paid, and TRANSYSTEMS' Compensation shall be adjusted by, an amount equal to the additional costs to TRANSYSTEMS resulting therefrom.

SECTION 3 CLIENT'S RESPONSIBILITIES

CLIENT shall do the following in a timely manner so as not to delay the performance of the Services by TRANSYSTEMS:

Section 3.1 Client Representative. Designate a person to act as CLIENT's representative with respect to the Services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define CLIENT'S policies and decisions with respect to TRANSYSTEMS' Services for the Project.

Section 3.2 Project Information. Provide all criteria, all available information pertinent to the Project, and full information as to CLIENT'S requirements for the Project. CLIENT agrees that TRANSYSTEMS shall be entitled to rely upon **the** accuracy and completeness of all such information.

Section 3.3 Project Access. Arrange for access to and make all provisions for TRANSYSTEMS to enter upon public and private property as required for TRANSYSTEMS to perform services under this Agreement. All such access shall be provided without condition or restriction unacceptable to TRANSYSTEMS nor shall TRANSYSTEMS be required to indemnify or insure any third party as a condition to such access.

Section 3.4 Client Participation. Examine all studies, reports, sketches, drawings, specification, proposals, and other documents presented by TRANSYSTEMS, obtain advice of an attorney, insurance counselor and other CONSULTANT as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of TRANSYSTEMS.

Section 3.5 Notices. Give prompt written notice to TRANSYSTEMS whenever CLIENT observes or other wise becomes aware of any development that affects the scope or timing of TRANSYSTEMS' Services, or any defect or non-conformance in the Services by TRANSYSTEMS (or its independent professional associates or CONSULTANTS) or in the work of any contractor or other party performing or providing work or services in connection with the Project.

Section 3.6 Additional Services. When CLIENT deems it necessary or appropriate for Additional Services to be performed in connection with any phase of the Project, CLIENT shall furnish or direct TRANSYSTEMS to provide, Additional Services as stipulated in Section 2 of this Agreement or other services as required.

Section 3.7 Licenses, Permits, etc. Provide TRANSYSTEMS with any necessary governmental

allocations or priorities, obtain all permits and licenses required to be taken out in the name of CLIENT which are necessary for the performance of the Services and, except where such permits, processes or licenses are by the terms of Exhibit A the responsibility of TRANSYSTEMS, obtain any permits, processes and other licenses which are required for the Project or the Services.

Section 3.8 Other Duties. Perform any other duties, obligations or responsibilities of the CLIENT set forth elsewhere in this Agreement, including, but not limited to, the obligation to make the payments called for under Section 5 hereof and perform any responsibilities and duties of the Client which may be identified on Exhibit B, if any.

Section 3.9 Defects in Services. The CLIENT shall promptly report to TRANSYSTEMS any defects or suspected defects in TRANSYSTEMS' services of which the CLIENT becomes aware, so that TRANSYSTEMS may take measures to minimize the consequences of such a defect. The CLIENT further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the CLIENT and the CLIENT's contractors or subcontractors to notify TRANSYSTEMS shall relieve TRANSYSTEMS of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

Section 3.10 Taxes. Pay for and be responsible for all taxes incurred in connection with the Project, regardless of whether such taxes are assessed against CLIENT, TRANSYSTEMS or others.

Section 3.11 Contractor Insurance and Indemnity Requirements. The CLIENT agrees, in any construction contracts in connection with this Project, to require all contractors of any tier to carry statutory Workers Compensation, Employers Liability Insurance and appropriate limits of Commercial General Liability Insurance (CGL). The CLIENT further agrees to require all contractors to have their CGL policies endorsed to name the CLIENT, TRANSYSTEMS and its subconsultants as Additional Insureds and to provide Contractual Liability coverage sufficient to insure the hold harmless and indemnity obligations assumed by the contractors. The CLIENT shall require all contractors to furnish to the CLIENT and TRANSYSTEMS certificates of insurance as evidence of the required insurance prior to commencing work and upon renewal of each policy during the entire period of construction. In addition, the CLIENT shall require that all contractors will, to the fullest extent permitted by law, indemnify and hold harmless the CLIENT, TRANSYSTEMS and its subconsultants from and against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the Project, including all claims by employees of the contractors, to the extent caused by the Contractor's wrongful acts, and/or its negligent acts, errors or omissions, or those of persons or entities for which it is legally liable.

Section 3.12 Unauthorized Changes. In the event the CLIENT, the CLIENT's contractors or subcontractors, or anyone for whom the CLIENT is legally liable makes or permits to be made any changes to any reports, plans, specifications or other construction documents prepared by TRANSYSTEMS without obtaining TRANSYSTEMS's prior written consent, the CLIENT shall assume full responsibility for the results of such changes. Therefore the CLIENT agrees to waive any claim against TRANSYSTEMS and to release TRANSYSTEMS from any liability arising directly or indirectly from such changes.

In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless TRANSYSTEMS from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising from such changes.

In addition, the CLIENT agrees to include in any contracts for construction appropriate language that prohibits the Contractor or any subcontractors of any tier from making any changes or modifications to TRANSYSTEMS' construction

documents without the prior written approval of TRANSYSTEMS and that further requires the Contractor to indemnify both TRANSYSTEMS and the CLIENT from any liability or cost arising from such changes made without such proper authorization.

Section 3.13 Construction Management. If the CLIENT elects to employ a construction manager, the CLIENT will promptly notify TRANSYSTEMS of the duties, responsibilities and authority of the construction manager and their relationship to the duties, responsibilities and authority of TRANSYSTEMS.

If the employment of such construction manager by the CLIENT results in additional time or expense to TRANSYSTEMS to prepare for, coordinate with or respond to the construction manager, TRANSYSTEMS shall be entitled to an equitable adjustment in fees and time for performance of these services.

Section 3.14 Costs. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 PERIODS OF SERVICE, COMPLETION DATE, FORCE MAJEURE

Section 4.1 Period of Service. The provisions of this Section 4 and the various rates of compensation for TRANSYSTEMS' Services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. TRANSYSTEMS' obligation to render Basic Services hereunder will extend for a period which may reasonably be required for the Project including any Additional Services, extra or changed work and required extensions thereto.

Section 4.2 Completion Date. TRANSYSTEMS agrees to complete the Basic Services by the end of December 2020 (the "Completion Date"). If the Completion Date is exceeded through no fault of TRANSYSTEMS, all rates, measures and compensation provided herein shall be subject to equitable adjustment. The Completion Date (and TRANSYSTEMS' obligation to complete the Basic Services by such date) is subject to reasonable extensions for the performance of Additional Services, Constructive Changes or other extra work and is subject to reasonable extensions for a Force Majeure Event.

Section 4.3 Timeliness of Performance. The CLIENT and TRANSYSTEMS are aware that many factors outside TRANSYSTEMS' control may affect TRANSYSTEMS' ability to complete the services to be provided under this Agreement. TRANSYSTEMS will perform these services with reasonable diligence and expediency consistent with sound professional practices.

Section 4.4 Notice of Delay. If TRANSYSTEMS becomes aware of delays due to time allowances for review and approval being exceeded, delay by the Contractor, the CLIENT, TRANSYSTEMS or any other cause beyond the control of TRANSYSTEMS, which will result in the schedule for performance of TRANSYSTEMS' services not being met, TRANSYSTEMS shall promptly notify the CLIENT. If the CLIENT becomes aware of any delays or other causes that will affect TRANSYSTEMS' schedule, the Client shall promptly notify TRANSYSTEMS. In either event, TRANSYSTEMS' schedule for performance of its services shall be equitably adjusted.

Section 4.5 Force Majeure. For purposes hereof, a "Force Majeure Event" shall mean the occurrence of a failure or delay due to circumstances beyond TRANSYSTEMS' control including, without limitation, acts of God, acts of a public enemy, fires, floods, earthquakes, wars, civil disturbances, sabotage, accidents, insurrection, blockages, embargoes, storms, explosions, catastrophes, epidemics, damage to the Project, lack of access to Project, unavailable utilities and power, water, labor disputes, CLIENT's failure to timely perform its obligations under this Agreement or other

causes beyond TRANSYSTEMS' control.

SECTION 5 TRANSYSTEMS' COMPENSATION

Section 5.1 Compensation for Services and Expenses of TRANSYSTEMS in connection with Basic Services

Section 5.1.1 For Basic Services. As compensation for the performance of the Basic Services rendered by TRANSYSTEMS under Section 1, CLIENT shall pay TRANSYSTEMS, in accordance with the provisions of Section 5.4, as follows:

Section 5.2 Compensation for Services and Expenses of TRANSYSTEMS in connection with Additional Services

Section 5.2.1 For Additional Services. As compensation for the performance of the Additional Services rendered by TRANSYSTEMS under Section 2, CLIENT shall pay TRANSYSTEMS, in accordance with the provisions of Section 5.4, as follows:

Additional Services of TRANSYSTEMS principals and employees engaged directly on the Project and rendered pursuant to Section 2, on the basis of TRANSYSTEMS' Schedule of Rates and Expenses then in effect.

Section 5.2.2 For Reimbursable Expenses in connection with Additional Services. In addition to payments provided for in paragraph 5.2.1., CLIENT shall pay TRANSYSTEMS for all Reimbursable Expenses incurred in connection with all Additional Services at the rates or in amounts set forth on TRANSYSTEMS' Schedule of Rates and Expenses in effect at the time such Additional Services are performed. For purposes hereof, "Reimbursable Expenses" are those costs and expenses incurred by TRANSYSTEMS in connection with the performance of the Services under this Agreement, including, but not limited to, the costs and expenses incurred by TRANSYSTEMS for travel, reproduction, mailing costs, computer time, supplies and materials, taxes, transportation, telephone or communications, independent professional associates, CONSULTANTS, SUBCONSULTANTS and any other expense items which are described on TRANSYSTEMS' then current Schedule of Rates and Expenses.

Section 5.3 TranSystems' Schedule of Rates and Expenses. TRANSYSTEMS' rates and expense provisions set forth on this initial Schedule of Rates and Expenses shall be the rates and expense provisions in effect from the date of this Agreement until December 31 of this year. TRANSYSTEMS will revise the Schedule of Rates and Expenses annually and will submit the revised Schedule of Rates and Expenses to CLIENT in December of each year that this Agreement is in effect and such revised Schedule of Rates and Expenses shall automatically become effective with regard to this Agreement and the Services performed under this Agreement on January 1st of the next calendar year.

Section 5.4 Monthly Invoices. TRANSYSTEMS shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon TRANSYSTEMS' estimate of the proportion of the total services actually completed at the time of billing. CLIENT shall make prompt monthly payments in response to TRANSYSTEMS' monthly statements.

Section 5.5 Other Provisions Concerning Payments.

Section 5.5.1 Interest, Suspension of Services. If CLIENT fails to make any payment due

TRANSYSTEMS for services and expenses within thirty (30) days after receipt of TRANSYSTEMS' statement therefor, TRANSYSTEMS shall be entitled interest on the unpaid amounts due TRANSYSTEMS at the lesser of: i) 1.5 % per month; or, ii) the highest rate of interest allowed under applicable law. The entire unpaid balance due TRANSYSTEMS shall bear said rate of interest from the thirtieth day after CLIENT's receipt of TRANSYSTEMS' statement, until the entire unpaid balance has been paid to TRANSYSTEMS. In addition to being entitled to interest, TRANSYSTEMS may, after giving seven (7) days written notice to CLIENT, suspend services under this Agreement until TRANSYSTEMS has been paid in full all amounts due for Services, expenses, and charges.

Section 5.5.2 Payments after Termination by Client. In the event of termination by CLIENT under paragraph 7.1 upon the completion of any phase of the Basic Services, payments due TRANSYSTEMS for all Services rendered and expenses incurred through such phase shall constitute total payment for such Basic Services. In the event of such termination by CLIENT during any phase of the Basic Services, TRANSYSTEMS will be paid for Services rendered and expenses incurred during that phase through the date of termination on the basis of TRANSYSTEMS' Schedule of Rates and Expenses. In the event of any such termination (whether at the completion of a phase or otherwise), TRANSYSTEMS shall also be reimbursed for the charges of independent professional associates and CONSULTANTS employed by TRANSYSTEMS to render Basic Services or Additional Services and all reasonable demobilization costs incurred by TRANSYSTEMS, including any cancellation charges by independent professional associates, CONSULTANTS and others performing or furnishing Services on the Project through TRANSYSTEMS, and TRANSYSTEMS shall be paid for all Additional Services performed and unpaid Reimbursable Expenses incurred through the date of the termination.

Section 5.5.3 Payments after Termination by TranSystems. In the event of termination by TRANSYSTEMS under paragraph 7.1, TRANSYSTEMS will be paid for all Services rendered and expenses incurred during that phase through the date of termination on the basis of TRANSYSTEMS' Schedule of Rates and Expenses. In addition, TRANSYSTEMS shall also be reimbursed for the charges of independent professional associates and CONSULTANTS employed by TRANSYSTEMS to render Basic Services or Additional Services and all reasonable demobilization costs incurred by TRANSYSTEMS, including any cancellation charges by independent professional associates, CONSULTANTS and others performing or furnishing Services on the Project through TRANSYSTEMS, and TRANSYSTEMS shall be paid for all Additional Services performed and unpaid Reimbursable Expenses incurred through the date of the termination.

Section 5.5.4 Records. Records of TRANSYSTEMS' salary costs pertinent to TRANSYSTEMS' compensation under this Agreement will be kept in accordance with generally accepted accounting practices. If CLIENT desires to have copies of such records, copies will be made available to CLIENT upon CLIENT's request prior to final payment for TRANSYSTEMS' services. TRANSYSTEMS shall be reimbursed the cost of any such copies by CLIENT.

Section 5.5.5 Cost Factors. Whenever a factor is applied to salary costs or other expenses in determining compensation payable to TRANSYSTEMS that factor will be adjusted periodically and equitably to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by TRANSYSTEMS and consistent with TRANSYSTEMS' overall compensation practices and procedures.

SECTION 6 OPINIONS OF COST AND SCHEDULE

Section 6.1 Opinions of Cost and Schedule. Since TRANSYSTEMS has no control over the cost of labor, materials, equipment or services furnished by others, or over the resources provided by others to meet construction or other Project schedules, or over the methods of others in determining prices, or over competitive bidding or market conditions, TRANSYSTEMS' opinions of probable costs (including probable Total Project Costs and Construction Cost) and of Project schedules shall be made on the basis of TRANSYSTEMS' experience and qualifications and represent TRANSYSTEMS' best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but TRANSYSTEMS cannot and does not guarantee that proposals, bids or actual Project costs (including Total Project Costs or Construction Costs) will not vary from opinions of probable cost prepared by TRANSYSTEMS or that actual schedules will not vary from the projected schedules prepared by TRANSYSTEMS. TRANSYSTEMS makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from TranSystems' opinion of probable construction cost.

SECTION 7 GENERAL CONSIDERATIONS

Section 7.1 Termination. The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days written notice to the other party in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

Section 7.1.1 Replacement of TranSystems. If TRANSYSTEMS for any reason is not allowed to complete all the services called for by this Agreement, TRANSYSTEMS shall not be held responsible for the accuracy, completeness or constructability of the construction documents prepared by TRANSYSTEMS if used, changed or completed by the CLIENT or by another party. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless TRANSYSTEMS, its officers, directors, employees and subconsultants (collectively, TRANSYSTEMS) from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from such use, change or completion by any other party of any construction documents prepared by TRANSYSTEMS.

Section 7.2 Reuse of Documents. All documents, drawings, sketches, studies, analysis, information, schedules, estimates, reports and other items prepared or furnished by TRANSYSTEMS (or TRANSYSTEMS' independent professional associates and CONSULTANTS) pursuant to this Agreement, including, but not limited to Drawings and Specifications, are instruments of service in respect of the Project and TRANSYSTEMS shall retain an ownership and property interest therein whether or not the Project is completed. Provided, however, that such documents, drawings, sketches, studies, analysis, information, schedules, estimates, reports and other items are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by TRANSYSTEMS for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to TRANSYSTEMS, or to TRANSYSTEMS' independent professional associates or CONSULTANTS, and CLIENT does hereby, to the fullest extent permitted by law, indemnify and hold harmless TRANSYSTEMS, TRANSYSTEMS' officers, employees and agents and TRANSYSTEMS' independent professional associates and CONSULTANTS from all claims, suits, demands, damages, liabilities, losses, expenses and costs, including but not limited to reasonable attorney's fees and other costs of defense, arising out of or resulting therefrom. The provisions of this Section 7.2 shall survive the termination of this Agreement.

Section 7.3 Delivery of Electronic Files. In the event that CLIENT requests any electronic deliverables under this agreement, TRANSYSTEMS and CLIENT shall execute a separate CADD agreement. Otherwise, in accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by TRANSYSTEMS, the CLIENT agrees that all such electronic files are instruments of service of TRANSYSTEMS, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

The CLIENT agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The CLIENT agrees not to transfer these electronic files to others without the prior written consent of TRANSYSTEMS. The CLIENT further agrees to waive all claims against TRANSYSTEMS resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than TRANSYSTEMS.

Electronic files furnished by either party shall be subject to an acceptance period of sixty (60) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by TRANSYSTEMS and electronic files, the signed or sealed hard-copy construction documents shall govern.

In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless TRANSYSTEMS, its officers, directors, employees and subconsultants (collectively, TRANSYSTEMS) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than TRANSYSTEMS or from any reuse of the electronic files without the prior written consent of TRANSYSTEMS.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by TRANSYSTEMS, and TRANSYSTEMS makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall TRANSYSTEMS be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of the electronic files.

Section 7.4 Standard of Practice, Warranties. Services performed by the TRANSYSTEMS under this Agreement will be conducted in a manner consistent with the level of care, diligence and skill ordinarily possessed and exercised by members of the profession currently practicing in the same locality under similar conditions. Except as expressly set forth above, no other representations, expressed or implied, and no warranty or guarantee, express or implied, is included in this Agreement, or in any document, drawing, sketch, study, analysis, schedule, estimate, report, opinion, specification and other item prepared or furnished by TRANSYSTEMS (or TRANSYSTEMS' independent professional associates and TRANSYSTEMSs) pursuant to this Agreement.

Section 7.5 Limitation of Responsibility, Job Site Safety/Techniques. Neither the professional activities of TRANSYSTEMS, nor the presence of TRANSYSTEMS or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. TRANSYSTEMS and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures.

The CLIENT agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The CLIENT also agrees that the CLIENT, TRANSYSTEMS and the TRANSYSTEMS' subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance. In addition, TranSystems shall not be responsible for (i) the failure of any other project party to fulfill their respective contractual responsibilities and obligations to client or to comply with Federal, State or local laws, rules, regulations or codes; (ii) for the schedules of any of the other project parties or the failure of any of the other project parties to carry out their work in accordance with their respective agreements. TranSystems shall not have control over or charge of and shall not be responsible for acts or omissions of the other project parties, or their agents or employees, or of any other persons performing portions of the work on the project.

Section 7.6 Insurance.

Section 7.6.1 TranSystems Insurance. TRANSYSTEMS shall maintain throughout the duration of this Agreement insurance in the following amounts and will, upon request of the CLIENT furnish a copy of certification thereof:

- (a) Worker's Compensation and Employer's Liability
Worker's Compensation Statutory
Employer's Liability
\$500,000/\$500,000/\$500,000
- (b) Comprehensive Automobile Liability
\$1,000,000 combined single limit Bodily Injury and Property Damage
- (c) Comprehensive General Liability
\$1,000,000 - per occurrence
\$2,000,000 - annual aggregate
\$2,000,000 - product / completed operations per occurrence
\$1,000,000 - personal injury / advertising liability
- (d) Umbrella/Excess Liability
\$1,000,000 - per occurrence
\$1,000,000 - annual aggregate
- (e) Professional Liability Insurance in an amount of \$1,000,000 per claim and \$2,000,000 annual aggregate.

Section 7.6.2 Client Insurance. If, pursuant to the provisions of Exhibit B, CLIENT is required to obtain certain insurance coverages, CLIENT agrees to obtain and maintain throughout the duration of this Agreement (or, as applicable, cause its contractors to obtain and maintain) such insurance in the coverages and the amounts specified on Exhibit B. CLIENT will furnish TRANSYSTEMS with a copy of certification of such insurance. TRANSYSTEMS' interests shall be covered under any such insurance coverage.

Section 7.7 Liability and Indemnification.

Section 7.7.1 General. Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and TRANSYSTEMS' Compensation for the performance of the Services, and in consideration of the promises contained in this Agreement, CLIENT and TRANSYSTEMS agree to allocate and limit such liabilities in accordance with the provisions of this Section 7.7.

Section 7.7.2 TranSystems Indemnification.

TRANSYSTEMS agrees, to the fullest extent permitted by law, to indemnify and hold the CLIENT harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by TRANSYSTEMS' negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its subconsultants or anyone for whom TRANSYSTEMS is legally liable. TRANSYSTEMS is not obligated to indemnify the CLIENT in any manner whatsoever for the CLIENT'S own negligence.

Section 7.7.3 Client Indemnification. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold TRANSYSTEMS harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the CLIENT'S negligent acts, errors or omissions and those of its contractors, subcontractors or consultants or anyone for whom the CLIENT is legally liable, and arising from the project that is the subject of this Agreement. The CLIENT is not obligated to indemnify TRANSYSTEMS in any manner whatsoever for TRANSYSTEMS' own negligence.

Section 7.7.4 Contractors Indemnification. CLIENT agrees to cause each of its other contractors on the Project to include an indemnification provision in CLIENT's contract with each such contractor that indemnifies and holds harmless TRANSYSTEMS and any of its officers or employees from all loss, damage, cost or expense to the extent caused by such contractors (or its employees or subcontractors) negligence or willful misconduct.

Section 7.7.5 Employee Claims. TRANSYSTEMS shall indemnify CLIENT against any loss, damage, cost or expense arising out of claims by TRANSYSTEMS' employees (unless such claim arises out of or as a result of the negligence of CLIENT, its employees, agents or contractors). CLIENT shall indemnify TRANSYSTEMS against any loss, damage, cost or expense arising out of claims by CLIENT'S employees (unless such claim arises out of or as a result of the negligence of TRANSYSTEMS, its employees, agents or subcontractors).

Section 7.7.6 Consequential Damages. To the fullest extent permitted by law, TRANSYSTEMS shall not, in any event, be liable to CLIENT for any special, indirect, incidental or consequential damages, including, but not limited to, damages from delay, lost distribution, loss of product, loss of use, loss of profits or revenue or increased cost of operation, the cost of capital or the cost of purchased or replacement equipment, systems or power.

Section 7.7.7 Limitation of Liability. To the fullest extent permitted by law, TRANSYSTEMS' and/or its individual principals, directors, officers, employees, agents and servants of the firm total liability to CLIENT for all claims, losses, damages and expenses resulting or arising in any way from the performance of the Services (including TRANSYSTEMS' indemnity obligations hereunder) shall not exceed the total compensation received by TRANSYSTEMS under this Agreement or the limits of any professional liability requirements set forth in Section 7.6.1(e) whichever is less.

Section 7.7.8 Survival. The terms and conditions of this Section 7.7 shall survive the termination of this Agreement and/or the completion of the Services.

Section 7.8 Betterment. If, due to TRANSYSTEMS's negligence, a required item or component of the Project is omitted from TRANSYSTEMS's construction documents, TRANSYSTEMS shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will TRANSYSTEMS be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

Section 7.9 Protection From Supplanting Consultant. In consideration of the risks and rewards involved in this Project, the CLIENT agrees, to the maximum extent permitted by law, to indemnify and hold harmless TRANSYSTEMS from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from any negligent acts, errors or omissions by any prior consultants employed by the CLIENT on this project and from any claims of copyright or patent infringement by TRANSYSTEMS arising from the use of any documents prepared or provided by the CLIENT or any prior consultants of the CLIENT. The CLIENT warrants that any documents provided to TRANSYSTEMS by the CLIENT or by the prior consultants may be relied upon as to their accuracy and completeness without independent investigation by the supplanting consultant and that the CLIENT has the right to provide such documents to the supplanting consultant free of any claims of copyright or patent infringement or violation of any other party's rights in intellectual property.

Section 7.10 Use of Logo. CLIENT grants to TRANSYSTEMS during the term of this agreement and thereafter a non-exclusive license to use CLIENT's name and logo in TRANSYSTEMS's marketing materials such as press releases, case study briefs/project summaries, TRANSYSTEMS website or brochures. This license shall be perpetual and irrevocable for such use on all materials distributed and or printed but not yet distributed prior to termination and revocation of said license; said license shall remain in effect unless and until CLIENT shall terminate and revoke the same by giving TRANSYSTEMS 60 days advance written notice thereof whereupon at the end of said 60 days the license shall be deemed terminated.

SECTION 8 SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

Section 8.1 Special Provisions. This Agreement is subject to no special provisions

Section 8.2 Contract Documents. This Agreement consists of this contract document and the following Exhibits and Schedules, which are attached to and made a part of this Agreement:

Exhibit A – Scope of Services, Schedule and Design Fee

Exhibit B – Blank

Section 8.3 Entire Agreement. This Agreement together with the Exhibits and Schedules identified above constitute the entire agreement between CLIENT and TRANSYSTEMS and supersede all prior written or oral understandings. This Agreement and said Exhibits and Schedules may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or TRANSYSTEMS. TRANSYSTEMS' services under this Agreement are being performed solely for the CLIENT'S benefit, and no other party or entity shall have any claim against TRANSYSTEMS because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and TRANSYSTEMS agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

TRANSYSTEMS shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of TRANSYSTEMS, increase the TRANSYSTEMS's contractual or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance.

Section 8.4 Hazardous Materials. Unless otherwise provided in this Agreement, TRANSYSTEMS shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site. However, TRANSYSTEMS shall report to CLIENT the presence and location of any hazardous material which it notices or which an engineer of similar skill and experience should have noticed.

Section 8.5 Attorneys Fees. In the event that either party hereto employs an attorney to enforce any provision of this Agreement or to collect damages for default or breach of this Agreement, or pursue claims in litigation or arbitration, the prevailing party in any such action shall be entitled to recover from the other such attorneys' fees and costs of collection as the prevailing party may expend or incur with respect thereto. In the event that a settlement is reached between the parties before a final decision in any such litigation or arbitration, then neither party shall be entitled to recover its attorneys fees or costs from the other and neither party shall be responsible for the other party's attorney's fees or costs, unless otherwise agreed by the parties.

Section 8.6 Disputes. In the event a dispute arises between TRANSYSTEMS and CLIENT regarding the application or interpretation of any provision of this Agreement, or quality of Services by TRANSYSTEMS, the aggrieved party shall promptly notify the other party to this Agreement of the dispute, but in no event more than 20 days after such dispute arises. If the parties fail to resolve the dispute within 20 days after receipt of such notice, each party shall, within five days thereafter, proceed to non-binding mediation, with each party to bear its own costs and attorneys' fees (except as otherwise provided in Section 8,5 above) and the parties shall share equally in the cost of the mediator. In the event that the mediation is unsuccessful, the aggrieved party may elect to litigate its dispute with the other party. All disputes shall be governed by the laws of the State of Kansas and the jurisdiction and venue for litigation between the parties shall be solely and exclusively in Sedgwick County, Kansas, or the United States District Court for the District of Kansas, sitting in Wichita, Kansas.

It is intended by the parties to this Agreement that TRANSYSTEMS' services in connection with the Project shall not subject TRANSYSTEMS' individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against TRANSYSTEMS, an interstate corporation, and not against any of TRANSYSTEMS' individual employees, officers or directors.

Section 8.7 Independent Contractor. TRANSYSTEMS shall be an independent contractor with respect to the Services to be performed hereunder. Neither TRANSYSTEMS, nor its independent professional associates, CONSULTANTS or subcontractors, nor the employees of any of the foregoing, shall be deemed to be the servants, employees or agents of CLIENT.

Section 8.8 Representations and Remedies. TRANSYSTEMS makes no representations, covenants, warranties or guarantees, express or implied, other than those expressly set forth herein. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED. The parties' rights, liabilities, responsibilities and remedies with respect to the Services, whether in contract or otherwise, shall be exclusively those expressly set forth in this Agreement.

Section 8.9 Assignment, Subcontractors. This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, except that it may be assigned without such consent to the successor of either party, or to a person, firm or corporation acquiring all or substantially all of the business assets of such party or to a wholly owned subsidiary of either party, but such assignment shall not relieve the assigning party of any of its obligations under this Agreement. No assignment of this Agreement shall be valid until this Agreement shall have been assumed by the assignee. This Agreement shall be binding upon and shall inure to the benefit of the TRANSYSTEMS' and CLIENT's respective successors and assigns. Nothing in this Section 8.9 shall prevent or be deemed to prevent TRANSYSTEMS from employing, contracting with or engaging independent professional associates, CONSULTANTS and other subcontractors to perform or assist in the performance of the Services.

Section 8.10 Notices. All notices or communications pertaining to this Agreement shall be in writing and shall be sufficient when mailed or delivered to the address specified below:

If to CLIENT:

City of Dodge City
806 2nd Avenue
Dodge City, KS

Attention: Ray Slattery, PE

If to TRANSYSTEMS:

TranSystems Corporation
245 N. Waco, Ste 222
Wichita, KS 67202

Attention: Brett Letkowski, PE

Nothing in this Section 8.10 shall be construed to restrict the transmission of routine communications between representatives of CLIENT and TRANSYSTEMS.

Section 8.11 Interpretation.

(a) This Agreement shall be governed by and interpreted in accordance with the laws of Kansas.

(b) Headings and titles of sections, paragraphs and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.

(c) Unless specifically stated to the contrary therein, indemnities against, releases from and limitations on liability expressed in this Agreement shall apply even in the event of the fault, negligence or strict liability of the party indemnified or released or whose liability is limited and shall extend to the officers, directors, employees, agents, licensors and related entities of such party.

(d) In the event that any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement which shall effect the intent of the parties as set forth in this Agreement.

Section 8.12 Certificates, Guarantees And Warranties. TRANSYSTEMS shall not be required to sign any documents, no matter by whom requested, that would result in TRANSYSTEMS having to certify, guarantee or warrant the existence of conditions whose existence TRANSYSTEMS cannot ascertain. The Client also agrees not to make resolution of any dispute with TRANSYSTEMS or payment of any amount due to TRANSYSTEMS in any way contingent upon TRANSYSTEMS signing any such certification.

As used herein, the word "certify" shall mean an expression of TRANSYSTEMS' professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by TRANSYSTEMS.

Section 8.13 Execution of Documents. TRANSYSTEMS shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of TRANSYSTEMS, increase the TRANSYSTEMS' risk or the availability or cost of its professional or general liability insurance.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the _____ day of _____, 2020.

City of Dodge City

TranSystems Corporation

By:
Printed Name:
Title:

By:
Printed Name: Brett A. Letkowski, PE
Title: Senior Vice President

Exhibit “A”

**Scope of Services
Discovery Phase
Dodge City Streetscape Project
Front Street from 3rd Avenue to Central Avenue
September 11, 2020**

PROJECT UNDERSTANDING

The general project improvements as agreed upon by the City of Dodge City and TranSystems include full reconstruction of Front Street from Third Avenue to Central Avenue including the sidewalk and parking lot from the south building face to the back of curb of Wyatt Earp Boulevard. As funding allows the following areas would also be part of the design:

- First Avenue from Wyatt Earp to Gunsmoke
- Second Avenue from Front Street to Gunsmoke
- Third Avenue from Wyatt Earp to Gunsmoke
- Central Avenue – Wyatt Earp to Vine

The project improvements would include the following elements:

- New pavement, hardscape, and street crossings
- Utilities – Water, Sewer, Storm Sewer, Electric, Gas, Communications
- Vaults & Utility Duct Analysis
- Lighting
- Landscape
- Irrigation
- Furnishings
- Fire Amenity
- Archways
- Trail of Fame Integration
- Historical Markers
- Parking Inventory and parking plan and recommendations for short and long term parking
- Regulatory / Traffic / Parking Signage
- Sculpture Locations for future integration

Other elements of the project would include the following:

- Wayfinding signage. Our scope would be limited to incorporation of any new wayfinding signage with existing wayfinding signage, identify locations and destinations to be listed on each sign. No sign design is included in this scope, it is assumed the City will work with a company to have the signs designed and constructed.
- Building façade Inventory and Awning/Canopy Design. During the Discovery Phase we will field measure and inventory existing building facades along Front Street, First, Second, Third and Central for coordination with awning/canopy design and recommendations.

FINAL DELIVERABLES

TranSystems will submit electronic plan sets and renderings of the concepts that will be suitable for a public meeting. Electronic copies of these exhibits will be provided along with the Engineer’s Probable Construction Cost of the Concept Design.

PROJECT TASKS

This scope of services includes the Discovery Phase only. Upon approval of the Discovery Phase, TranSystems will submit a supplemental for final design services of the approved concept. This study will be conducted in four phases, which are listed below with a brief description for each phase.

Phase 100 – Discovery Phase	Data Collection, Initial Analysis and Conceptual Design
*Phase 200 – Field Check Plans	Further Refinement of Project, and detail development.
*Phase 300 – Office Check Plans	Final Review of plans
*Phase 400 - Final Plans	Completion of Plans

*Phases 200-400 will be handled under a supplemental agreement.

When authorized by the City of Dodge City, TranSystems will initiate the Discovery Phase. The following services will be provided during this phase of the project.

Phase 100 – Discovery Phase

Task 100 Survey/Basemap

101. Control - Establish and supplement Horizontal Control throughout the project limits on Kansas State Plane Coordinate System, NAD83 (1997 adjustment), South Zone. Reference tie and control sketches on all control points along project. Estimation of four (4) Control Points will be established for future project use. Establish and supplement Vertical Control throughout the project limits on NGVD 88 Datum. Set a minimum of four (4) benchmarks along project limits with tied references to their locations. Establish control points and benchmarks in locations to assist in future survey for proposed next phases that will improve the district moving north from this point.
102. Topographical Survey - Provide field survey necessary for preparation of site plans between the centerline of westbound Wyatt Earp Boulevard and the building fronts north of Front Street. Project survey limits are from the center median of Wyatt Earp Boulevard north to Gunsmoke Street. The survey will extend to all building fronts within the site improvement boundary (elevations may need to be hand shot due to canopy overhangs). The survey will extend an additional 75' north along 3rd Avenue, 2nd Avenue, and 1st Avenue. The survey will extend north along Central Avenue to approximately 75' north of Vine Street. Along Central Avenue, the survey will extend 75' down each side street. The survey will also extend 100' west along Front Street from the centerline of 3rd Avenue. The survey limits shall be an average of ten (15) feet past the existing right of way line unless a building front comes first. Survey will include locating, but not limited to the following features within the project limits as described (pavements, driveways, building faces, utilities, drainage structures with measure rim down for flow line elevations, natural ground elevations, trees 6" or above noted with size and type, curbing, power poles, signs, fences and etc.)
103. Utilities- All utilities will be located using the Kansas "One Call" system. The resulting markings will be surveyed at the same time as the topographic survey. No physical locates of any underground utilities will be completed as a part of the survey. Collect the flow lines of any surveyed gravity storm or sanitary sewer lines that have easily accessible manholes.

Video inspection of the existing sanitary and storm sewer will be performed to determine the condition of the systems, make recommendations for repair or replace as well as locate lateral locations.

104. Existing storm sewers and channels-Existing storm sewers, storm inlets, channels and reinforced box culverts will be located and flow lines surveyed. The existing storm sewer boxes that run north and south along 3rd Avenue, 2nd Avenue, 1st Avenue, and Central Avenue will remain; some manholes and flowlines for these existing structures will be located outside of the survey area but flow line elevations will need to be gathered to establish and analysis existing drainage flows.
105. Base Map Development- The raw field survey, topographic features and utility data gathered will be used to develop the base map of the planimetric features along with the ground surface model to create contours for the project. The base map will be a plan view representation of the project with contours presented at 1-foot minor and 5-foot major intervals. The maps will be prepared in English units and at a scale of 1:20.
106. Property Research - Obtain necessary property research items such as, but not limited to, parcel tax maps, printouts of ownership, utility maps, plats, road records and road plans. Also, obtain any needed Title Reports that will include copies of all easements and encumbrances and existing survey data for up to twenty-four (24) tracts of land within the site improvement area. Make a reasonable effort (using a metal detector, existing property pin or section corner information) to find existing property corners, quarter section corners and section corners along the project and outside of project if necessary to assist in establishing existing right of way and ownership base map. Field survey will be tied to nearest section corners and quarter section corners. Existing roadway alignment pins (if available) will be used to help establish right of way. Should the corner not exist, costs for the re-establishment of the corner are not included in the contract, however, if the City desires corner re-establishment, TranSystems may enter into a supplemental agreement to reestablish missing section and/or quarter corners. Prepare an ownership boundary and existing right of way strip map along the project alignment showing but not limited to section lines, property lines, existing easements and ownership. A list of all the properties impacted by the project in excel format including the key number acquisition, property owner, quarter section or plat name, and property street address shall be prepared.

Task 200 Concept Development

201. The following tasks will be performed in coordination with the City to develop the concept plans for the project. This will be done against topographic base maps and aerial photography.
- Streetscape design
 - Streets, parking lots, pedestrian/hardscape areas, and multi-use pathway
 - Site Features: Windmill, landscape walls & landscape elements, archways, historical markers, event area, sculpture locations, trail of fame integration, trash enclosures, fire amenity and site furnishings.
 - Lighting: Street, parking, pedestrian, and accent design & recommendations
 - Parking Analysis and Recommendations for parking and limited parking recommendations
 - Wayfinding Signage: Locations and Destination of wayfinding signage.
 - Landscape Planting Concept & street tree planting
 - Outdoor event area: Concept design & recommendations
 - Existing Building Façade Inventory/Survey for coordination
 - Develop concepts of awning/canopy recommendations along Front Street
 - Utilities – Water, Sewer, Storm Sewer, Electric, Gas, Communications
 - Vaults & Utility Duct Analysis
 - Preliminary Construction Sequence Concept

- Creating a utility corridor possibly using pre-cast 8'x8' RCB
 - Provide access points for utility companies and providing racks for power and communication
202. Utility Meetings - In addition to contacting Kansas One-call, TranSystems will contact all public and private utility companies with facilities within the project limits to inform them of the project and review the accuracy of the utilities located with the topographic survey. We have assumed three (3) utility meetings will take place to coordinate any relocations and replacements of their services.
203. Meetings
- Steering Committee – Bi-monthly via video conference, one live meeting per month
 - City Staff – Bi-monthly via video conference, one live meeting per month
204. Deliverables:
- Conceptual design renderings and plans
 - Conceptual alternates
 - Construction sequence concept
 - Probable construction cost estimates
 - Presentation to City Commission for approval (design freeze)

Project Schedule

October 2020

- Concept Review with Staff and Steering Committee
- Initiate Field Survey, parking inventory, vault analysis
- Initiate utility contact and coordination
- Initiate site analysis

November 2020

- Concept Refinement
- Parking inventory, site analysis and vault analysis complete
- Utility concept development
- Grading and drainage concept development

December 2020

- Finalize design concept
- Field survey complete
- Utility concept refinement
- Grading and drainage refinement
- Probable Construction Cost estimates, phasing, alternates
- Presentation to City Commission

Proposal Conditions

The following is a list of conditions that were the basis for this proposal:

- City of Dodge City supplemented with KDOT Construction Specifications will be used as the governing specifications for the project and will be supplemented by Special Provisions as required;
- English units will be used for this project;
- Bidding and construction management or testing services are not included in this proposal. These services can be provided by TranSystems via a supplemental agreement;
- The scope of work does not include waters of the U.S. mitigation (likely not required);

- It is assumed that others will be providing the following if necessary:
 - Threatened and endangered species surveys and habitat studies.
 - Cultural resource/archaeological surveys.
- Floodplain development permit or FEMA flood map revisions are not included in this contract;

It is anticipated that the City will provide the following:

- Review and comment on project alignment and design details;
- Acquire all right-of-way;
- Provide rights of entry for survey or geotechnical work on private property;
- Put Steering Committee together;
- Provide any plans or reports related to this project;

Project Design Fee

Discovery Phase = \$224,751