

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, October 18, 2021

7:00 p.m.

MEETING #5194

Public is welcome although seats are limited for social distancing; or you can view as follows:

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.

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

PETITIONS & PROCLAMATIONS

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

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes October 4, 2021.
2. Appropriation Ordinance No.20, October 18, 2021.
3. Cereal Malt Beverage License:
 - a. Kate's, 305 E Trail Street,
 - b. Farmers Country Market #11, 1800 Central Avenue.
4. Approval of Change Order for Barbara Lane Drainage Channel Revision.
5. Approval of Change Order #1, Fairway Drive Reconstruction.
6. Approval to Amend the Dodge City Airport Lease with Midwest Custom Ag Aviation.

ORDINANCES & RESOLUTIONS

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of Bid for 2nd Avenue Bridge & RCB Repairs. Report by Director of Engineering Services, Ray Slattery.
2. Approval of Consulting Service Agreement for Iron Flats Phase I Platting & Infrastructure Design. Report by Director of Engineering Services, Ray Slattery.
3. Approval of Consulting Service Agreement for Iron Rd. from 14th Ave. to 6th Ave. (Iron Flats Sub-Division). Report by Director of Engineering Services, Ray Slattery.
4. Approval of the Jacobs Agreement for Operations, Maintenance and Management Services. Report by Public Works Director, Corey Keller.
5. Approval of Bid for Crack Sealing Material for the Dodge City Regional Airport. Report by Public Works Director, Corey Keller.

OTHER BUSINESS

STAFF REPORTS

ADJOURNMENT

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, October 4, 2021

7:00 p.m.

MEETING #5193

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CALL TO ORDER

ROLL CALL: Mayor Rick Sowers, Commissioners, Kent Smoll., Brian Delzeit, Blanca Soto, Joseph Nuci present.

INVOCATION by Jay Morford of Oasis Church

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Commissioner Kent Smoll made a motion to approve the agenda as presented. Commissioner - Brian Delzeit seconded the motion. The motion carried unanimously.

PETITIONS & PROCLAMATIONS

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

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes September 20, 2021
2. Approval of City Commission Meeting Minutes September 20, 2021
3. Appropriation Ordinance No.19, October 4, 2021;
4. Approval of Change Order #1 for Casa Del Rio, Phase 1 Street Work.
5. Approval of Addendum to Boot Hill Museum Memorandum of Understanding.
6. Approval of Resolution No. 21-360 adopted by the City of Wichita, Kansas on September 14, 2021 declaring an intend to issue its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.).

Commissioner Joseph Nuci moved to approve the consent calendar as presented. Commissioner Blanca Soto seconded the motion. The motion carried unanimously.

ORDINANCES & RESOLUTIONS

Resolution No. 2021-25: A Resolution of Support by the Mayor and City Council of the City of Dodge City for Expansion of Amtrak Passenger Rail Service in Oklahoma and Kansas and authorize payment of \$750 for IPSR (Institute for Policy & Social Research), Kansas University was approved on a motion by Commissioner Kent Smoll. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

UNFINISHED BUSINESS

NEW BUSINESS

1. Commissioner Brian Delzeit moved to approve the Replat for Catalon Addition Unit 1. Commissioner Blanca Soto seconded the motion. The motion carried unanimously.
2. Commissioner Blanca Soto moved to approve the Amendment Agreement #2 for the Downtown Street Scapes with TranSystems in the amounts of 89,500.00 for completion of design and submittal review and \$629,385.00 for construction inspection. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.
3. Commissioner Kent Smoll moved to approve the selection committee's recommendation for Building Solutions, LLC to be the Construction Manager at Risk for the Downtown Street Scape Construction and to allow for partial payment for construction of the project to be taken from Star Bond funds. Commissioner Joseph Nuci seconded the motion. The motion carried unanimously.
4. Commissioner Brian Delzeit moved to approve a five-year Master Service Agreement for Airport Consultant with Burns and McDonnell for the airport-airfield development projects. Commissioner Blanca Soto seconded the motion. The motion carried unanimously.
5. Commissioner Kent Smoll moved to approve the bid from Dockzille Company in the amount of \$31,683.40 for the purchase of a Mobile Loading Dock for CREW. Commissioner Blanca Soto seconded the motion. The motion carried unanimously.
6. Commissioner Blanca Soto moved to approve the City Employee Advisory Committee (CEAC) Bylaws. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

OTHER BUSINESS

STAFF REPORTS

ADJOURNMENT

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

ATTEST:

Mayor

City Clerk

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

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

City or County of Dodge City

SECTION 1 - LICENSE TYPE		
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit		
Check One: <input checked="" type="checkbox"/> License to sell cereal malt beverages for consumption on the premises. <input type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licenses premises.		
SECTION 2 - APPLICANT INFORMATION		
Kansas Sales Tax Registration Number (required): <u>004-481236736</u>		
I have registered as an Alcohol Dealer with the TTB. <input checked="" type="checkbox"/> Yes (required for new application)		
Name <u>Carla Barth</u>	Phone No. <u>620-225-9466</u>	Date of Birth <u>7-3-68</u>
Residence Street Address <u>11057 Ridge Rd</u>	City <u>Dodge City KS</u>	Zip Code <u>67801</u>
Applicant Spousal Information		
Spouse Name	Phone No.	Date of Birth
Residence Street Address	City	Zip Code
SECTION 3 - LICENSED PREMISE		
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)
DBA Name <u>Kates</u>		Name <u>Kates</u>
Business Location Address <u>305 E Trail St</u>		Address <u>305 E Trail St</u>
City <u>Dodge City</u> State <u>KS</u> Zip <u>67801</u>		City <u>Dodge City</u> State <u>KS</u> Zip <u>67801</u>
Business Phone No. <u>620-225-9466</u>	<input checked="" type="checkbox"/> I own the proposed business location. <input type="checkbox"/> I do not own the proposed business location.	
Business Location Owner Name(s) <u>Carla Barth</u>		
SECTION 4 - APPLICANT QUALIFICATION		
I am a U.S. Citizen	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
I have been a resident of Kansas for at least one year prior to application.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
I have resided within the state of Kansas for <u>53</u> years.		
I am at least 21 years old.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
I have been a resident of this county for at least 6 months.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Within 2 years immediately preceding the date of this application, neither I nor my spouse* have been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.	<input type="checkbox"/> Yes Have	<input checked="" type="checkbox"/> No Have Not
My spouse has previously held a CMB license.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
My spouse has never been convicted of one of the crimes mentioned above while licensed.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

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

City or County of _____

SECTION 1 - LICENSE TYPE

Check One: New License Renew License Special Event Permit

Check One:

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

SECTION 2 - APPLICANT INFORMATION

Kansas Sales Tax Registration Number (required): 004-850273610-F01

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

Name of Corporation <u>All American Meat, Inc</u>		Principal Place of Business <u>Roswell, N.M</u>	
Corporation Street Address <u>111 N. Atkinson</u>	Corporation City <u>Roswell</u>	State <u>NM</u>	Zip Code <u>88203</u>
Date of Incorporation <u>7/10/79</u>	Articles of Incorporation are on file with the Secretary of State		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Resident Agent Name <u>Harold Broedyk</u>	Phone No. <u>575-623-0042</u>		
Residence Street Address <u>1800 Central Avenue</u>	City <u>Dodge City</u>	State <u>KS</u>	Zip Code <u>67801</u>

SECTION 3 - LICENSED PREMISE

Licensed Premise (Business Location or Location of Special Event)	Mailing Address (If different from business address)
DBA Name <u>Farmers Country Market #11</u>	Name <u>All American Meat Inc</u>
Business Location Address <u>1800 Central Avenue</u>	Address <u>P.O. Box 1210</u>
City <u>Dodge City</u>	City <u>Roswell</u>
State <u>Kansas</u>	State <u>NM</u>
Zip <u>67801</u>	Zip <u>88202</u>
Business Phone No. <u>620-225-2981</u>	<input checked="" type="checkbox"/> Applicant owns the proposed business location. <input type="checkbox"/> Applicant does not own the proposed business location.
Business Location Owner Name(s) <u>Bill Fenn</u>	

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

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

Name <u>Bill Fenn</u>	Position <u>President</u>	Date of Birth <u>1/6/55</u>
Residence Street Address <u>111 N. Atkinson</u>	City <u>Roswell</u>	State <u>NM</u>
		Zip Code <u>88203</u>
Spouse Name <u>Christine Fenn</u>	Position <u>Spouse</u>	Date of Birth <u>10/14/67</u>
Residence Street Address <u>111 N. Atkinson</u>	City <u>Roswell</u>	State <u>NM</u>
		Zip Code <u>88203</u>
Name	Position	Date of Birth
Residence Street Address	City	State
		Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State
		Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State
		Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State
		Zip Code



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Ray Slattery, PE, Director of Engineering Services
Date: October 6, 2021
Subject: Change Order #1, Barbara Lane Drainage Channel Revision, PL2002
Agenda Item: Consent Calendar

Recommendation: Approve Change Order #1 for Barbara Lane Drainage Channel Revisions for an increase in the amount of \$9,717.22.

Background: The Barbara Lane Drainage Channel Revisions was approved in June of 2021. During the project it was discovered that additional back fill was required for the project. This additional backfill lessened the grade around the end of the new pipe and along the new Barbara Ln. street extension. This will make it easier for the adjoining property owners to maintain.

Justification: This change order provided the necessary work to complete the construction project.

Financial Considerations: Change Order #1 is for an increase of \$9,717.22. Funding will be from RHID program set up for Wagon Wheel III.

Purpose/Mission: The completion of this project aligns with the City's Core Value of Ongoing Improvement and Safety.

Legal Considerations: By approving the Change Order from Underground Specialist, Inc., the contract dollar amount will be amended.

Attachments: Change Order #1



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Ray Slattery, PE, Director of Engineering Services
Date: October 14, 2021
Subject: Change Order #1, Fairway Dr. Reconstruction, ST 2110
Agenda Item: Consent Calendar

Recommendation: Approve Change Order #1 for Fairway Dr. Reconstruction for an increase in the amount of \$13,218.30.

Background: At the August 2, 2021 commission Meeting, the Commission awarded the reconstruction of Fairway Dr. to Building Solutions. Since that time staff has looked at the possibility of making the golf cart crossing for the County Club Golf course more visible to the traveling public on Fairway Dr. Over the years we have also received numerous complaints about speeding on Fairway Dr. from the residents. Staff worked out a plan to construct a raised tabletop at the golf cart crossing. This raised tabletop will be approximately 4" higher than the adjacent pavement causing vehicles to slow prior to crossing. The street width of Fairway Dr. at this location will also be narrowed 8' to make the crossing distance for the carts shorter. New signs will be installed at the tabletop to provide warning to the traffic on Fairway Dr. The raised tabletop will be colored, stamped concrete to make it more visible.

Justification: This change order will provide the raised tabletop to provide traffic calming and a visible cart crossing.

Financial Considerations: Change Order #1 is for an increase of \$13,218.30. Funding will be from GOB.

Purpose/Mission: The completion of this project aligns with the City's Core Value of Ongoing Improvement and Safety.

Legal Considerations: By approving the Change Order from Building Solutions, LLC, the contract dollar amount will be amended.

Attachments: Change Order #1 & Tabletop/Cart Crossing Plan Sheet

CITY OF DODGE CITY

Change Order

CONTRACT FOR: Fairway Dr. Reconstruction (Comanche St. to University Dr.)

PROJECT NUMBER: ST 2110

CONTRACTOR: Building Solutions, LLC

REQUEST NUMBER: 1

ITEM DESCRIPTION	UNIT	CONTRACT OR PREVIOUS QUANTITY	ADJUSTED QUANTITY	AMOUNT OF OVERRUN OR UNDERRUN	CONTRACT UNIT PRICE	NEW UNIT PRICE	DOLLAR AMOUNT OF CHANGE
Mobilization	L.S.	1.00	1.03472	0.0347	\$28,800.00		\$ 1,000.00
7" Concrete Pavement (NRDJ)	S.Y.	9724	9640	-84	\$54.80		\$ (4,603.20)
Remove Curb & Gutter	L.F.	0	80	80		\$ 10.00	\$ 800.00
30" Standard Curb & Gutter	L.F.	0	134	134		\$ 28.50	\$ 3,819.00
6" Barrier Curb	L.F.	0	50	50		\$ 39.00	\$ 1,950.00
7" Stamped Colored Concrete	S.Y.	0	53.5	53.5		\$ 150.00	\$ 8,025.00
4" Colored Concrete	S.Y.	0	12	11.5		\$ 85.00	\$ 977.50
Epoxy Markings	L.S.	0	1	1		\$ 1,250.00	\$ 1,250.00
						NET INCREASE	\$ 13,218.30

RECOMMENDED FOR APPROVAL:

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

Ray Slattery, P.E.
Director of Engineering Services

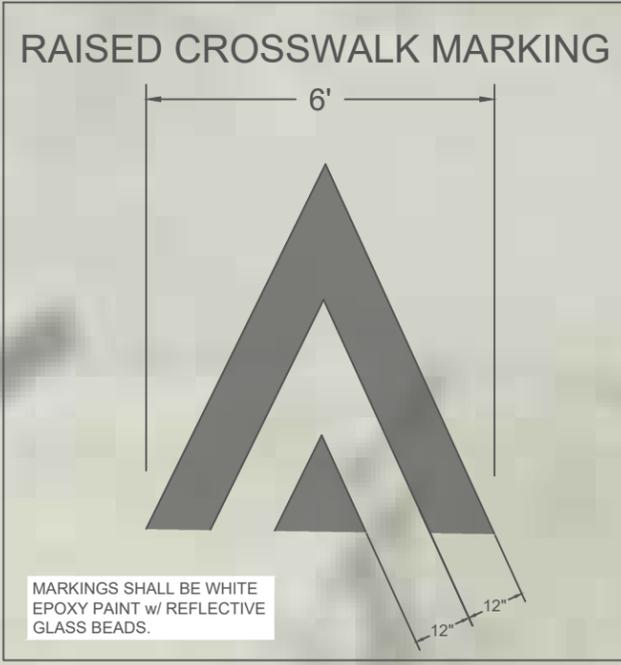
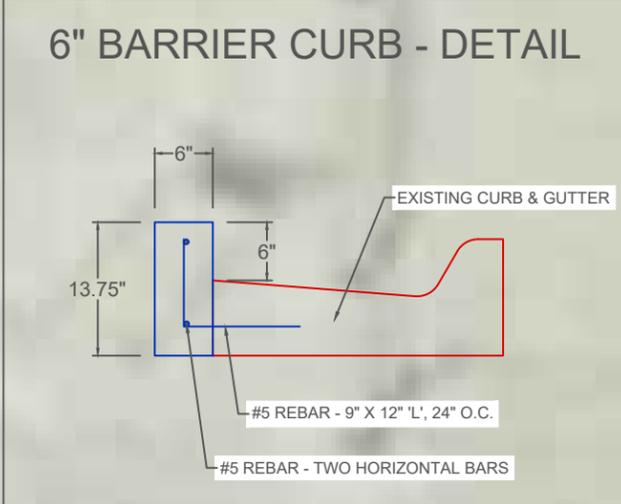
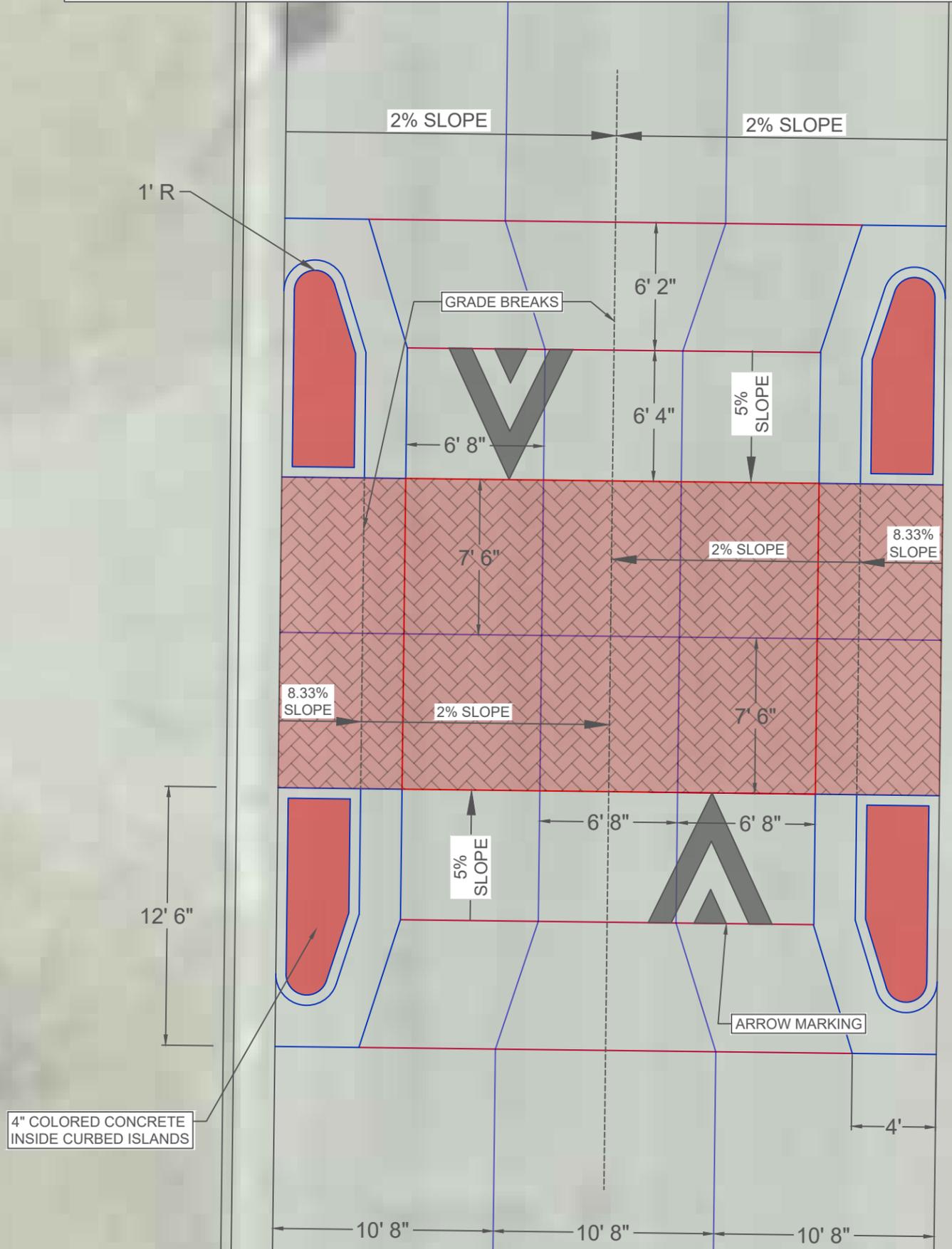
Contractor: Building Solutions, LLC

Connie Marquez, City Clerk

Mayor or City Manager

By: _____

FAIRWAY DRIVE GOLF CART CROSSING



QUANTITIES:

7" STAMPED COLORED CONCRETE	53.5 SY
4" COLORED CONCRETE	11.5 SY
30" CURB & GUTTER	52 LF
6" BARRIER CURB	46 LF
EPOXY PAVEMENT MARKINGS	1 LS



Memorandum

To: City Manager
City Commissioners
From: Corey Keller, Public Works Director
Date: October 13, 2021
Subject: Midwest Custom Ag Aviation Lease
Agenda Item: Consent Calendar

Recommendation: To amend the Midwest Custom Ag Aviation lease to include a newly built hanger completed earlier this year and update the description of properties previously leased.

Justification: This past year Midwest Custom Ag Aviation built a new hanger on unimproved land located north of their existing hangar on Airport property. This amended lease will update the previous agreed upon lease to include the land where the new airplane hangar was built. Additional changes to the lease include an updated description of the 62,400 square feet of land and buildings currently being utilized by Midwest Custom Ag. Price per square foot of the land was also updated to match other airport tenants.

The lease will back date and become effective as of December 1, 2021, and end on November 30, 2026. Signatures of both parties will activate the lease. Midwest Custom Ag Aviation has agreed to the terms and signing of the document will complete the lease.

Financial Considerations: Midwest Custom Ag Aviation will pay the City \$6,240.00 annual fee for the five-year term. This fee will increase two percent annually for the five-year term.

Legal Considerations: Legal has reviewed the document and agrees with the terms.

Attachments: Lease Agreement

AMENDED
CITY OF DODGE CITY AIRPORT LEASE WITH MIDWEST CUSTOM AG AVIATION, INC.

**PURSUANT TO K.S.A. 79-412, NOTICE IS GIVEN THAT THIS LEASE INCLUDES A
BUILDING ON LEASED GROUND**

LEASE. This Lease is made and entered into on the 1st day of December, 2021 (the “Effective Date”) by and between the City of Dodge City, Kansas, a municipal corporation (“City”) and Midwest Custom Ag Aviation, Inc. (“Lessee”):

1. PREMISES. The City, in consideration of the rent, agreements and conditions as set forth herein to be paid and performed by Lessee, does hereby lease to the Lessee, subject to the terms and conditions set forth herein, approximately 62,400 square feet of land located at the Dodge City Regional Airport and certain improvements situated thereon including a Chemical Storage Building and Chemical Pad, all as depicted in Exhibit A, attached hereto and made a part hereof by this reference, and referred to herein after as the “Premises.” City acknowledges that there are two (2) hangars owned by Lessee located on the Premises.

2. RENTAL FEE:

A. The sum of \$ 6,240.00 is the yearly basic rent and will commence on December 1st, 2021. Yearly installments will be due on the 1st day of each December thereafter. Each December 1st, the yearly basic rent will increase by 2%. This change will affect the yearly basic rent for all subsequent years of the lease, including those resulting from any renewals, until its expiration. The City, as a courtesy, will provide written notice of this change at the end of November each calendar year; however this is not a requirement for the implementation of the yearly basic rent changes. The annual increase is as shown below:

	2021	2022	2023	2024	2025	2026
2.0%	\$6,240.00	\$6,364.80	\$6,492.10	\$6,621.94	\$6,754.38	\$6,889.46

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

3. LATE CHARGES. In the event Lessee has failed to pay the yearly basic rent and other amounts due to the City under the terms of this Lease, on or before the first (1st) day of December, the Lessee shall owe, as additional rent, a late charge equal to five percent (5%) of the amount of the yearly payment then due.

4. TERM. This Lease commences on December 1, 2021, and expires on November 30, 2026, inclusive. This Lease may be extended by mutual agreement of the parties for a defined term, or in compliance with any option for renewal provided in Section 5 of this Lease.

5. OPTION TO RENEW:

A. Lessee will have the option to renew this Lease for additional five (5) year terms unless the lease has been terminated as a result of voluntary withdrawal, destruction of the Premises, or Lessee’s default or breach of its obligations under this Lease.

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

C. All terms and conditions contained in this Lease will remain in full force and effect for the full term of the Lease unless the parties otherwise agree in writing.

6. ACCEPTANCE OF PREMISES, CONDITION REPORT:

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

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

7. USE OF PREMISES.

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

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

8. REPAIRS AND MAINTENANCE:

City shall be responsible for major repairs and maintenance within budget limitations including mowing and the removal of snow on the airport premises; ramp, runways, taxiways, hangars, parking lot and airport entrance road. For purposes hereof, "major" shall be defined as any one occurrence or condition requiring an expenditure of one thousand dollars (\$1,000.00) or more to correct, labor and materials included, with regard to the Chemical Storage Building. All minor repairs to the Premises, or any part thereof, shall be the responsibility of Lessee.

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

B. In the event Lessee fails to comply with requirements of this Section, the City will have the option either to treat such failure as a default and breach and terminate this Lease as provided in Section 22 or, after giving notice and opportunity to cure such failure as provided in Section 23, the City may perform all repairs and maintenance necessary to cure such failure and add the cost thereof to the next yearly basic rent due following the date such costs are incurred.

C. Notwithstanding any other provision of this Lease, in the event:

1) Lessee fails, in the sole judgment of the City, to take necessary precautions to protect the Premises or personal property thereon from the elements, or the security thereof;

2) Lessee's maintenance or use of the Premises is such that it constitutes a fire hazard or otherwise endangers the Premises; or

3) Lessee's conduct endangers property owned by the City, or persons on the Premises or on adjacent the City property; then the City or its authorized representatives may forthwith come upon the Premises and take all reasonable and necessary steps to correct such danger or condition. The expenses in making such corrections will be billed to Lessee and will be due and payable by Lessee to the City the first of the month subsequent to such billing.

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

9. PERMANENT IMPROVEMENTS TO PREMISES:

A. At its sole expense, Lessee may make permanent improvements to the Premises constructing new improvements provided the City gives prior approval in writing, and Lessee submits detailed construction and site plan of proposed improvements for the City's final approval prior to commencement of construction. All permanent improvements will become part of the Premises and property of the City and must conform to the following minimum requirements unless specifically waived by the City in writing.

1) Any new buildings or additions to buildings now on the Premises will be restricted to commercial, industrial or warehouse use as approved by the City.

2) Outside walls of all new buildings or additions must be of masonry construction, decorative metal or their equivalent.

3) All roofs will be constructed from fire resistant material.

4) All signage shall comply with the Zoning Ordinances.

5) Lessee shall obtain and pay for all requisite government permit and authorizations related to new construction on the Premises prior to commencement thereof; Lessee shall comply with applicable building and zoning laws and ordinances and other government regulations and requirements.

6) All construction shall be prosecuted to completion with diligence in a workmanlike manner.

10. OWNERSHIP OF PERSONAL PROPERTY AND TRADE FIXTURES: Lessee may replace or install on the Premises, at its sole expense, such personal property, furniture, trade fixtures and equipment as it deems necessary for the conduct of its business; Lessee shall have the privilege, at any time during the term of this lease, of removing any and all of its personal property, furniture, trade fixtures and equipment.

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

12. CONTEST OF LIENS:

A. Notwithstanding provisions of Section 11 of this Lease, Lessee shall have the right to contest any mechanics lien or other similar lien if Lessee notifies the City in writing of its intention to do so.

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

13. INDEMNITY:

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

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

14. INSURANCE:

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

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

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

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

D. All insurance policies described in sub-sections A and B of this Section and renewals thereof shall name the City and Lessee as insured parties and shall contain a provision prohibiting cancellation by the insurer without at least ten (10) days prior written notice to the City and Lessee. Lessee shall deliver to the City a certificate of such insurance within ten (10) days after execution of this Lease.

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

15. INSPECTION OF PREMISES. Lessee shall permit agents and officers of the City and the Federal Aviation Administration free access to the Premises at all reasonable times to examine and inspect the condition thereof and exercise any right reserved to the City in this Lease.

16. ASSIGNMENT AND SUBLEASES. Lessee may neither assign, mortgage, pledge, sell nor in any manner transfer, convey or dispose of this Lease or any interest therein or part thereof whether voluntary, involuntary or by operation of law, and Lessee shall neither sublet the Premises or any part thereof nor

permit any licensee or concessionaire to operate thereon without prior written consent of the City in each instance. In the event the City gives such consent, neither sublease nor assignment of this Lease by Lessee shall release Lessee from its obligations under this Lease.

17. TAXES. Lessee shall pay to the proper governmental agencies as they become due all taxes, assessments and similar charges which, at any time during the term of this Lease, may be assessed or imposed upon Lessee whether such taxes arise from this Lease, the Premises and any permanent improvements thereto or from any other levy or assessment. The City will not be liable to pay any such taxes.

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

19. NONDISCRIMINATION ASSURANCES.

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

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

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

20. SUBORDINATION CLAUSE.

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

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

21. NO EXCLUSIVE USE. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 40103, Chapter 401, Subpart I, Part A, Subtitle VII, Title 49 of the US Code, found at <http://www4.law.cornell.edu/uscode/49/40103.html>.

22. DEFAULT AND BREACH:

A. Lessee will be in default of this Lease whenever Lessee:

- 1) Fails to perform any duty, agreement or condition required by this Lease;
- 2) Fails in the due and punctual payment of yearly basic rent or any other monies due the City;
- 3) Files a voluntary petition under the bankruptcy act or an involuntary petition under such act is filed against Lessee, and Lessee, after full hearing, is adjudged to be bankrupt, insolvent or unable to pay its debts as they mature;
- 4) Makes an assignment for the benefit of its creditors;
- 5) A trustee or receiver, after full hearing, is appointed or retained to take charge of and manage any substantial part of the assets of Lessee;
- 6) Any execution or attachment shall issue against Lessee whereupon any part either of Premises or of Lessee's interest therein shall be taken or an attempt is made to take the same in contemplation of a judicial sale thereunder (except that Lessee shall have the right to contest any such attachment or execution in the same manner and to the same extent as Lessee's right to contest liens as set forth in Section 12 hereof); or;
- 7) Abandons the Premises; abandonment shall occur whenever Lessee, its officers, employees and agents are and remain absent from the Premises for thirty (30) consecutive days without notice to the City of such absence. At the expiration of such thirty (30) day period, the City will have the option to issue termination notice as provided in Section 27 of this Lease which shall take effect immediately on issuance thereof without providing a ten (10) day period within which to cure this default.

B. Lessee's default in performance of required duties, agreements and conditions will constitute a breach of this Lease. The City may, at its option, terminate this Lease in the manner provided in Section 23 on Lessee's default or at any time thereafter while Lessee continues in default.

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

23. TERMINATION:

A. This Lease will terminate:

- 1) Automatically at the expiration of its initial term or any renewal term, subject to Section 5 hereof;
- 2) Immediately upon the City exercising its option to terminate provided in Section 22 of this Lease;
- 3) Upon the occurrence of any default by Lessee as more particularly set forth in Section 22. This Lease will terminate, at the City's option, upon the City serving upon Lessee, a written notification entitled "Notice to Terminate Lease in Ten (10) Days and Right to Cure." Such right to cure notice will specify the amount of past due yearly basic rent and/or the nature of Lessee's other default and breach and will state that the Lease will not terminate should the Lessee pay such past due rent and/or cure such other default and breach to the City's satisfaction prior to the expiration of the ten (10) days; but that the Lease will terminate automatically on the date specified in the notice unless such rent has been paid or other breach has been cured by such date.

B. In the event of termination by the City pursuant to the terms hereof, Lessee shall remain liable for payment of the full unpaid balance of all yearly basic rent due for the remainder of the then current term of the Lease, but shall upon such termination be obligated to forthwith return the Premises to the City. Upon such termination, the City shall have the immediate and unconditional right to reenter the

Premises free of any right, title and interest of Lessee to the use and possession thereof, but such reentry shall not relieve Lessee's duty to comply with all requirements of this Lease as specified herein. The remedies conferred upon the City herein shall not be considered exclusive of any other remedy, but shall be in addition to every other remedy available to the City as landlord under this Lease and as matter of law. The failure of the City to insist upon a strict performance of any term or condition of this Lease will not be deemed a waiver of any right or remedy that the City may have and will not be deemed a waiver or any subsequent breach of such term or condition.

24. SURRENDER OF POSSESSION.

A. Upon termination, Lessee shall forthwith peacefully surrender the Premises to the City in good condition and repair, ordinary wear and tear excepted. Lessee shall remain liable to the City for all yearly basic rent due and owing through the remainder of the then current term of this Lease.

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

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

26. USE OF PREMISES. Lessee shall provide a high standard of customer services consistent with good customer relations for the benefit of the public and adequate to meet the demands for such services at the Dodge City Regional Airport.

27. SERVICE OF NOTICE:

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

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

City of Dodge City
P.O. Box 880
Dodge City, KS 67801

or at such other place as the City may designate in writing;

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

Midwest Custom Ag Aviation, Inc.
255 Schilling Blvd., Ste 210
Collierville, TN 38017

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

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

THIS LEASE is binding upon heirs, executors, administrators, successors and assignees of the respective parties hereto. This Lease embodies the entire agreement and understanding between the parties regarding the Premises, and supersedes all prior agreements and understandings between the

parties hereto regarding any part or all of the Premises. Without limiting the generality of the foregoing, this Lease specifically supersedes and replaces the Lease dated May 16, 2016, between the parties regarding the Premises and the Lease dated May 16, 2016, shall be terminated and shall have no further force or effect as of the Effective Date of this Lease, except for those provisions which are intended to survive termination. This Lease may be modified only upon execution by all parties of a written document setting forth any change or additions and bearing the effective date thereof. If two (2) copies of this Lease are executed; each shall be deemed an original.

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

Date

By: _____
Lessee or its authorized representative
Midwest Custom Ag Aviation, Inc.
100 Airport Road
Dodge City, KS 67801

Date

By: _____
Kelli Enlow, Airport Manager

Date

By: _____
Rick Sowers, Mayor

Attest: _____
Connie Marquez, City Clerk

STATE OF KANSAS, COUNTY OF FORD, ss:

BE IT REMEMBERED, that on this ____ day of _____, 2021, before me, the undersigned Notary Public in and for the County and State aforesaid came, Rick Sowers, Mayor and Connie Marquez, Clerk of the City of Dodge City, Kansas who are personally known to me to be the same person(s) who executed the above Lease, and duly acknowledged the execution of the same.

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

Notary Public

(SEAL)

My appointment expires: _____

STATE OF KANSAS, COUNTY OF FORD, ss:

BE IT REMEMBERED, that on this ____ day of _____, 2021, before me, the undersigned Notary Public in and for the County and State aforesaid came, Kelli Enlow, Airport Manager, who is personally known to me to be the same person(s) who executed the above Lease, and duly acknowledged the execution of the same.

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

Notary Public

(SEAL)

My appointment expires: _____

STATE OF _____, COUNTY OF _____, ss:

BE IT REMEMBERED, that on this ____ day of _____, 2021, before me, the undersigned Notary Public in and for the County and state aforesaid came, (Print Name) _____ of _____, who is personally known to me to be the same person who executed the above lease, and duly acknowledged the execution of the same.

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

Notary Public

(SEAL)

My appointment expires: _____

Exhibit A to Lease between Midwest Custom Ag Aviation Inc. and the City of Dodge City.
This land lease provides Midwest Custom Ag Aviation Inc. 62,400 sq ft of unimproved
land.





Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Ray Slattery, PE, Director of Engineering Services
Date: October 11, 2021
Subject: Approval of bid for 2nd Avenue Bridge & RCB Repairs
Agenda Item: New Business

Recommendation: Approve the bid from PbX Corporation, for the 2nd Ave. Bridge & RCB Repairs in the amount of \$280,962.93.

Background: The repairs needed on the 2nd Ave. Bridge, the RCB on 14th Ave. (north of the river), and the RCB at the Ave. D & Wyatt Earp Blvd. intersection have been outlined in our biennial bridge inspection. These repairs include the replacement of the expansion joints, repairs to the rocker bearings, and fix some pavement deterioration on the 2nd Ave. Bridge. The two RCB's need to have some exposed rebar repaired and then a shot-crete material applied. Without these repairs the structural integrity of the bridge and RCB's could be lost making total replacement necessary.

The City received two bids for this project. The one from PbX Corporation and the other from Pci Roads in the amount of \$416,567. The engineer's estimate was \$412,492.50. PbX Corporation's tentative start date is February 23, 2022.

Justification: These repairs will improve the driving surface and prolong the life of the bridge and the two RCB structures.

Financial Considerations: The cost of these bridge and RCB's repairs is \$280,962.93. Funding of this project will be from the 2021 GOB's, \$575,000 was budgeted for the construction and inspection of the project.

Purpose/Mission: The completion of this project aligns with the City's Core Values of Safety and Ongoing Improvement.

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

Attachments: Bid Tab



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Ray Slattery, PE, Director of Engineering Services
Date: October 14, 2021
Subject: Approval of Consulting Service Agreement for Iron Flats Phase I Platting & Infrastructure Design, PL 2105
Agenda Item: New Business

Recommendation: Approve Consulting Service Agreement with SMH Consultants, P.A. in the amount of \$183,420.00.

Background: Volz Builders recently purchased a portion of ground in the southwest quarter of Section 11, Township 26S, Range 25W, known as the Goodnight Property, from the City of Dodge City for housing. City Staff has started working with the developer to open this area for housing using the RHID Incentive Program. SMH has worked with the developer on several of his past subdivision developments. SMH will provide all the necessary documentation for platting of Phase I and the plans for the construction of the infrastructure needed for this development.

Justification: The City has a need for additional housing and this subdivision will help in addressing the need. SMH will provide the necessary services to ensure that the subdivision meets all City and State requirements while meeting the developer's time schedule.

Financial Considerations: The design contract with SMH Consultants is for a not to exceed amount of \$183,420.00. This is a reimbursable expense through the RHID Program.

Purpose/Mission: The completion of this project will enable the City to have additional housing opportunities for new and existing citizens.

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

Attachments: Consulting Service Agreement, Scope of Services, 2021 Personnel & Reimbursable Rates, and Fee Estimate from SMH Consultants.

CONSULTING SERVICES AGREEMENT

Client: <u>City of Dodge City</u>	Project: <u>Iron Flats Phase I</u>
Address: <u>806 N. Second Avenue</u> <u>Dodge City, KS 67801</u>	Project Location: <u>Dodge City</u>
Telephone: <u>620-225-8106</u>	SMH Project Manager: <u>Ben Gasper, PE</u>
Contact: <u>Ray Slattery, Dir. Eng. Ser.</u>	
Client Job No.: _____	SMH Job No.: <u>2104-0177</u>

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

Iron Flats Phase I – Development of Construction Documents for streets, utilities, and drainage for the residential subdivision

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

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

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

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
- THE HOURLY ESTIMATED NOT-TO EXCEED COST OF CONSULTANT’S SERVICES IS \$183,420.00

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

CLIENT	CONSULTANT
By: _____ AUTHORIZED REPRESENTATIVE	By: _____ AUTHORIZED REPRESENTATIVE
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

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



GENERAL CONDITIONS

SECTION I – Services by CONSULTANT

1.1 Scope of Services

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

1.2 Fees

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

SECTION II – Payment to CONSULTANT

2.1 Payment for Personnel Services

2.1.1 Payment

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

2.1.2 Chargeable Time

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

2.1.3 Overtime Rates

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

2.2 Payment for Direct Expenses

2.2.1 Payment

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

2.2.1 Direct Expenses

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

2.3 Payment Conditions

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

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

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

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

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

2.4 Independent Contractor

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

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

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

SECTION III – Terms of AGREEMENT

3.1 Term

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

3.2 Termination of AGREEMENT

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

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

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

3.3 Payment for Work Upon Abandonment or AGREEMENT Termination

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

3.4 Damages and Injunctive Relief

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

SECTION IV – General Considerations

4.1 Assignment and Responsibility for Personnel

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

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

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

4.2 Insurance

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

4.3 Compliance with Law

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

4.4 Ownership and Reuse of Documents

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

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

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

4.5 Location of Underground Utilities

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

4.6 Subsurface Investigations

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

4.7 CONSULTANT's Personnel at PROJECT Site

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

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

4.8 Opinions of Cost, Financial Considerations and Schedules

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

4.9 Disposition of Samples and Equipment

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

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

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

4.10 Discovery of Unanticipated Pollutant and Hazardous Substance Risks

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

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

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

SECTION V – Professional Responsibility

5.1 Performance of Services

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

5.2 No Special or Consequential Damages

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

5.3 Indemnification

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

5.4 Third Party Beneficiaries

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

SECTION VI – CONFIDENTIALITY AND NON-DISCLOSURE

6.1 Confidential Information

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

Confidential Information will not include information which:

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

6.2 Relevancy of Confidential Information

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

6.3 Representatives of CLIENT

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

6.4 Use of Confidential Information

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

6.5 Survival of AGREEMENT and Confidentiality

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

6.6 Return of Confidential Information

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

6.7 Forced Disclosure

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

6.8 No Conveyance of Confidential Information or Rights Therein

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

6.9 Enforcement

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

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

SECTION VII – Miscellaneous

7.1 Applicable Law

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

7.2 Severability

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

7.3 Survival and Further Assurances

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

7.4 Headings

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

7.5 Successors and Assigns

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

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

7.6 Counterparts

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

7.7 Time is of the Essence

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

7.8 Entire Agreement

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

7.9 Amendment and Modification

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

7.10 Waiver of Breach

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

7.11 Rights not Exclusive to CONSULTANT

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

7.12 Notices

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

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

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

7.13 Authority

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

7.14 No Partnership

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



***Iron Flats Subdivision
Dodge City, Kansas
Iron Flats – Phase I Construction Documents
Scope of Professional Services
Prepared: October 7, 2021***

SMH Consultants (SMH) will perform the following tasks:

Iron Flats – Phase I

Part I - Land Survey

1. A complete boundary, topographic, and site survey for the entire area that is to be called Iron Flats subdivision. The survey will include any necessary boundary information, manmade features on the site, marked utilities, and topography as necessary to develop a digital terrain model for grading.
2. Conversion of the survey into a working drawing that can be used for design.

Part II – Preliminary Plat of Entire Subdivision

1. Preparation of preliminary plat for entire subdivision. This task includes review of the initial layout of lots, utilities, easements, and etc. with the owner.
2. Electronic and paper copy of the plat to be provided to the City of Dodge City as required.

Part III – Phase I Final Plat

1. Preparation of the Phase I final plat. This task includes review of the initial layout of lots, utilities, easements, and etc. with the owner.
2. Electronic and paper copy of the plats to be provided to the City of Dodge City as required.
3. Obtainment of a certificate of title as required by the City of Dodge City.
4. All necessary fees with Ford County for filing the plat.
5. Obtainment of plat Signatures as required by the City of Dodge City.
6. Setting of all property pins as required by the laws of the State of Kansas.
7. One continuous legal description for the Iron Flats Phase I Subdivision and the Iron Road improvements for use in the RHID paper work.

Part IV – Project Management & Coordination

1. Project Management and Administration of the inhouse design, coordination, and implementation of the project. This task includes management of internal staff in regards to project invoicing, design, coordination, contract compliance, and other items necessary to complete the design of the proposed improvements.
2. Project Coordination with the City of Dodge City, utility companies, and any other parties of interest to gather input on design impacts. This will include three (3) meetings with the City; Kick-off meeting to discuss project scope, design criteria, and project goals; 50% Field Check Submittal Review Meeting; 95% Design Submittal Review Meeting.
3. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.

Part V – Sanitary Sewer; Waterline; & Street Design; Preliminary Field Check (50%) & Final Construction (100%) Documents

1. Title sheet with project disclaimers, notes, index, appropriate signature blocks and other requirements as required by of the City of Dodge City.
2. General Notes sheet to include general notes related to the project's construction, quantities, utility company contact information, owner information, and designer information.
3. Overall Site plan showing all existing and proposed improvements, proposed lot lines, proposed easements, existing easements, right of way, utilities, and horizontal and vertical control depicting project survey control necessary for construction of the project.
4. Utility Coordination sheet to address any potential conflicts between the proposed improvements and the existing utilities in the area.
5. Typical sections to depict the standard sections of the roadway plan. Typical sections to conform to City of Dodge City Standards.
6. Mass grading plan for the Iron Flats improvements to depict areas of cut and fill.
7. Sanitary Sewer plan and profile internal to the development. The proposed sanitary sewer plan and profile will also depict the location of service lines both vertically and horizontally. The sanitary sewer plan and profile shall conform to City of Dodge City Standards.

8. Sanitary Sewer standard details as provided by the City of Dodge City.
9. Waterline main plan and profile for the extension of water service to and within the platted subdivision. This design shall include waterline connection to the existing well in the center of the subdivision. The waterline main plan and profiles shall conform to City of Dodge City standards and include water service locations and stub out detail information.
10. Waterline standard details as provided by the City of Dodge City.
11. Roadway plan and profiles for the proposed Iron Flats Phase I improvements.
12. Intersection details detailing horizontal and vertical design information at each of the proposed intersections.
13. Paving details as required by the pavement design.
14. Drainage Map depicting stormwater runoff calculations to verify the required stormwater needs of the Iron Flats improvements including the proper sizing of conduits and inlets and sizing the site regional detention pond. This includes stormwater analysis of the entire area for the regional detention pond to be located in the NW quadrant of the Iron Road & 6th Avenue intersection. Analysis findings will be recorded and summarized in letter format.
15. Storm sewer Plan & Profile design to conform to City of Dodge City Standards.
16. Storm sewer standard details as to conform to the City of Dodge City Standards.
17. Stormwater erosion and sediment control plan. Preparation and submittal of a stormwater pollution prevention plan to the Kansas Department of Health and Environment and all necessary NPDES permitting applications. Upon approval the approved NPDES NOI and accompanying SWPPP will be provided to the developer. This document is required to be onsite through construction of the project.
18. Stormwater erosion and sediment control details to conform to City of Dodge City Standards.
19. Roadway cross sections for the proposed Iron Flats' roadways. Roadway cross sections will depict proposed and existing known and discoverable ground conditions,

characteristics and improvements, as well as water and sanitary sewer crossings and crown elevations.

20. Preparation of special provisions and specifications documents using City of Dodge City standard forms.
21. Quality Assurance of all designs prior to submittal to the owner for review. This task will involve detailed review of the designs and plans by the project manager.
22. Submittal of Field Check (50%) Documents (electronically) for review by the City of Dodge City.
23. Submittal of Field Check (95%) Documents (electronically) for review by the City of Dodge City.
24. Address and incorporate any modifications to the plans required as a result of the Field Check and Design Document reviews by the City of Dodge City.
25. Quality Control of all final designs. This task will involve a detailed review of plans by an in-house independent reviewer.
26. Submittal of Final Construction Documents to the City of Dodge City. SMH will provide the City with 2 - full size and 2 - 11"x17" sets of the plan in addition to PDF documents

Part VI – Contractor Coordination and Project Pricing

1. Project construction cost estimates to be utilized by the City in preparation of the necessary documentation for both project petitions and the Rural Housing Incentive District.
2. Preparation of a project bid sheet that includes utilities for the developer to utilize in obtaining bids for construction of the project.
3. Respond to questions from bidders regarding the project as they prepare project bids for the City of Dodge City. Advise the City of any inquiries prior to the bid opening from contractors, subcontractors, suppliers, and public officials.
4. Provide any necessary addendums to the final construction documents that may arise during the bidding process. This task includes submitting draft addendum(s) to the City for review prior to issuing to contractors bidding on the project.
5. Review Contractor submitted shop drawings, material samples, and other data submittals for conformance with the project drawings and specifications. Include City on all

Contractor submittal review correspondence and provide City with all Contractor submittals.

Services not Rendered by SMH but May be Required

1. Structural design services.
2. Geotechnical Investigation services.
3. Construction Inspection Services
4. Construction Staking Services
5. Right of Way Acquisition Services
6. All other services not identified in the above scope of services.

Notes

1. There may be studies (i.e. additional traffic, additional drainage, sewer and etc.) not identified in this scope of services that may arise because of the City of Dodge City or other jurisdictional agencies. As the need for these studies arises a separate scope of work will be developed for approval by the client.
2. Any changes to the overall layout of the site, the design constraints, original design intent and so forth made midstream in the project will impact the ability to complete the work within the fee proposed. These changes, if necessary, will constitute a revised and re-negotiated scope of work and fee.
3. All designs shall be provided on SMH title block and provided in PDF format.
4. Any services not identified in the fore mentioned scope of services requested by owner will be provided at 2021 hourly rates.

2021 Personnel and Reimbursable Rates

SMH Consultants

	<u>Standard Rate</u>	<u>Overtime Rate</u>
<i>Survey Crew</i>	<i>\$130.00/hour</i>	<i>\$170.00/hour</i>
<i>GPS /Robot Crew</i>	<i>\$100.00/hour</i>	<i>\$124.00/hour</i>
<i>CADD Technician</i>	<i>\$90.00/hour</i>	<i>\$120.00/hour</i>
<i>Drone Piloting</i>	<i>\$100/hour</i>	<i>\$130/hour</i>
<i>Drone Processing</i>	<i>\$90/hour</i>	<i>\$110/hour</i>
<i>Managing Principal Professional Surveyor</i>	<i>\$130.00/hour</i>	<i>\$165.00/hour</i>
<i>Professional Surveyor</i>	<i>\$110.00/hour</i>	<i>\$133.00/hour</i>
<i>Managing Principal Engineer</i>	<i>\$190.00/hour</i>	<i>\$215.00/hour</i>
<i>Principal Engineer</i>	<i>\$170.00/hour</i>	<i>\$225.00/hour</i>
<i>Project Engineer</i>	<i>\$135.00/hour</i>	<i>\$180.00/hour</i>
<i>Design Engineer</i>	<i>\$110.00/hour</i>	<i>\$150.00/hour</i>
<i>Landscape Architect</i>	<i>\$110.00/hour</i>	<i>\$150.00/hour</i>
<i>Construction Engineering/Inspection</i>	<i>\$90.00/hour</i>	<i>\$120.00/hour</i>
<i>Land Acquisition Agent</i>	<i>\$135.00/hour</i>	<i>\$150.00/hour</i>
<i>Proctor</i>	<i>\$300.00/each</i>	
<i>Clerical</i>	<i>\$55.00/hour</i>	<i>\$70.00/hour</i>
<i>Mileage</i>	<i>\$0.56/mile</i>	
<i>Concrete Cylinder Breaks</i>	<i>\$50/each</i>	

Fee Estimate

Iron Flats - Phase I
City of Dodge City
10/13/2021

SC = Survey Crew
CT = CADD Technician
MPLS = Managing Principal Land S

RLS = Registered Land Surveyor
MPE = Managing Principal Engineer
PE = Project Engineer

DE = Design Engineer
LA = Landscape Architecture
CE = Construction Engineering



	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CE	Rate =	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CE	Expenses	Totals											
											125.00	90.00	130.00	110.00	190.00	135.00	110.00	110.00	90.00		Hours	Total Fee										
Estimated Hours										Estimated Fee																						
Part I - Land Survey																																
1	56		8				2				\$7,000.00		\$1,040.00					\$220.00		\$420.00	66	\$8,680.00										
2		74					2					\$6,660.00						\$220.00			76	\$6,880.00										
																						Part I - Land Survey		\$15,560.00								
Part II - Prelim. Plat																																
1		118	4		26	9	41				\$10,620.00	\$520.00		\$3,510.00	\$990.00	\$4,510.00					198	\$20,150.00										
2					1		1							\$135.00		\$110.00				\$200.00	2	\$445.00										
																						Part II - Prelim. Plat		\$20,595.00								
Part III - Final Plat																																
1		29	4		2		2				\$2,610.00	\$520.00		\$270.00		\$220.00					37	\$3,620.00										
2					1		1							\$135.00		\$110.00			\$200.00	2	\$445.00											
3								1								\$110.00			\$150.00	1	\$260.00											
4																			\$400.00			\$400.00										
5							1									\$110.00					1	\$110.00										
6	75	4	4								\$9,375.00	\$360.00	\$520.00								83	\$10,255.00										
7		1	4									\$90.00	\$520.00								5	\$610.00										
																						Part III - Final Plat		\$15,700.00								
Part IV - Project Management & Coordination																																
1						54									\$7,290.00						54	\$7,290.00										
2						54	27								\$7,290.00	\$2,970.00					81	\$10,260.00										
4						8	8								\$1,080.00	\$880.00					16	\$1,960.00										
																						Part IV - Project Management & Coordination		\$19,510.00								
Part IV - Street Design;																																
1							2									\$220.00					2	\$220.00										
2						16	18									\$2,160.00	\$1,980.00				34	\$4,140.00										
3						4	28									\$540.00	\$3,080.00				32	\$3,620.00										
4						4	14									\$540.00	\$1,540.00				18	\$2,080.00										
5						2	18									\$270.00	\$1,980.00				20	\$2,250.00										
6						8	72									\$1,080.00	\$7,920.00				80	\$9,000.00										
7						9	54									\$1,215.00	\$5,940.00				63	\$7,155.00										
8						6	1									\$810.00	\$110.00				7	\$920.00										
9						13	129									\$1,755.00	\$14,190.00				142	\$15,945.00										
10							1										\$110.00				1	\$110.00										
11						27	93									\$3,645.00	\$10,230.00				120	\$13,875.00										
12						7	56									\$945.00	\$6,160.00				63	\$7,105.00										
13							1										\$110.00				1	\$110.00										
14						60	20									\$8,100.00	\$2,200.00				80	\$10,300.00										
15						60	20									\$8,100.00	\$2,200.00				80	\$10,300.00										
16							8										\$880.00				8	\$880.00										
17						4	16									\$540.00	\$1,760.00		\$100.00		20	\$2,400.00										
18							1										\$110.00				1	\$110.00										
19						8	52									\$1,080.00	\$5,720.00				60	\$6,800.00										
20						4	1									\$540.00	\$110.00				5	\$650.00										
21						78	12									\$10,530.00	\$1,320.00				90	\$11,850.00										
22						1	1									\$135.00	\$110.00		\$200.00		2	\$445.00										
23						1	1									\$135.00	\$110.00		\$200.00		2	\$445.00										
24							80										\$8,800.00				80	\$8,800.00										
25						18										\$2,430.00					18	\$2,430.00										
26						1	1									\$135.00	\$110.00		\$200.00		2	\$445.00										
																						Part IV - Street Design;		\$122,385.00								
Part V - Contractor Coordination and Project Pricing																																
1						4	2									\$540.00	\$220.00				6	\$760.00										
2						4	2									\$540.00	\$220.00				6	\$760.00										
3						4										\$540.00					4	\$540.00										
4						4	8									\$540.00	\$880.00				12	\$1,420.00										
5						14										\$1,890.00					14	\$1,890.00										
																						Part V - Contractor Coordination and Project Pricing		\$5,370.00								
Totals =											131.00	226.00	24.00	0.00	0.00	507.00	741.00	66.00	0.00		\$16,375.00	\$20,340.00	\$3,120.00	\$0.00	\$0.00	\$68,445.00	\$81,510.00	\$7,260.00	\$0.00	\$2,070.00	1,695.00	

Fee Estimate = \$2,070.00 1,695 \$183,420.00



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Ray Slattery, PE, Director of Engineering Services
Date: October 14, 2021
Subject: Approval of Consulting Service Agreement for Iron Rd. from 14th Ave. to 6th Ave. (Iron Flats Sub-Division), ST 2108
Agenda Item: New Business

Recommendation: Approve Consulting Service Agreement with SMH Consultants, P.A. in the amount of \$125,400.00.

Background: Volz Builders is in the process of developing the Iron Flats Sub-Division. Access to this sub-division will be off of Iron Rd. west of 6th Ave. Approximately 40% of Iron Rd. between 14th Ave. and 6th Ave. will be needed to provide access to Iron Flats. However, It makes since to complete Iron Rd to 14th Ave. to provide better circulation of traffic in the area, provide multiple access points for emergency services, and connect and improve a section of Iron Rd. that is currently gravel east of 14th Ave. to the improved section being built with the Iron Flats sub-division. So, in July of this year the City advertised for Request for Qualifications (RFQ) for the design of Iron Rd. The City received 4 proposals from engineering firms to design Iron Rd. After careful review by the selection committee, it was decided to have SMH Consultants, P.A. provide the design service for Iron Rd. SMH Consultants, P.A. is designing the Iron Flats Sub-Division and the portion of Iron Rd. needed to provide access to Iron Flats. With this design, we will be able to bid the construction of all of Iron Rd. between 14th Ave. and 6th Ave. to complete the transportation loop in this part of town. SMH will provide all the necessary plans for the construction of the Iron Rd.

Justification: It makes since to connect 14th Ave. and 6th Ave. in a part of town that is seeing growth with several new housing additions. SMH will provide the necessary services to for the City to bid the Iron Rd. project meeting timely schedule.

Financial Considerations: The design contract with SMH Consultants is for a not to exceed amount of \$125,400.00. This is a reimbursable expense through the RHID Program.

Purpose/Mission: The completion of this project will enable the City to have additional access to new housing subdivisions in this part of town. It will also complete Iron Rd. between 14th Ave. and Ave. A providing another important east/west connection north of US 50.

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

Attachments: Consulting Service Agreement, Scope of Services, 2021 Personnel & Reimbursable Rates, and Fee Estimate from SMH Consultants.

CONSULTING SERVICES AGREEMENT

Client: <u>City of Dodge City</u> Address: <u>806 N. Second Avenue</u> <u>Dodge City, KS 67801</u>	Project: <u>Iron Road – 14th Ave. to</u> <u>6th Ave.</u>
Telephone: <u>620-225-8106</u> Contact: <u>Ray Slattery, Dir. Eng. Ser.</u>	Project Location: <u>Dodge City</u> SMH Project Manager: <u>Ben Gasper, PE</u>
Client Job No.: _____	SMH Job No.: <u>2108-0332</u>

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

Iron Road from 14th Avenue to 6th Avenue – Development of Construction Documents

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

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

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

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
- THE HOURLY ESTIMATED NOT-TO EXCEED COST OF CONSULTANT’S SERVICES IS \$125,400.00

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

CLIENT	CONSULTANT
By: _____ AUTHORIZED REPRESENTATIVE	By: _____ AUTHORIZED REPRESENTATIVE
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

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



GENERAL CONDITIONS

SECTION I – Services by CONSULTANT

1.1 Scope of Services

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

1.2 Fees

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

SECTION II – Payment to CONSULTANT

2.1 Payment for Personnel Services

2.1.1 Payment

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

2.1.2 Chargeable Time

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

2.1.3 Overtime Rates

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

2.2 Payment for Direct Expenses

2.2.1 Payment

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

2.2.1 Direct Expenses

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

2.3 Payment Conditions

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

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

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

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

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

2.4 Independent Contractor

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

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

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

SECTION III – Terms of AGREEMENT

3.1 Term

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

3.2 Termination of AGREEMENT

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

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

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

3.3 Payment for Work Upon Abandonment or AGREEMENT Termination

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

3.4 Damages and Injunctive Relief

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

SECTION IV – General Considerations

4.1 Assignment and Responsibility for Personnel

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

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

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

4.2 Insurance

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

4.3 Compliance with Law

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

4.4 Ownership and Reuse of Documents

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

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

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

4.5 Location of Underground Utilities

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

4.6 Subsurface Investigations

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

4.7 CONSULTANT's Personnel at PROJECT Site

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

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

4.8 Opinions of Cost, Financial Considerations and Schedules

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

4.9 Disposition of Samples and Equipment

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

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

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

4.10 Discovery of Unanticipated Pollutant and Hazardous Substance Risks

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

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

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

SECTION V – Professional Responsibility

5.1 Performance of Services

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

5.2 No Special or Consequential Damages

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

5.3 Indemnification

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

5.4 Third Party Beneficiaries

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

SECTION VI – CONFIDENTIALITY AND NON-DISCLOSURE

6.1 Confidential Information

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

Confidential Information will not include information which:

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

6.2 Relevancy of Confidential Information

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

6.3 Representatives of CLIENT

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

6.4 Use of Confidential Information

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

6.5 Survival of AGREEMENT and Confidentiality

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

6.6 Return of Confidential Information

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

6.7 Forced Disclosure

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

6.8 No Conveyance of Confidential Information or Rights Therein

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

6.9 Enforcement

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

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

SECTION VII – Miscellaneous

7.1 Applicable Law

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

7.2 Severability

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

7.3 Survival and Further Assurances

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

7.4 Headings

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

7.5 Successors and Assigns

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

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

7.6 Counterparts

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

7.7 Time is of the Essence

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

7.8 Entire Agreement

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

7.9 Amendment and Modification

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

7.10 Waiver of Breach

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

7.11 Rights not Exclusive to CONSULTANT

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

7.12 Notices

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

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

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

7.13 Authority

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

7.14 No Partnership

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



*Iron Road Extension
Dodge City, Kansas
Iron Road (14th Ave. to 6th Ave.) Construction Documents
Scope of Professional Services
Prepared: October 7, 2021*

SMH Consultants (SMH) will perform the following tasks:

Iron Road from 14th Avenue to 6th Avenue, split 60% & 40%

Part I - Land Survey

1. A complete boundary, topographic, and site survey for the entire area that is to be improved along the proposed Iron Road from the west boundary of the Iron Flats subdivision entrance to 14th Avenue. The survey will include any necessary boundary information, manmade features on the site, marked utilities, and topography as necessary to develop a digital terrain model for grading.
2. Conversion of the survey into a working drawing that can be used for design.

Part II - Land Acquisition Services

1. Preparation of legal descriptions and exhibits for the potential acquisition of right of way from properties adjacent to Iron Road.

Part III – Project Management & Coordination

1. Project Management and Administration of the inhouse design, coordination, and implementation of the project. This task includes management of internal staff in regards to project invoicing, design, coordination, contract compliance, and other items necessary to complete the design of the proposed improvements.
2. Project Coordination with the City of Dodge City, utility companies, and any other parties of interest to gather input on design impacts. This will include three (3) meetings with the City; Kick-off meeting to discuss project scope, design criteria, and project goals; 50% Field Check Submittal Review Meeting; 95% Design Submittal Review Meeting.
3. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.

**Part IV – Street Design; Preliminary Field Check (50%) & Final Construction (100%)
Documents**

1. Title sheet with project disclaimers, notes, index, appropriate signature blocks and other requirements as required by of the City of Dodge City.
2. General Notes sheet to include general notes related to the project's construction, quantities, utility company contact information, owner information, and designer information.
3. Overall Site plan showing all existing and proposed improvements, proposed lot lines, proposed easements, existing easements, right of way, utilities, and horizontal and vertical control depicting project survey control necessary for construction of the project.
4. Utility Coordination sheet to address any potential conflicts between the proposed improvements and the existing utilities in the area.
5. Typical sections to depict the standard sections of the roadway plan. Typical sections to conform to City of Dodge City Standards.
6. Mass grading plan for the Iron Road improvements to depict areas of cut and fill.
7. Roadway plan and profiles for the proposed Iron Road improvements from the 14th Avenue intersection to 6th Avenue intersection.
8. Intersection details detailing horizontal and vertical design information at each of the proposed intersections.
9. Sidewalk geometrics depicting the location of horizontal and vertical design information to construction the 10' trail along the proposed road.
10. Traffic Control Plan to conform to City of Dodge City Standards.
11. Traffic Control Details to conform to City of Dodge City Standards.
12. Paving details as required by the pavement design.
13. Drainage Map depicting stormwater runoff calculations to verify the required stormwater needs of the Iron Road improvements including the proper sizing of conduits and inlets.
14. Storm Sewer Plan & Profile design to conform to City of Dodge City Standards.

15. Storm sewer standard details as provided by the City of Dodge City Standards.
16. Stormwater erosion and sediment control plan. Preparation and submittal of a stormwater pollution prevention plan to the Kansas Department of Health and Environment and all necessary NPDES permitting applications. Upon approval the approved NPDES NOI and accompanying SWPPP will be provided to the developer. This document is required to be onsite through construction of the project.
17. Stormwater erosion and sediment control details to conform to City of Dodge City Standards.
18. Roadway cross sections for the proposed Iron Road extension improvements from 14th Avenue intersection to 6th Avenue intersection. Roadway cross sections will depict proposed and existing known and discoverable ground conditions, characteristics and improvements, as well as water and sanitary sewer crossings and crown elevations.
19. Preparation of special provisions and specifications documents using City of Dodge City standard forms.
20. Quality Assurance of all designs prior to submittal to the owner for review. This task will involve detailed review of the designs and plans by the project manager.
21. Submittal of Field Check (50%) Documents (electronically) for review by the City of Dodge City.
22. Address and incorporate any modifications to the plans required as a result of the Field Check review by the City of Dodge City.
23. Quality Control of all final designs. This task will involve a detailed review of plans by an in-house independent reviewer.
24. Submittal of Final Construction Documents to the City of Dodge City. SMH will provide the City with 2 - full size and 2 - 11"x17" sets of the plan in addition to PDF documents.

Part V – Contractor Coordination and Project Pricing

1. Project construction cost estimates to be utilized by the City in preparation of the necessary documentation for both project petitions and the Rural Housing Incentive District.

2. Preparation of a project bid sheet that includes utilities for the developer to utilize in obtaining bids for construction of the project.
3. Respond to questions from bidders regarding the project as they prepare project bids for the City of Dodge City. Advise the City of any inquiries prior to the bid opening from contractors, subcontractors, suppliers, and public officials.
4. Provide any necessary addendums to the final construction documents that may arise during the bidding process. This task includes submitting draft addendum(s) to the City for review prior to issuing to contractors bidding on the project.
5. Review Contractor submitted shop drawings, material samples, and other data submittals for conformance with the project drawings and specifications. Include City on all Contractor submittal review correspondence and provide City with all Contractor submittals.

6th Avenue, from Iron Road to North of Iron Flats, 25% Concept Development
Part I - Land Survey

1. A complete right of way boundary, topographic, and site survey for the entire area that is to be improved along the proposed Iron Road from the Iron Road & 6th Avenue intersection, to the section line north Iron Flats subdivision. The survey will include any necessary boundary information, manmade features on the site, marked utilities, and topography as necessary to develop a digital terrain model for grading.
2. Conversion of the survey into a working drawing that can be used for design.
3. Preparation of exhibits for the potential acquisition of right of way from properties adjacent to 6th Avenue.

Part II – Project Management & Coordination

1. Project Management and Administration of the inhouse design, coordination, and implementation of the project. This task includes management of internal staff in regards to project invoicing, design, coordination, contract compliance, and other items necessary to complete the design of the proposed improvements.
2. Project Coordination with the City of Dodge City, utility companies, and any other parties of interest to gather input on design impacts.

Part III - Street Design; Preliminary Concept Development (25%)

1. Preliminary Overall Site plan showing all existing and proposed improvements, proposed lot lines, proposed easements, existing easements, right of way, utilities, and horizontal

and vertical control depicting project survey control necessary for construction of the project.

2. Preliminary mass grading plan for the 6th Avenue improvements to depict areas of cut and fill.
3. Preliminary roadway plan and profiles for the proposed 6th Avenue extension improvements from the 14th Avenue intersection to 6th Avenue intersection.
4. Preliminary Drainage Map depicting stormwater runoff calculations to verify the required stormwater needs of the Iron Road improvements including the proper sizing of conduits and inlets.
5. Preliminary Storm Sewer Plan & Profile design to conform to City of Dodge City Standards.
6. Preliminary roadway cross sections for the proposed 6th Avenue extension improvements from the 6th Avenue intersection to the norther section line. Roadway cross sections will depict proposed and existing known and discoverable ground conditions, characteristics and improvements, as well as water and sanitary sewer crossings and crown elevations.
7. An engineer's estimate will be prepared based on the Preliminary Concept Development (25%) Documents and provided to the City of Dodge City.
8. Submittal of Preliminary Concept Development (25%) Documents (electronically) for review by the City of Dodge City.

Alternate I - 6th Avenue, from Iron Road to North of Iron Flats

1. If the City is able, or proceeds, to acquire Right of Way for 6th Avenue from Iron Road to North of Iron Flats, a contract amendment will be pursued with SMH to provide design and acquisition services of 6th Avenue.

Services not Rendered by SMH but May be Required

1. Structural design services.
2. Geotechnical Investigation services.
3. Construction Inspection Services
4. Construction Staking Services
5. Right of Way Acquisition Services
6. All other services not identified in the above scope of services.

Notes

1. There may be studies (i.e. additional traffic, additional drainage, sewer and etc.) not identified in this scope of services that may arise because of the City of Dodge City or other jurisdictional agencies. As the need for these studies arises a separate scope of work will be developed for approval by the client.
2. Any changes to the overall layout of the site, the design constraints, original design intent and so forth made midstream in the project will impact the ability to complete the work within the fee proposed. These changes, if necessary, will constitute a revised and re-negotiated scope of work and fee.
3. All designs shall be provided on SMH title block and provided in PDF format.
4. Any services not identified in the fore mentioned scope of services requested by owner will be provided at 2021 hourly rates.

2021 Personnel and Reimbursable Rates

SMH Consultants

	<u>Standard Rate</u>	<u>Overtime Rate</u>
<i>Survey Crew</i>	<i>\$130.00/hour</i>	<i>\$170.00/hour</i>
<i>GPS /Robot Crew</i>	<i>\$100.00/hour</i>	<i>\$124.00/hour</i>
<i>CADD Technician</i>	<i>\$90.00/hour</i>	<i>\$120.00/hour</i>
<i>Drone Piloting</i>	<i>\$100/hour</i>	<i>\$130/hour</i>
<i>Drone Processing</i>	<i>\$90/hour</i>	<i>\$110/hour</i>
<i>Managing Principal Professional Surveyor</i>	<i>\$130.00/hour</i>	<i>\$165.00/hour</i>
<i>Professional Surveyor</i>	<i>\$110.00/hour</i>	<i>\$133.00/hour</i>
<i>Managing Principal Engineer</i>	<i>\$190.00/hour</i>	<i>\$215.00/hour</i>
<i>Principal Engineer</i>	<i>\$170.00/hour</i>	<i>\$225.00/hour</i>
<i>Project Engineer</i>	<i>\$135.00/hour</i>	<i>\$180.00/hour</i>
<i>Design Engineer</i>	<i>\$110.00/hour</i>	<i>\$150.00/hour</i>
<i>Landscape Architect</i>	<i>\$110.00/hour</i>	<i>\$150.00/hour</i>
<i>Construction Engineering/Inspection</i>	<i>\$90.00/hour</i>	<i>\$120.00/hour</i>
<i>Land Acquisition Agent</i>	<i>\$135.00/hour</i>	<i>\$150.00/hour</i>
<i>Proctor</i>	<i>\$300.00/each</i>	
<i>Clerical</i>	<i>\$55.00/hour</i>	<i>\$70.00/hour</i>
<i>Mileage</i>	<i>\$0.56/mile</i>	
<i>Concrete Cylinder Breaks</i>	<i>\$50/each</i>	

Fee Estimate

Iron Road Improvements
City of Dodge City
10/13/2021

SC = Survey Crew
CT = CADD Technician
MPLS = Managing Principal Land S

RLS = Registered Land Surveyor
MPE = Managing Principal Engineer
PE = Project Engineer
DE = Design Engineer
LA = Landscape Architecture
CE = Construction Engineering



	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CE	Rate =	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CE	Expenses	Totals Hours	Total Fee										
Iron Road from 14th Avenue to 6th Avenue, split 60% & 40%																																
Part I - Land Survey																																
1	24		4			1		1			\$3,000.00		\$520.00			\$135.00			\$110.00	\$500.00	30	\$4,265.00										
2		4										\$360.00									4	\$360.00										
Part I - Land Survey \$4,625.00																																
Part II - Land Acquisition Services																																
1		10				2						\$900.00				\$270.00				\$60.00	12	\$1,230.00										
Part II - Land Acquisition Services \$1,230.00																																
Part III - Project Management & Coordination																																
1						48	24									\$6,480.00	\$2,640.00			\$370.00	72	\$9,490.00										
2						48	24									\$6,480.00	\$2,640.00				72	\$9,120.00										
3						4	4									\$540.00	\$440.00				8	\$980.00										
Part III - Project Management & Coordination \$19,590.00																																
Part IV - Street Design:																																
1							4										\$440.00				4	\$440.00										
2						8	12									\$1,080.00	\$1,320.00				20	\$2,400.00										
3						4	16									\$540.00	\$1,760.00				20	\$2,300.00										
4						4	8									\$540.00	\$880.00				12	\$1,420.00										
5						4	12										\$1,320.00				12	\$1,320.00										
6						10	20									\$1,350.00	\$2,200.00				30	\$3,550.00										
7						35	120									\$4,725.00	\$13,200.00				155	\$17,925.00										
8							20									\$2,200.00					20	\$2,200.00										
9							40										\$4,400.00				40	\$4,400.00										
10						4	12									\$540.00	\$1,320.00				16	\$1,860.00										
11							6										\$660.00				6	\$660.00										
12							4										\$440.00				4	\$440.00										
13						80	8									\$10,800.00	\$880.00				88	\$11,680.00										
14						40	40									\$5,400.00	\$4,400.00				80	\$9,800.00										
15							8										\$880.00				8	\$880.00										
16						4	14									\$540.00	\$1,540.00			\$100.00	18	\$2,180.00										
17							4										\$440.00				4	\$440.00										
18						12	36									\$1,620.00	\$3,960.00				48	\$5,580.00										
19						8	4									\$1,080.00	\$440.00				12	\$1,520.00										
20						54		12								\$7,290.00		\$1,320.00			66	\$8,610.00										
21						1	1	4								\$135.00	\$110.00	\$440.00		\$200.00	6	\$885.00										
22							80										\$8,800.00				80	\$8,800.00										
23						16										\$2,160.00					16	\$2,160.00										
24						1	1	4								\$135.00	\$110.00	\$440.00		\$200.00	6	\$885.00										
Part IV - Street Design: \$61,275.00																																
Part V - Contractor Coordination and Project Pricing																																
1						4	2									\$540.00	\$220.00				6	\$760.00										
2						4	2									\$540.00	\$220.00				6	\$760.00										
3						4										\$540.00					4	\$540.00										
4						4	8									\$540.00	\$880.00				12	\$1,420.00										
5						14										\$1,890.00					14	\$1,890.00										
Part V - Contractor Coordination and Project Pricing \$5,370.00																																
Totals =											24.00	14.00	4.00	0.00	0.00	414.00	534.00	21.00	0.00		\$3,000.00	\$1,260.00	\$520.00	\$0.00	\$0.00	\$55,890.00	\$58,740.00	\$2,310.00	\$0.00	\$1,430.00	1,011	\$92,090.00

6th Avenue, from Iron Road to North of Iron Flats, 25% Concept Development

Iron Road from 14th Avenue to 6th Avenue, split 60% & 40% Fee Estimate = \$1,430.00 1,011 \$92,090.00

Part I - Land Survey																																
1	24		4			1		1			\$3,000.00		\$520.00			\$135.00			\$110.00	\$500.00	30	\$4,265.00										
2		12									\$1,080.00										12	\$1,080.00										
3			5			2						\$450.00				\$270.00				\$60.00	7	\$780.00										
Part I - Land Survey \$6,125.00																																
Part III - Project Management & Coordination																																
1						10	5									\$1,350.00	\$550.00				15	\$1,900.00										
2						10	5									\$1,350.00	\$550.00			\$200.00	15	\$2,100.00										
Part III - Project Management & Coordination \$4,000.00																																
Part IV - Street Design:																																
1							8										\$880.00				8	\$880.00										
2						4	18									\$540.00	\$1,980.00				22	\$2,520.00										
3						12	27									\$1,620.00	\$2,970.00				39	\$4,590.00										
4						40	5									\$5,400.00	\$550.00				45	\$5,950.00										
5						40	5									\$5,400.00	\$550.00				45	\$5,950.00										
6							9										\$990.00				9	\$990.00										
7						4	4	4								\$540.00	\$440.00	\$440.00			12	\$1,420.00										
8						1	1	4								\$135.00	\$110.00	\$440.00		\$200.00	6	\$885.00										
Part IV - Street Design: \$23,185.00																																
Totals =											24.00	17.00	4.00	0.00	0.00	23.00	10.00	1.00	0.00		\$3,000.00	\$1,530.00	\$520.00	\$0.00	\$0.00	\$3,105.00	\$1,100.00	\$110.00	\$0.00	\$960.00	265	\$3,310.00

6th Avenue, from Iron Road to North of Iron Flats, 25% Concept Development Fee Estimate = \$960.00 265 \$33,310.00

Total Fee Estimate = \$2,390.00 1,276 \$125,400.00



Memorandum

To: City Manager
City Commissioners
From: Corey Keller, Public Works Director
Date: October 13, 2021
Subject: Jacobs Operating Agreement
Agenda Item: New Business

Recommendation: Staff recommends the approval of the Jacobs Agreement for Operations, Maintenance and Management Services.

Background: This is a new agreement with Jacobs replacing the previous amended ten-year agreement that will end December 31, 2021. This agreement will be for a ten (10) year period with a renewal clause for an additional five (5) years following the ten-year agreement. Changes from the original 2007 contract include the name change from CH2M Hill to Jacobs, updated repair costs for the south plant and the bio gas facility that would exceed the amounts described in the old contract. This agreement also includes the membrane replacement cost that will occur in the next five years. The new agreement will still required the City and Jacobs to renegotiate the contract for services, operations, and maintenance each year witch will be brought to the commission at that time.

Justification: Changes in this contract will include some additional costs related to the replacement of the membrane at the North Plant. The membrane replacement has been broken up into a five-year period so that the City does not have to absorb the entire cost at once. It also includes updated repair costs to the South Plant and the Bio Gas facility. These were repair costs that were exceeding the negotiated contract price each year.

Financial Considerations: The contract amount for 2021 was \$2,150,313.00. The proposed contract for 2022 is \$2,384,807.00. This will be a \$234,494.00 increase from the previous year. The increase includes \$145,000.00 repair cost to the south plant and the \$109,365.00 Membrane replacement agreement with Suez for the north plant.

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

Legal Considerations: Legal has reviewed the document and agrees

Attachments: Agreement For Operations, Maintenance and Management Services and the Suez Contract

AGREEMENT
for
OPERATIONS, MAINTENANCE, AND
MANAGEMENT SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and between The City of Dodge City, Kansas (hereinafter “Owner”), whose address for any formal notice is P.O. Box 880, Dodge City Kansas 67801 and Jacobs Project Management Co., (hereinafter “Operator”) whose address for any formal notice is 9191 South Jamaica Street, Englewood, CO 80112.

Owner and Operator agree:

1. SERVICES

- A. Operator shall, within the design capacity and capability of the Owner’s facilities, manage, operate, and maintain the Project so that the effluent discharged from the wastewater treatment plant meets the requirements specified in Appendix C. The Scope of Services is defined in detail in Appendix B.

2. STANDARD OF PERFORMANCE

- 2.1 Operator shall perform the Services with the degree of skill and diligence normally employed by operations and maintenance professionals performing the same or similar services.

3. OWNER’S RESPONSIBILITIES

- 3.1 The Owner shall pay for all Capital Expenditures. Capital Expenditures over the amount of Five Thousand Dollars (\$5,000.00) must have prior written authorization from the Owner after exceeding the rebateable budgets. All Capital, including but not limited to all equipment, supplies, tools, computers, software and all other personal or real property purchased for use in the Project and billed to the Owner shall become the property of the Owner, but may be utilized by Operator at the Project site during the term of this Agreement.
- 3.2 The Owner shall be responsible to maintain and renew, with respect to all existing portions of the Project, any warranties, guarantees, easements, permits, authorizations and licenses that have been granted to the Owner, to the extent the maintenance thereof is not a responsibility of Operator hereunder.
- 3.3 The Owner shall pay all costs associated with the occupancy or operation of the Project and the performance of the Services, including but not limited to, all utility costs, all property, franchise, or other taxes assessed against the Project, except to the extent Operator shall be obligated to pay any such costs in accordance with the law or the terms of this Agreement.

- 3.4 The Owner shall provide Operator, within a reasonable time after request, any piece of Owner's heavy equipment that is readily available and not currently in use by the Owner so that Operator may discharge its obligations under this Agreement in the most cost-effective manner.
- 3.5 The Owner shall provide all licenses and insurance for Owner supplied vehicles used in connection with the project.
- 3.6 The Owner shall provide for Operator's use of all vehicles and equipment currently in use by Operator at the Project, including the vehicles described in Appendix F.
- 3.7 The Owner agrees to not offer employment or other compensation to Project Management and Supervisory personnel of Operator directly working on the Project for a period of two years (2) after the end date of this Agreement or said employee's re-assignment from this Project.
- 3.8 Owner will provide to Operator all data in Owner's possession relating to the Project. Operator will reasonably rely upon the accuracy and completeness of the information provided by the Owner.

4. COMPENSATION AND PAYMENT

- 4.1 Compensation for the Services is described in Appendix E.

5. TERM

- 5.1 The initial term of this Agreement shall be for a period of ten (10) calendar years commencing January 1, 2022, through December 31, 2031, notwithstanding the later date of execution of this Agreement. Thereafter, this Agreement shall be automatically renewed for successive terms of five (5) calendar years each unless cancelled by either party not less than 120 days prior to expiration of the initial term, or any successive term, or under the provisions so established in Appendix E.
- 5.2 Either party may terminate this Agreement at any time for a material breach of this Agreement by the other party after giving written notice of the breach and allowing the other party a reasonable time to correct the breach. Excepting breaches by Owner for non-payment of Operator's invoices in a timely manner, neither party shall terminate this agreement without giving the other party thirty (30) days' written notice of intent to terminate for failure of the other party to correct the breach within a reasonable time.
- 5.3 This Agreement may be terminated at anytime by mutual written agreement of the parties.

6. INDEMNITY AND LIABILITY

- 6.1 Operator hereby agrees to indemnify and hold Owner harmless from any claim, cause of action, liability or damages for property damage or bodily injury, including death, which may arise from Operator's negligent operations under this Agreement, or resulting from Operator's breach of this Agreement, to the proportion such negligence or breach contributed to the damages, injury, or loss, whether such negligent operation or breach be by Operator or by a subcontractor of Operator.
- 6.2 Owner agrees to indemnify and hold Operator harmless from any claim, cause of action, liability or damages asserted by any third party for property damage or bodily injury, including death, which may arise out of the ownership or operation of the Project, except to the proportionate extent caused by the negligence or willful misconduct of Operator, its employees or its subcontractors or Operator's breach of this Agreement.
- 6.3 It is understood and agreed that, in seeking the services of Operator under this Agreement, Owner is requesting Operator to undertake obligations for Owner's benefit involving the presence or potential presence of hazardous substances for which Operator has special training, experience and expertise. Therefore, Owner agrees to hold harmless, indemnify, and defend Operator from and against any and all claims, losses, damages, liability, and costs including, but not limited to, costs of defense arising out of or in any way connected with the presence, discharge, release, or escape of contaminants of any kind asserted by a third party excepting only such liability as may arise as the result of the negligence or willful misconduct of Operator, its employees or its subcontractors in the performance of services under this Agreement or results from Operator's breach of the Agreement, or claims asserted by Operator's employees or their assigns.
- 6.4 In no event shall either party, its subcontractors or their officers or employees be liable to the other for special, indirect or consequential damages, whether such liability arises in breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.
- 6.5 Operator's responsibility is to operate the certain aspects of the Project in compliance with current laws and regulations as may be amended from time to time, to the extent that such compliance is possible within the design and physical capacity of the Owner's facilities. It is not part of Operator's scope of Services to test for or eliminate water borne bacteria or viruses, except as required by current laws and regulations as may be amended from time to time. Any additional costs incurred due to compliance with changes in law after the execution of this Agreement shall be compensated to Operator by Owner.

7. INSURANCE

7.1 Operator shall provide the following insurance coverages throughout the term of this Agreement and all subsequent terms, and shall provide to Owner Certificates of Insurance demonstrating compliance with this provision:

7.1.1 Statutory Worker's Compensation and Employers Liability Insurance as required by the State of Kansas.

7.1.2 Comprehensive Automobile and Vehicle Liability Insurance with Three Million Dollars (\$3,000,000) combined single limits, covering claims for injuries to members of the public and/or damages to property of others arising from the use of Operator owned or leased motor vehicles, including onsite and offsite operations.

7.1.3 Comprehensive Commercial General Liability Insurance with limits of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of Operator or any of its employees, and subcontractors, or Operator's provision of Services under this Agreement

7.2 Owner will maintain the following insurances throughout the term of this Agreement and all subsequent terms, and shall provide Operator with Certificates of Insurance to demonstrate compliance with this provision:

7.2.1 Property Damage Insurance for all property including Owner supplied vehicles and equipment for the full fair market value of such property.

7.2.2 Liability Insurance for all motor vehicles and equipment provided by Owner and operated by Operator under this Agreement.

7.3 Owner and Operator will provide for a waiver of subrogation against the other as to all insurances required to be carried hereunder, and each party waives any claim against the other arising in contract or in tort which are covered by their respective insurance hereunder.

8. LABOR DISPUTES

8.1 In the event activities by Owner's employee groups or unions causes disruption in Operator's ability to perform Services, Owner, with Operator's assistance, or Operator at its own option, may seek appropriate injunctive court orders during any such disruption, Operator shall operate the facilities on a best efforts basis until any such disruptions cease, but Operator cannot assure compliance with all contract conditions.

9. FORCE MAJEURE

9.1 Neither party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical, abnormally difficult, or abnormally costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, strike, acts of God, or other occurrences, beyond its reasonable control. The party invoking this Force Majeure clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of Force Majeure.

9.2 In the case of Force Majeure events (including Acts of God), parties agree to share equally any Costs and expenses (including all overtime charges and additional equipment charges) in order to maintain the proper operation of the Project so that the effluent discharged from the facilities meets current permit specifications.

10. ACCESS TO FACILITIES AND PROPERTY

10.1 Owner will make its Project facilities accessible to Operator as required for Operator's performance of its Services, and will secure access to any other Owner property necessary for performance of Operator's Services.

10.2 Operator shall provide 24-hour per day access to Project for Owner's personnel. Visits may be made at any time by any of Owner's employees so designated by Owner's Representative. Keys for the Project shall be provided to Owner by Operator. All visitors to the Project shall comply with Operator operating and safety procedures.

11. CHANGES

11.1 Owner and Operator may from time to time during the term of this Agreement and all subsequent terms mutually make changes within the general Scope of Services of this Agreement. In the event of such changes the contract price and schedule for the remainder of the term will be equitably adjusted pursuant to a written Change Order, Modification or Amendment to the Agreement executed by both parties.

12. NO THIRD PARTY BENEFICIARIES

12.1 This Agreement and all subsequent terms gives no rights or benefits to anyone other than Owner and Operator and has no third party beneficiaries.

13. JURISDICTION

13.1 This Agreement and all subsequent terms shall be governed by and interpreted in

accordance with the laws of the State of Kansas.

14. SEVERABILITY AND SURVIVAL

14.1 If any of the provisions contained in this Agreement or any subsequent Agreements are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

15. FINES AND CIVIL PENALTIES

15.1 Operator shall be liable for those fines or civil penalties, which may be imposed against either the Owner or Operator by a regulatory agency or court for violations of the effluent quality requirements specified in Appendix C.1, that are a result of Operator's negligent operation or breach of this Agreement. Owner will assist Operator to contest any such fines in administrative proceedings and/or in court prior to any payment by Operator. Operator shall pay the costs of contesting any such fines.

16 AUTHORITY

16.1 Both parties represent and warrant to the other party that the execution delivery and performance of this Agreement has been duly authorized by the responsible parties thereof. Both parties warrant that all required approvals have been obtained and the executing party below has such authority to bind the party.

17 ENTIRE AGREEMENT

17.1 This Agreement, together with all Appendices attached to this Agreement, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its Appendices. The parties mutually declare there are no oral understandings or promises not contained in the Agreement which contains the complete, integrated, and final agreement between the parties.

SIGNATURE PAGE FOLLOWS

JACOBS PROJECT MANAGEMENT Co.

CITY OF DODGE CITY KANSAS

Authorized signature:

Authorized signature:

Name:

Name:

Title:

Title:

Date: _____

Date: _____

Appendix A

DEFINITIONS

- A.1 “**Adequate Nutrients**” means plant influent nitrogen, phosphorous, and iron contents proportional to BOD₅ in the ratio of five (5) parts nitrogen, one (1) part phosphorous, and one-half (0.5) part iron for each one hundred (100) parts BOD₅.
- A.2 “**Base Fee**” means the compensation paid by Owner to Operator for the base services defined in Appendix B of this Agreement for any year of the Agreement. The Base Fee is specified in Appendix E.1 and will be renegotiated annually. This compensation does not include payments for Requests by Owner that are incidental to or outside the Scope of Services, but does include the City funded repairs budget and the gypsum purchase and application budget.
- A.3 “**Biologically Toxic Substances**” means any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of Owner’s NPDES permit. Biologically Toxic Substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.
- A.4 “**BOD**” means Biochemical oxygen demand.
- A.5 “**Capital Expenditures**” means any expenditures for (1) the purchase of new equipment or facility items that cost more than Five Thousand Dollars (\$5,000.00); or (2) Repairs that significantly extend equipment or facility service life and cost more than Five Thousand Dollars (\$5,000.00); or (3) expenditures that are planned, non-routine, and budgeted by Owner.
- A.6 “**Change in the Scope of Services**” means those events or services which either change the basis of cost or add additional scope to the services provided in this Agreement which are anticipated as long term events (greater than one year). Such events or services include but are not limited to, services and/or cost presently the responsibility of Owner, newly mandated regulatory requirements, construction and the impacts thereof, and changes in the Project(s) characteristics.
- A.7 “**Cost**” means the total of all costs determined on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP), including but not limited to direct labor, labor overhead, chemicals, materials, supplies, utilities, equipment, maintenance, repair, and outside services.
- A.8 “**Incidental Services**” means those services requested by Owner incidental to/or not specifically identified or included in Operator’s Costs, but are related or similar in nature to the services contemplated under this Agreement, including but not limited to, services

and/or cost for plant or facility upgrades, rate studies, short term construction and the impacts thereof, engineering studies, and other short term incidental projects.

- A.9 **“Preventive Maintenance”** means the cost of those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or Operator to maximize the service life of the equipment, sewer, vehicles, and facility. Labor cost for preventative maintenance will be provided by Operator as part of Base Fee.
- A.10 **“Project”** means all equipment, vehicles, grounds, and facilities described herein and where appropriate, the operations, maintenance, and management of such, involved in the Owner’s wastewater treatment and land application process. Operator’s responsibilities for operation, management and maintenance are related primarily to the wastewater treatment facilities and process, but also include other aspects of the total Project as indicated in the Scope of Services.
- A.11 **“Repairs”** means those repairs arising under normal operations or as performed by mutual agreement that can significantly extend equipment or facility service life.
- A.12 **“Repairs Cost”** means the cost of those routine/non-repetitive activities and Repairs required for operational continuity, safety, and performance generally resulting from failure or to avert a failure of the equipment, sewer, vehicle, or facility or some component thereof.
- A.13 **“TSS”** means total suspended solids.

Appendix B

SCOPE OF SERVICES for PROJECT

OPERATOR, IN ADDITION TO SERVICES AND OBLIGATIONS SET FORTH IN THE BODY OF THIS AGREEMENT, OPERATOR SCOPE OF SERVICES SHALL INCLUDE:

B.1 GENERAL

- B.1.1 Alter as needed, the process, procedures and/or facilities to achieve the objectives of this Agreement; provided, however, that no alteration shall be without Owner's written approval if such alteration shall cost in excess of Five Thousand Dollars (\$5,000).
- B.1.2 Provide appropriate staff during the normal work day so as to assure the efficient and uninterrupted operation of the South Plant and Biogas facility eight (8) hours per day, seven (7) days per week. The North Plant shall be staffed eight (8) hours per day, five (5) days per week. The staff shall respond to emergency calls twenty-four (24) hours per day, seven (7) days per week, within one (1) hour of its occurrence.
- B.1.3 Staff the Project with a sufficient number of properly trained and qualified employees who possess the managerial, administrative, technical skills, expertise, training and experience to perform the Services specified in this Agreement, and where appropriate, the certification requirements mandated by State and/or Federal governmental regulatory agencies.
- B.1.4 Payment of all Cost incurred in normal Project operations of the wastewater treatment aspect of the Project except as specifically provided otherwise in this Agreement.
- B.1.5 Without limiting the generality of the foregoing, to maintain the following specific aspects of Project:
 - B.1.5.1 Maintain all facilities, equipment and structures for which it has responsibility under this Agreement in a clean, neat, and orderly fashion including painting and Repairs as needed.
 - B.1.5.2 Perform Repairs subject to the provisions of Appendix E.1.4.
 - B.1.5.3 Perform administrative and laboratory work involved in preparing billing for National Beef Inc., Nor-am, Mid America Truck Wash, septic haulers and submit the same to City.

- B.1.5.4 Operate and maintain twelve (12) lift stations and ten (10) grinder pump stations located throughout the City.
- B.1.5.5 Clean (pig) the three 15 inch (quarterly) and one 20 inch force mains from the Primary Pump Station to the reservoirs monthly.
- B.1.5.6 Inspect and perform preventive maintenance for all aspects of the Project for which it has responsibility under this Agreement, including but not limited to the fifty-five (55) air-vacuum/reliefs located on the force mains as needed, but at least annually, or as otherwise recommended by manufacturer.
- B.1.5.7 Perform all mowing and grounds upkeep at the Biogas Plant, North WWTP, Primary and Booster Pump Stations, lift stations, North and South reservoirs, and air-vac stations.
- B.1.5.8 Maintain all irrigation pipelines from the reservoirs up to and including screening units located at the center pivots of irrigation systems utilized in the land application aspects of the Project.
- B.1.5.9 Operate and maintain all equipment at the Primary and Booster pump stations.
- B.1.5.10 Operate and maintain all equipment at the reservoirs including making any Repairs to the floating covers on the biogas capturing system.
- B.1.5.11 Inspect and report any abnormalities on the City owned water wells 22, 23, 24, 25, 26, 27 and 28 and chlorine facility located outside the city limits of Dodge City on weekends and holidays.
- B.1.6 Place, at each permanently staffed Project facility, a copy of Operator's Corporate Safety Program and provide all employees training specific to this Program. The cost of any Capital Improvement required at the Project to bring the facilities within OSHA compliance at commencement of services will be paid by the Owner. Any changes in OSHA regulations requiring subsequent improvements to the facilities will be an out-of-scope event subject to compensation changes.
- B.1.7 Provide job related training for personnel in the areas including but not limited to operation, quality, maintenance, safety, supervisory skills, laboratory, and energy management. All such training shall be fully documented. Where employees are required by law or regulation to hold current licenses, certificates or authority to perform the work required of their respective positions, Operator shall provide the training and a reasonable time frame for the employee to qualify for such certificate, license or authority.
- B.1.8 Operator shall comply with all State and Federal Laws with regard to affirmative

action provisions for minority hiring as well as all federal or state non-discrimination laws.

B.2 WASTEWATER TREATMENT PLANT

- B.2.1 Within the design capacity and capability of the Wastewater Treatment Plant (Plants), manage, operate, and maintain the Plants so that effluent discharged from the Plant meets the requirements specified in NPDES permit No. M-UA11-NO01 and No. M-UA11-OO02 (copy attached), except only if one or more of the following occurs: (1) Plant influent does not contain Adequate Nutrients to support operation of the Plant's biological processes and/or contains Biologically Toxic Substances that cannot be removed by the existing process(es) and facilities; (2) dischargers into Owner's sewer system violate any or all regulations as stated in the applicable Sewer Ordinance and, (3) the flow, influent biochemical demand (BOD₅,) and/or total suspended solids (TSS) exceeds the Plant's design parameters; in which case Appendix C, Section 1.2 specifies responsibilities and remedies.
- B.2.2 Operate the facilities in a manner such that odor and noise are minimized within the design capacity and capabilities of the facilities. The cost of any upgrades or modifications to the facility above its design capacity and specifications to accomplish this will be treated as a Capital Improvement.
- B.2.3 Prepare and submit to Owner for transmittal to appropriate agencies, all required regulatory reports pertaining to operation and maintenance of the Project. Operator shall comply with all current local, State and Federal notices and reporting requirements, regarding violations, upsets, excursions, or emergencies related to the Project and take appropriate remedial actions.
- B.2.4 As long as land application is used as the method for disposal of biosolids from the wastewater treatment Plant, Operator shall comply with the State and Federal 40 CFR 503 regulations and any other regulations including but not limited to any county or city codes, applicable to such disposal process. Operator shall assist Owner in securing all permits and land use agreements, perform soils and biosolids testing, report the volume and quantity of biosolids land applied and shall acquire and apply as part of its Base Fee charges an adequate supply of gypsum and manage the application thereof.
- B.2.5 Provide computerized maintenance, process control and laboratory management systems for the Project. Owner shall have the right to inspect these records during normal business hours. The maintenance program will include documentation of spare parts inventory. This system shall be capable of providing historical data.
- B.2.6 Where applicable, monitor and report the volume and nature of septic tank hauler discharges and prepare billings therefore and submit to Owner.

- B.2.7 Perform all laboratory testing and sampling currently required by the NPDES permit. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.
- B.2.8 Provide and document all Preventive Maintenance for the Plants and other aspects of the Project for which it is responsible under the Scope of Services. Owner shall have the right to inspect maintenance work and records during normal business hours.
- B.2.9 Provide and document repairs for the aspects of the Project for which it has responsibility under the Scope of Services. The Repairs Limit described in Appendix E shall not include the salary cost of Operator's onsite personnel assigned to the Project making such repair, which salary cost is part of the Base Fee. However, due to the size, complexity, technical nature, or timing for completion of such repairs, Operator may with Owner's consent subcontract or provide Operator personnel outside of the Project to make such repairs and charge such services to the Repairs budget. Operator will provide Owner with a monthly report of expenditures for Repairs.

B.3 MEMBRANE FILTRATION WASTEWATER TREATMENT PLANT

- B.3.1 Owner has constructed a Membrane Wastewater Treatment Plant ("Membrane Plant") and now desires to have Operator operate said plant. Beginning of late March 2011, Operator began providing personnel and assistance for the start-up of the Membrane Plant.
- B.3.2 Operator will operate and maintain the Membrane Plant in accordance with the Membrane Performance Agreement, a copy of which is attached hereto as Appendix G.
- B.3.4 During the course of the Membrane Performance Agreement, if the following costs are incurred by Operator, these costs will be passed through to the Owner. This list does not include all eligible costs but is meant to represent the general categories of additional repair costs to which Owner would be responsible:
- Removal of solids from the membrane cassettes;
 - Purchase of additional membrane modules
 - Disposal of retired membrane modules;
 - Disposal of shipping materials;
 - Disposal of waste materials from repair work; and
 - Any tariffs or taxes on membrane materials that Owner is not exempt from paying.
- B.3.5 Within the design capacity and capability of the Membrane Wastewater Treatment Plant ("Membrane Plant"), manage, operate, and maintain the Plant so

that effluent discharged from the Membrane Plant meets the requirements specified in the Kansas Water Pollution Control Permit No. M-UA11-OO02 and NPDES Permit No. KS0099830, except only if one or more of the following occurs: (1) Plant influent does not contain Adequate Nutrients to support operation of the Plant's biological processes and/or contains Biologically Toxic Substances that cannot be removed by the existing process(es) and facilities; (2) dischargers into Owner's sewer system violate any or all regulations as stated in the applicable Sewer Ordinance; and (3) the flow, influent, biochemical demand (BOD5) and/or total suspended solids exceeds the Plant's design parameters; in which case Appendix C, Section 1.2 specifies responsibilities and remedies.

- B.3.6 Operate the facilities in a manner such that odor and noise are minimized within the design capacity and capabilities of the facilities. The cost of any upgrades or modifications to the facility above its design capacity and specifications to accomplish this will be treated as a Capital Improvement.
- B.3.7 Prepare and submit to Owner for transmittal to appropriate agencies, all required regulatory reports pertaining to operation and maintenance of the Project. Operator shall comply with all current local, State and Federal notices and reporting requirements, regarding violations, upsets, excursions, or emergencies related to the Project and take appropriate remedial actions.
- B.3.8 Provide computerized maintenance, process control and laboratory management system for the Membrane Plant. Owner shall have the right to inspect these records during normal business hours. The maintenance program will include documentation of spare parts inventory. This system shall be capable of providing historical data.
- B.3.9 Perform all laboratory testing and sampling currently required by the Kansas Water Pollution Control Permit No. M-UA11-OO02 and NPDES Permit No. KS0099830. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.
- B.3.10 Provide and document all Preventive Maintenance for the Membrane Plant and other aspects of the Project for which it is responsible under the Scope of Services. Owner shall have the right to inspect maintenance work and records during normal business hours.
- B.3.11 Provide and document repairs for the aspects of the Membrane Plant for which it has responsibility and which are flowdown costs to the Owner under the Scope of Services and the Membrane Performance Agreement. The Repairs limit described in Appendix E shall not include the salary cost of Operator's onsite personnel assigned to the Project making such repair, which salary cost is part of the Base Fee. However, due to the size, complexity, technical nature, or timing for completion of such repairs, Operator may with Owner's consent subcontract or provide Operator personnel outside of the Project to make such repairs and

charge such services to the Repairs Budget. Operator will provide Owner with a monthly report of expenditures for Repairs.

B.3.12 Maintain all Membrane Plant warranties, guarantees and licenses that have been granted to Owner on new equipment, purchased by Owner after the start date of this Agreement. Assist the Owner in enforcing existing equipment warranties and guarantees.

Appendix C

CAPACITY
and
CHARACTERISTICS

C.1 CAPACITY AND CHARACTERISTICS OF WASTEWATER TREATMENT PLANT(S)

C.1.1 South Wastewater Treatment Plant Design Capacities/ described as follows:

<u>Parameter</u>	<u>Plant No. 1</u>
Flow, million gals/day	7.2
BOD ₅ , pounds per day	103,010
TSS, pounds per day	86,010

North Wastewater Treatment Plant

<u>Parameter</u>	<u>Plant No. 2</u>
Flow, million gals/day	1.25
BOD ₅ , pounds per day	2794
TSS, pounds per day	3128
Daily Peaking Factor	3.5

All parameters shall be based on the design average dry weather flow with the Daily Peaking Factor being the multiplier applied to the design average dry weather flow.

C.1.2 In the event any one of the Project influent characteristics, suspended solids, BOD₅, or flow, exceeds the design parameters stated above, Operator shall return the plant effluent to the characteristics required by the NPDES permit in accordance with the following schedule after Project influent characteristics return to within design parameters:

<u>Characteristics Exceeding Design Parameters By</u>	<u>Recovery Period Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then Operator will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

C.1.3 Operator shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period.

C.1.4 The estimated Cost for Services under this specification is based on the following Project characteristics:

<u>Parameter</u>	<u>Plant No. 1</u>
Flow, million gals/day	N/A
BOD ₅ , pounds per day	N/A
TSS, pounds per day	N/A

The above characteristics are the actual twelve (12) month averages prior to the date Services are first provided under this Agreement. An increase of five percent (5%) or more in any of these characteristics during the term of this Agreement, shall constitute a change in scope of Services.

Appendix D

LOCATION AND DESCRIPTION OF PROJECT

WASTEWATER TREATMENT PLANT

Operator agrees to provide the Services necessary for the operation, maintenance, and management of the facilities described herein as part of the Project:

D.1 All equipment, grounds, and facilities now existing within the current property boundaries of or being used as part of the operation of Owner's Wastewater Treatment Plant located at in Sections 23 and 26, Township 28s, Range 25W Ford County, Kansas, including but not limited to all waste water irrigation lines to the center pivot or discharge site.

D.2 All equipment, grounds, and facilities now existing and being used as part of the operation of Owner's Water Treatment Plant including but not limited to Primary and Booster Pump Stations, lift stations located throughout the City, and wastewater transportation lines from the City to the Wastewater Treatment Plant.

D.3 Facilities and equipment covered under the Agreement include:

South Reclamation Site:

- a) Primary Pump Station: 101 McCaustland Rd #1
- b) Booster Pump Station: 11560 112 Rd
- c) 4 Force Mains from primary to reservoirs
- d) Lagoon system 11022-11023 Warrior Rd
- e) Several miles of underground irrigation pipelines, valves, valve banks, screen housing, bladder valves and flow meters
- f) 62 Air Vacuum reliefs
- g) 2 Irrigation Pump Stations

North Water Reclamation Site: 4120 North 14th Ave

- a) Membrane treatment plant
- b) Offsite pump station
- c) On – Pump Station
- d) Reuse valve vault
- e) Two force mains

Lift Stations:

- a) Rodeo Grounds
- b) Ranchwood
- c) Chaffins
- d) Rolliede
- e) Circle Lake
- f) Casino

- g) Cottonwood
- h) Lazy Acres
- i) Boto
- j) South Dodge

Grinder Lift Station

- a) Old SW Towing (1309 S. 2nd Avenue)
- b) Hi Plains Farm Equipment
- c) Midwest Mixer Services
- d) Kan Equip
- e) Happy Homes East
- f) Happy Homes West
- g) National Beef Engineering
- h) Kindsvater Shop
- i) Kindsvater Office
- j) Control Building
- k) Bio Gas LS

Warrior Project (Bio -Gas Facility) 11079 Warrior Rd

Appendix E

COMPENSATION, PAYMENT AND BASE FEE ADJUSTMENT PROCEDURES

E.1 COMPENSATION

- E.1.1 Owner shall pay to Operator as compensation for Services performed under this Agreement a Base Fee of Two Million Three Hundred Eighty-Four Thousand Eight Hundred Seven Dollars (\$2,384,807) which includes the Base Fee, Biosolids Cost, Gypsum Costs, Repairs Costs, Chemicals Costs, and the Membrane Agreement Costs for the period of January 1, 2022 through December 31, 2022. The Base Fee for subsequent calendar years of the initial term and any subsequent terms shall be determined as hereinafter specified.
- E.1.2 Changes in the Base Fee shall be negotiated annually, preferably at least three (3) months prior to the expiration of the calendar year of the then current term. Base Fee adjustments shall be negotiated based on increases or decreases in Labor & Benefits, Chemicals, Sludge Hauling, Repairs, modifications in the Scope of Services and Other Direct Costs to Operator. The parties agree that good faith negotiations resulting in mutual Agreement is the preferred methodology to be used to determine changes in the Base Fee and other contract provisions. So long as there is no change in the Agreement Scope of Services, and in the event that Owner and Operator fail to agree, the Base Fee for the next calendar year of the current term shall be the amount as determined by the application of the Base Fee adjustment formula shown in Appendix E.3, or the amount of the current Base Fee increased by three and half percent (3.5%) whichever amount is less. Upon such agreement between the parties as to the new contract, Operator shall issue an invoice retroactively adjusting the above Base Fee amount.
- E.1.3 Notwithstanding the provisions of E.1.2 above to the contrary, at any time during the calendar year the parties reach a written agreement, establishing a Base Fee different than that established under the provisions of E.1.2, the Base Fee so agreed to shall be retroactive to the beginning of the current calendar year.
- E.1.4 Gypsum Cost. The total amount Operator shall be required to pay for acquisition and application of gypsum shall not exceed the limit of One Hundred Fifty Thousand Dollars (\$150,000) for the contract period as set forth in Appendix E, Article E.1.1. Operator shall provide Owner with a detailed invoice of monies spent over the annual limit for gypsum acquisition and application, and Owner shall pay Operator for all monies in excess of such limit. Operator will rebate to Owner the entire amount that the cost of gypsum acquisition and application is less than the annual gypsum application limit.
- E.1.5 Repairs Cost. The total amount Operator shall be required to pay for Repairs Cost shall not exceed the annual Repairs Limit of Four Hundred Seventy-Five Thousand Dollars (\$475,000) for the contract period as set forth in Appendix E,

Article E.1.1. Total Repairs Cost includes South Plant Repairs cost of Two Hundred Fifty Thousand Dollars (\$250,000), North Membrane Plant Repairs cost of Twenty-Five Thousand Dollars (\$25,000), and Bio Gas Repairs cost of Two Hundred Thousand Dollars (\$200,000). Operator shall provide Owner with a monthly accounting reflecting the reason for and the cost of repairs provided. Once Operator has reached the Repairs Limit amount set forth for any given year, Operator shall provide Owner with a monthly accounting and invoice for any Repair Cost incurred in excess of the Repairs Limit. Owner shall pay Operator for all Repair Cost in excess of such limit. Operator will rebate to Owner the entire amount that actual Repairs Cost are less than the annual Repairs Limit during the calendar year.

E.1.6 Biosolids Cost. Owner shall pay as additional compensation to Operator a fee of Seventeen Thousand Five Hundred Dollars (\$17,500) for Biosolids Costs for the contract period as set forth in Appendix E, Article E.1.1. Operator shall provide Owner with a detailed invoice of Biosolids Costs over the annual biosolids limit and Owner shall pay Operator will rebate to Owner the amount the actual Biosolids Costs is less than the annual biosolids limit in any year of this Agreement.

E.1.7 Chemicals Cost. The total amount Operator shall be required to pay for chemicals for the Membrane Plant shall not exceed the annual Chemicals Limit of Thirty-One Thousand Eight Hundred Forty-Four Dollars (\$31,844) during the contract period as set forth in Appendix E, Article E.1.1. Operator shall provide Owner with a monthly accounting reflecting the reason for and the cost of chemicals provided. Operator will rebate to Owner the entire amount that actual chemicals for the New Plant are less the annual Chemicals Limit of the New Plant during the calendar year. In the event the Chemicals Limit for the New Plant is reached, Operator shall invoice Owner on a monthly basis for Chemicals Costs for the New Plant in excess of such limit.

E.1.8 Membrane Replacement Cost. The five (5) year schedule for membrane replacement cost is set forth below and shall be payable according to Appendix E, Article E.2.1. Upon final payment of replacement costs in 2026, Operator will provide warranty pricing based upon rates available at the time.

Payment period	Start date	End date	Payment amount
1	Jan 1, 2022	Dec 31 2022	\$109,365
2	Jan 1, 2023	Dec 31 2023	\$109,365
3	Jan 1, 2024	Dec 31 2024	\$109,365
4	Jan 1, 2025	Dec 31 2025	\$109,597
5	Jan 1, 2026	Sep 30, 2026	\$82,025

E.1.9 The Gypsum Limit and Repairs Limit shall be negotiated each calendar year. Should Owner and Operator fail to agree, the Gypsum Limit and Repairs Limit will be determined by the prior year's actual direct Gypsum and Repairs Cost.

E.1.10 Services that are provided by Operator at the request of Owner that are outside or beyond the Scope of Services shall, absent mutual written agreement to the contrary, be invoiced to Owner at Operator's Cost plus ten percent (10%).

E.1.11 In the event of a material change in the Scope of Services provided by Operator occurs as a result of a request by Owner or such required by a regulatory agency, Owner and Operator will negotiate an appropriate adjustment in Base Fee.

E.1.12 In the event Operator should expend the annual budget for any of the budget items noted in this Appendix E, Article E.1, Owner and Operator agree that Operator may begin billing monthly for any additional costs incurred on Owner's behalf. Invoices shall provide an accounting of the expenses and be subject to the payment terms denoted in Article E.2 below.

E.2 PAYMENT OF COMPENSATION

E.2.1 One-twelfth (1/12) of the calendar year Base Fee shall be due and payable on the first of the month.

E.2.2 All other compensation owing to Operator is due on receipt of Operator's invoice and payable within thirty (30) days.

E.2.3 Any monies due to Owner due to rebate reconciliations will be due and payable within sixty (60) days after the end of each calendar year.

E.2.4 Both parties shall pay interest at an annual rate equal to Wells Fargo Bank, N.A.'s prime rate plus one and one-half percent (1.5%) (said amount of interest not to exceed any limitation provided by law) on payments not paid and received within fifteen (15) calendar days, of the due date such interest being calculated from the due date of the payment.

E.3 BASE FEE ADJUSTMENT FORMULA

$$ABF = BF \times AF$$

Where:

BF = Base Fee specified in Article E.1.1

ABF = Adjusted Base Fee

AF = Adjustment Factor as determined by the formula:

$$AF = [((E-E_0)/E_0) .5 + ((C-C_0)/C_0) .5] + .02 + 1.0$$

E_0 = ECI for Compensation for Civilians Workers, Not Seasonally Adjusted (Employment Cost Index) for the month that is twenty-one (21) months prior to the beginning of the period for which an ABF is being calculated as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report, which is the month of June.

E = ECI for Compensation for Civilians Workers, Not Seasonally Adjusted (Employment Cost Index) for the month that is nine (9) months prior to the beginning of the period for which an ABF is being calculated as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report, which is the month of June.

C_0 = C_0 = Consumer Price Index for all urban consumers as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report for the month that is twenty-one (21) months prior to the beginning of the period for which an ABF is being calculated, which is the month of June.

C = Consumer Price Index for all urban consumers as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report for the month that is nine (9) months prior to the beginning of the period for which an Adjusted Base Fee is being calculated, which is the month of June.

Appendix F

(Description of Owner Vehicles Provided)

Make	Model	Year
International	Boom/Dump Truck	1981
International	Camel Truck	1992
Caterpillar	Front Loader	1992
John Deere	Backhoe	2000

Appendix G
Membrane Agreement

membrane replacement proposal

to:	City of Dodge City, Kansas referred to here as Dodge City or Buyer	date:	May 27, 2021
		no. of pages:	29 including cover
attention:	Cody Woods	email:	Cody.Woods@jacobs.com
plant address:	4120 North 14 th Avenue Dodge City, KS 67801 USA	telephone no.:	620 339 1099
from:	Tina St. Pierre regional lifecycle manager northcentral USA	email:	tina.stpierre@suez.com
		telephone no.:	905 465 3030 x3004
		cell no.:	416 402 9869
cc:			
subject:	membrane replacement and services extension of current MRA agreement	proposal no.:	208606-2
		original project no.:	200439
plant data:	Please provide corrections if inaccurate Dodge City Water Reclamation Facility, municipal sanitary wastewater treatment. 4 trains, each train has 1 x 48M cassette + 2 x 34/48M cassettes, both with ZW500D 340ft ² modules. substantial completion date: October 28, 2011		

proposal provisos

This proposal has been issued based on the information provided by the customer and on information currently available to SUEZ Water Technologies & Solutions at the time of proposal issuance. Any changes or discrepancies in site conditions, including but not limited to changes in system influent water characteristics, changes in environmental health and safety (EH&S) conditions, changes in the reissued state/provincial disposal system permit, changes in buyer financial standing, buyer requirements, or any other relevant change or discrepancy in the factual basis upon which this proposal was created may lead to changes in the offering, including but not limited to changes in pricing, guarantees, quoted specifications, or terms and conditions.

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1 introduction

SUEZ Water Technologies & Solutions is pleased to present this proposal to initiate an extension to the existing membrane performance agreement (MPA) contract with the City of Dodge City, Kansas for material supply and services only (wastewater membrane replacement, cassette refurbishment, InSight Pro, 24/7 emergency telephone service and annual service visits) at the Dodge City WRF.

The current membrane performance agreement began on October 1, 2011 and will expire on September 30, 2021. Part of that agreement was replacement of modules if necessary. Due to fortuitous operations, the agreement will expire without necessitating a membrane replacement.

SUEZ anticipates that Dodge City will require a membrane replacement not long after the expiration of the current agreement. To avoid a full charge to Dodge City/Jacobs for membrane replacement and to acknowledge the commitment by Dodge City/Jacobs in entering the original agreement, SUEZ is proposing an extension of the annual payments for 5 years following expiration of the current agreement.

With the discontinuation of the ZW500D 370ft² product and the introduction of SUEZ's newest ZW500D product, the RX12 430ft² module, SUEZ proposes matching the current surface area in each train by requiring only 2 cassettes of the new membranes in each train. This reduces the number of cassettes to be refurbished and upgraded for LEAP aeration, reduces the number of membranes required to meet flows and introduces additional spare space in each train for future membranes purchases either for flux management or potential expansion.

With the introduction of LEAP aeration, it is best practice to upgrade all trains at the same time and the most efficient time to make that change is during membrane replacement. To that end, SUEZ is proposing that the membrane replacement, cassette refurbishment and LEAP aeration upgrade be completed in one event rather than spaced out over consecutive years.

The scope of this extension will include the following:

- one complete membrane replacement (368 x ZW500D RX12 430ft² modules) – matching current surface area in the plant
- on-site membrane installation assistance;
- InSight Pro level service for the duration of the extension;
- InSight hardware replacement in year 1 and year 4;
- annual service visits for the duration of the extension, each visit = 2 days on-site;
- 24/7 telephone technical support for the duration of the extension
- cassette refurbishment
- upgrade to LEAP aeration.

Details of the scope are set out in the sections below.

SUEZ is a proven leader in delivering tangible value to our clients over the life of the plant. Our measure of success is how well we deliver **solutions** that help our clients meet their critical business objectives. Benefits of this agreement include:

- fixed lifecycle costs over the period of the agreement;
- planned membrane replacement.

Through long-acquired membrane experience, SUEZ has clearly distinguished itself from other membrane manufacturers. A mature service culture and deep technical expertise are at the ready to serve and support Dodge City through this next membrane lifecycle.

2 membrane replacement agreement

Through the term of this agreement, SUEZ will provide a quantity of membranes to replace the existing full plant of ZW500 RX12 430ft² membranes at the Dodge City WRF.

Based on the projected life of the current membranes and the planned start date of this agreement, SUEZ recommends the following replacement schedule:

agreement year:	2021	2022	2023	2024	2025	2026	total
membrane qty	-	-	368	-	-	-	368

*Through the term of this agreement, SUEZ will work with Dodge City to determine the actual timing of replacement events based on plant performance and membrane condition, with the ultimate goal to maximize current membrane life.

It is possible that, through virtue of continued good membrane management and plant operation, Dodge City may extend membrane life of the current membranes beyond the end date of this agreement. To avoid unnecessary premature replacement, Dodge City may choose to defer delivery of membranes into a future year provided that all membranes are received and accepted within a 2-year period following final billing for the agreement.

This membrane replacement agreement provides assurance to Dodge City that over the course of the agreement, SUEZ will provide the membrane modules specified or equivalent for use at the Dodge City WRF.

For optimal economics and to follow best membrane replacement practices, pricing is based on replacing and upgrading the plant in a single event.

3 SUEZ scope & price

SUEZ’s scope includes the material and services outlined in the table below. The sections that follow provide additional detail regarding each scope item.

item description - base	part #	quantity	price (USD)
ZeeWeed membrane modules – ZW500D RX12 430ft ²		368	
2-year full replacement membrane warranty, section 11		incl.	
cassette refurbishment (materials & on-site installation support) for 8 cassettes (2 per train)		incl.	
LEAP aeration upgrade (materials, off-site programming support & on-site installation support) for 8 cassettes (2 per train)		incl.	
InSight Pro consulting services, section 7.3	3110634	incl.	
24/7 emergency telephone support, section 7.4	3066598	incl.	
annual service visit, section 7.5		incl.	
in-house support, project management, section 7.1		incl.	
on-site support for membrane installation, section 7.2	135491	incl.	
freight, DDP Dodge City WRF, section 5	3095534	incl.	
All figures are in USD.			
Please make purchase order to ZENON Environmental Corporation.		total price¹	546,825

Notes:

1. SUEZ has agreed to apply the same pricing per year as the MPA agreement (USD \$76,453.50) plus additional pricing for cassette refurbishment and LEAP aeration upgrade;

payment schedule

payment period	start	end	payment amount (USD)
1	Oct 1, 2021	Dec 31, 2021	27,340.00
2	Jan 1, 2022	Dec 31, 2022	109,365.00
3	Jan 1, 2023	Dec 31, 2023	109,365.00
4	Jan 1, 2024	Dec 31, 2024	109,365.00
5	Jan 1, 2025	Dec 31, 2025	109,597.00
6	Jan 1, 2026	Sep 30, 2026	82,025.00
total			546,825.00

SUEZ will issue the invoice at the beginning of each payment period.

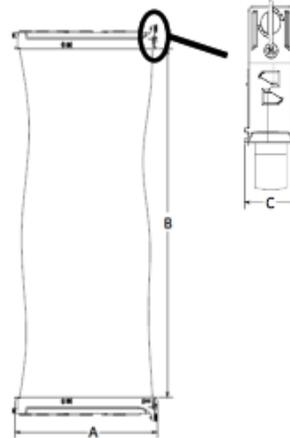
4 material description

4.1 membrane modules

Supply 368 x ZeeWeed 500D RX12 430ft² wastewater membrane modules.

ZeeWeed* 500D Module

Module Dimensions				
Application	Product	Width (A) mm (in)	Header-to-Header Length (B) mm (in)	Depth (C) mm (in)
MBR	500D	844 (33.2)	1,940 (76.4)	49 (1.9)



Module Properties									
Application	Membrane Surface Area m ² (ft ²)	Max. Shipping Weight ¹ kg (lb)	Lifting Weight ² kg (lb)	Material	Nominal Pore Size (µm)	Fibre Diameter (mm)	Surface Properties	Fibre Tensile Strength (N)	Flow Path
MBR	40.0 (430)	28 (61)	28 – 75 (61 – 164)	PVDF	0.04	2.2	Non-ionic & Hydrophilic	> 600	Outside-In

¹ Packaged

² Varies with solids accumulation

Operating & Cleaning Specifications						
Application	TMP Range kPa (psig)	Max. Operating Temp. °C (°F)	Operating pH Range	Max. Cleaning Temp. °C (°F)	Cleaning pH Range	Max. Cl ₂ Conc'n (ppm)
MBR	-55 to 55 [-8 to 8]	40 (104)	5.0-9.5	40 (104)	2.0 – 10.5 [<30°C] 2.0 -10.0 [30-40°C]	

Find a contact near you by visiting www.suezwatertechnologies.com and clicking on "Contact Us."

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FSpw500D-MOD_EN.doc Dec-20

5 ZeeWeed configuration

configuration data	units	existing plant configuration	proposed configuration after replacement
number of trains, plant		4	4
number of trains as configured		4	4
type of ZeeWeed membrane		ZW500D	ZW500D RX12
module surface area	ft ²	340	430
total number of cassette spaces per train		3	3
maximum number of modules per cassette		48	48
fully populated cassettes installed per train		1	0
flex cassettes installed per train		2	2
installed number of modules per flex cassette		34	46
total module count, train		116	92
total surface area in operation, train	ft ²	39,440	39,560
total module count, plant		464	368
total surface area in operation, plant	ft ²	157,760	158,240

6 delivery

- ❑ **packaging** – membranes may be delivered factory-installed in shipping frames, individually bagged, boxed and crated or a combination of the two methods depending on availability and urgency of delivery.
- ❑ **DDP** - Delivery will be by standard ocean/ground on the basis of DDP Dodge City WRF, 4120 North 14th Avenue, Dodge City, KS, USA or other named place of destination; Incoterms 2010. DDP = delivery duty paid. Partial shipments will be acceptable unless otherwise specified. Where delivery cannot be accepted at this destination, Dodge City shall specify an alternate, equivalent destination without delay.

Due to varying origins and availability, non-membrane items included in this proposal may be shipped separately from the membranes. Should separate shipments be required, where possible, SUEZ will strive to provide these items on or before the delivery of the membranes.

- ❑ **origin** - Delivery of ZeeWeed membranes originates from the SUEZ Water Technologies & Solutions, ZENON Membrane Products (ZEM), Bláthy Ottó u 4, Oroszlány, 2840 Hungary facility.
- ❑ **title & risk** - Title and risk of loss or damage to membrane modules and crating shall pass to Dodge City upon delivery at the named place of destination.

- ❑ **export documents** - All ZeeWeed membrane module shipments into the USA require clearance documentation from the EPA. SUEZ will prepare and provide the required EPA documentation to the Carrier.
- ❑ **MPF** - Merchandise processing fee is a fee assessed for formal custom entries based on 0.35% of the invoice value, with a minimum of USD \$25 per formal entry and a maximum of USD \$485. On the basis of DDP terms, this fee will be paid by SUEZ within the quoted price.
- ❑ **duty** - A US Customs duty of 3.9% applies to all ZeeWeed membranes shipped individually or in shipping frames; not in operational cassette frames. On the basis of DDP terms, this duty will be paid by SUEZ within the quoted price. Any new duty imposed after the date of this proposal is the responsibility of Dodge City.
- ❑ **taxes** - All applicable local, state, or federal taxes are the responsibility of Dodge City.
- ❑ **temperature** - UF membranes cannot be allowed to freeze or overheat and may require temperature-controlled freight and handling according to the season and the planned routing. If required, the price of temperature control will be included within the firm quote on freight by SUEZ.
- ❑ **unloading** - may require one of or a combination of a loading dock, extended forks and an experienced fork lift driver at delivery destination. Please consult with SUEZ at the time of purchase order (PO) preparation on this.

shipping crate Information (estimated)

qty	description	dimensions (in.)	weight (lb.)
12	ZW500D 30M shipping frame crate	L=93" x W=37" x H=96"	612 lb.
1	ZW500D 8M membrane module crate	L=93" x W=76" x H=52"	1,500 lb.

Notes:

- Only crates for membrane/cassette transport have been shown above to identify the largest and heaviest items that will need to be unloaded;
- Smaller crates/skids will be used for hardware items (hanger arms, spool connection components, etc.).
- ❑ **availability** - Delivery of membrane modules and cassette refurbishment kits is typically 10 - 20 weeks after receipt of order/request. With good planning between SUEZ and Dodge City, minimal to no delays should be achievable for receiving membranes and hardware when required. Definitive membrane module availability will be confirmed on request to supply and assuming that all current invoiced amounts have been paid to date.

7 SUEZ support

7.1 off-site support

project management

Provide planning and off-site assistance during the membrane replacement project.

7.2 on-site technical advisory services

The proposal includes a provision for technical advisory services during membrane installation and commissioning process to Dodge City's staff.

SUEZ assumes that the replacement of modules, cassette refurbishment and LEAP upgrade will occur in the plant in a single on-site event. SUEZ's scope includes 2 FSR's on-site for 10 x 10-hr days.

SUEZ strongly recommends that Dodge City consider having at least one experienced person on site during this period.

The following activities will be executed and completed jointly by SUEZ personnel and plant staff:

- remove existing membranes/cassettes;
- refurbishment of cassettes and upgrade to LEAP aeration;
- install the new membrane modules into existing cassettes;
- perform bubble test where applicable to test membrane integrity and review trans membrane pressure (TMP) on the installed membranes and compare to expected values for new membranes.

operating responsibility - Dodge City retains control of the work site and retains final responsibility for the installation and commissioning process.

SUEZ will perform the services specified in the scope section of this document, but SUEZ will not operate the system. For the purposes of this agreement, the term "operate the system" shall mean to run or control the functioning of the equipment or to otherwise conduct or manage the affairs of any aspect of water or wastewater treatment or other functions at Dodge City's site, and shall include functions such as providing operators or laborers to adjust or control water treatment ("WT") equipment, wastewater treatment ("WWT") equipment or sludge management facilities ("SWF"), providing program oversight or directing on-site or contract operators/laborers to adjust or control WWT or SMF, providing personnel responsible for or providing oversight of water treatment residual quality, wastewater effluent quality, sludge quality, waste characterization, or waste disposal activities, or providing personnel with continual or daily operational responsibilities with respect to water or wastewater treatment, influent or effluent compliance monitoring, process monitoring, government reporting or notification, or permit compliance.

waiting time - Any overtime or waiting times required due to unforeseen site events outside the control of SUEZ will be invoiced according to the prevailing SUEZ service labor rates sheet, available on request.

reporting - Before leaving site, SUEZ will record observations and discuss with operators concerning the condition of the equipment, tasks accomplished during the visit, and key operating and maintenance issues requiring further attention. SUEZ will provide a copy of a written report before leaving site and/or provide a service visit report to the plant operator within a reasonable timeframe of the SUEZ service representative's return to the office. In any case, Dodge City will be asked to sign a work order that describes the hours on site and tasks accomplished.

SUEZ duties for on-site services

- SUEZ will coordinate its work under this agreement in a reasonable manner with the operating staff of the facility.
- SUEZ will maintain public liability and property damage insurance covering all operations undertaken by SUEZ and its sub-contractors with a limit of \$5,000,000 inclusive for any one accident or occurrence. If for any reason additional insurance coverage (e.g. general construction/erection all risk, general liability) is required above and beyond SUEZ's standard insurance terms for on-site commissioning supervision, Dodge City must inform SUEZ in writing 60 days prior to work commencement at site. Dodge City will be billed for all additional insurance costs and processing fees.
- SUEZ will maintain workers compensation and employers' liability coverage as per statutory requirements.

7.3 InSight Pro process consulting services

Extension of the existing InSight Pro service from October 1, 2021 through to September 30, 2026 (5 year term). Includes replacement of necessary black box/digital access equipment twice over the term of the extension.

7.4 24/7 emergency telephone technical support

Extension of the existing 24/7 support from October 1, 2021 through to September 30, 2026 (5 year term).

7.5 annual service visit

Extension of annual service visits from October 1, 2021 through to September 30, 2026 (5 year term). Dodge City can schedule 5 visits over the term of the extension. Each service visit is 1 FSR x 2-8hr days on-site. Additional time can be requested at SUEZ's prevailing field service rates per attachment a.

7.6 cassette refurbishment

Any time a commitment is made to replace membranes on a train or plant basis, it is recommended that consideration be given to refurbishing the plastic components and hardware of the cassettes. Plastic components can wear and degrade over time with exposure to chemicals, abrasive solids, high temperatures and other environmental factors in the wastewater. SUEZ recommends planning cassette refurbishments during membrane replacement to economize on the fact that cassettes are being lifted from the membrane tanks and the modules are being removed from the cassette.

materials

SUEZ will supply 8 x ZW500D 48M cassette refurbishment kits, spares included.

warranty

cassette refurbishment kits are supplied with a one year warranty per attachment a, item 6e.

7.7 LEAP aeration upgrade

SUEZ introduced LEAPmbr to address our customers' key wastewater treatment challenges and provide the low energy and advanced performance solution demanded by the global wastewater treatment and reuse market. This advanced aeration technology is intended to be the primary product for all future ZeeWeed MBR applications. To service the existing wastewater customers, SUEZ can provide LEAPmbr retrofit kits to upgrade the current 48M module cassettes to take advantage of this new technology

materials

SUEZ will supply 8 x ZW500D 48M LEAP upgrade kits, spares included.

warranty

LEAP upgrade kits are supplied with a one year warranty per attachment a, item 6e.

8 scope - Dodge City

8.1 installation preparation

- Receive, off-load, handle and provide temperature-controlled storage of the equipment and materials required for Seller to perform the duties outlined in the Seller's scope of supply.
- Membranes must be stored in a sheltered area, protected from freezing, direct sunlight or extreme heat, and sealed as shipped until ready for use. Storage should be in a dark, dry, level area at a temperature of 5-30°C (41-86°F). Membranes have a shelf life of 1 year before requiring re-preservation and should not be stored longer than necessary prior to installation. Dodge City is responsible for risk of loss of Seller's parts while in storage at the customer's plant.
- Inspect, evaluate and make repairs as required for the membrane tanks, mounting brackets, hoses and all connections prior to SUEZ arriving at site.
- Provide all access structures (such as scaffolding) and mechanical lifting equipment including cranes, forklifts and scissor lifts.
- Assure availability of a copy of the operating manual, all process and instrumentation drawings, and all electrical drawings on site and accessible for reference.
- Maintain adequate insurance coverage for the risks of fire, theft, vandalism, floods and personal injury to authorized or unauthorized visitors.

8.2 installation

- Provide 2 or more plant personnel to work continuously with the SUEZ service representative during installation and commissioning of the modules for the full duration of the site visit.
- Dodge City will afford Seller's personnel free access and egress of the facility for all authorized work. Dodge City will provide reasonable access to workshop facilities with standard workshop tools and equipment as is necessary to meet any repair and maintenance requirements of the system during installation.
- Provide adequate illumination and emergency lighting for all areas in which the Seller will be executing the scope of supply. Provide all site utilities such as raw water, instrument quality air, potable water and power required for operation of the proposed equipment included in this scope of supply. Assure that adequate quantities of membrane cleaning and neutralizing chemicals are on hand for wash procedures including sodium hypochlorite, sodium bisulphite, citric acid and sodium hydroxide. Supply telephone/fax/modem access while Seller's staff members are on-site.
- Dodge City will provide assistance to:
 - clean each cassette as it is removed from the system.
 - install cassette refurbishment / LEAPmbr aeration kit components;
 - place new modules into each cassette.
 - Prepare shipping frames for return to SUEZ. See section 8.1.
- Dodge City will:
 - remove cassettes from the system as required.
 - return the cassette to the system.
 - dispose of all retired membrane modules and cassette components.
 - Dispose of shipping and packaging materials unless specifically requested not to do so by SUEZ.
 - Load shipping frames onto the truck for return to SUEZ. SUEZ will be responsible for organizing the logistics of delivery back to SUEZ.

8.1 empty shipping frame preparation

All shipping frames returning to Hungary must be clean and packaged appropriately for trans-oceanic transport in shipping containers. SUEZ can provide Dodge City offsite assistance to facilitate the return of shipping frames.

All wooden packaging material used for international shipments must conform to current phytosanitary standards to reduce the risk of introduction and spread of quarantine pest species associated with the movement in international trade of wood packaging material made from raw wood.

All wood packaging material used to transport shipping frames internationally, must comply with ISPM15 which is the standard for phytosanitary measures and be properly stamped indicating compliance with the standard. Failure to comply with the standard may lead to shipment refusal and subsequent project delays. For detailed information on ISPM15 please visit <http://www.ispm15.com>.

Whenever possible, save and re-use the wooden skids that the shipping frames arrived on for return freight purposes.

9 solution design notes

9.1 permits

regulatory requirements

Dodge City is responsible to review and report to the permit granting agency on the impact of any of the proposed changes on the regulatory permit. SUEZ will provide the necessary manufacturer's technical support on regulatory issues

Please speak with your regional lifecycle manager (RLM) if there are any regulatory requirements or concerns.

utilization

SUEZ understands that these modules are required as replacements for currently installed modules.

9.2 maintenance notes for replacement membranes

At the time of any full plant or full train membrane replacement, it is recommended to evaluate the appropriate timing of repairs or replacement of the following ancillary system components:

- Is it the right time to address any tank coating repairs which may be required?
- Are any of the aeration or permeate connection hoses, clamps, camlocks, camlock seals and couplings due for replacement?

preferential flow

Preferential flows can create a risk of over-fluxing of new modules when they are installed in the same train with older modules. The mixing of old and new modules in the same cassette also makes management of slack adjustment more difficult. SUEZ recommends that Dodge City plan membrane module replacement on a complete cassette and complete train basis wherever possible to achieve both optimal performance and best value from the new membrane modules. In this case, by replacing all membrane modules on a per train basis, this risk has been neutralized.

membrane slack

SUEZ's membranes are supplied and shipped with an initial factory fiber slack designed to optimize membrane air scouring during operation as well as accommodate a degree of shrinkage. Membranes shrink in length early in their lifecycle when exposed to higher

temperature water. The pace of shrinkage slows with age. With the installation of new membranes, the requirements for slack adjustment start a new cycle.

Due to the wide variety of operating environments in which our products can be utilized, it is difficult to generally predict the rate of shrinkage. If membranes operate in a condition of insufficient slack for an extended period of time, irreversible damage to the fiber-urethane bond may occur. Please refer below to the recommended inspection frequencies based on your plant’s membrane tank operating temperature. Visual inspections should begin during the membrane installation and be repeated over time on the same cassette. Digital pictures will allow for comparative analysis of the fiber slack over time.

maximum operating temperature	recommended slack inspection frequency
0-24 °C / 32-76 °F	every 2 years
25-30 °C / 77-86 °F	once per year
>30 °C / > 86 °F	twice per year

bubble test pressure

The bubble test pressure for the purchased membranes is 2 psi horizontally and 3 psi vertically.

hoses & fittings

SUEZ has assumed for this proposal that the current aeration and permeate cassette connections for the ZW500D cassettes do not need replacing at this time. If this is not so, please advise SUEZ and request that they be added to this proposal.

pre-screen

Trash and non-biodegradable solids, such as hair, lint, grit and plastics may foul or damage the membranes if allowed to pass into the membrane chamber. SUEZ recommends that an internally-fed screen with mesh or punched-hole openings less than or equal to 2 mm with no possibility of bypass or carryover be operated upstream of the new membranes to ensure effective operation and to maximize membrane life.

9.3 LEAP aeration upgrade

LEAPmbr aeration technology is SUEZ’s latest technology advancement for wastewater treatment which incorporates a dramatically simplified, more efficient membrane aeration system offering significant savings in operating cost.

- ❑ reliability through simplified design – Innovation doesn’t have to be complex. With simplicity as a design objective, LEAPmbr has reduced membrane aeration equipment and controls without compromising on flexibility;
- ❑ energy savings – LEAPmbr, with its reduced blower output requirements for scouring air, can provide a 30% reduction in blower energy use under normal operation and up to a 50% reduction depending on the system configuration;
- ❑ maintenance savings – LEAPmbr aeration eliminates the requirement for high-frequency cyclic valves and the associated maintenance. Compressed air requirements are also reduced.

LEAPmbr aeration technology will be pre-installed in each of the cassettes. Air is delivered on a continuous basis, which eliminates the need for cyclic aeration valves. Once the program has been upgraded for LEAPmbr aeration, the cyclic will operate as normal open/closed isolation valves (i.e. they will not cycle) and only close when the train is not being aerated (i.e. shutdown or in standby).

LEAPmbr aeration technology operates at two discrete airflows, LEAP-Lo and LEAP-Hi, based on the plant operating conditions. Under average daily flow (ADF) conditions where most plants operate the majority of the time, the membrane cassettes will operate under the LEAP-Lo airflow condition. Under flow conditions greater than ADF, where the membranes are operated at a higher flux, the airflow rate increases to the LEAP-Hi condition. The modulation between lo and hi airflow conditions is managed by the control code to determine the number of blowers required for operation.

Controlling two aeration modes for both the existing trains and the trains converted to LEAPmbr presents design and operating challenges and it is strongly recommended to plan for conversion of all trains to LEAPmbr at the same time.

blowers

SUEZ will supply resheaving kits for all membrane aeration blowers so that they may run at the lower air flows required for the LEAP conditions. SUEZ will supply Dodge City with the appropriate air flow rates.

Dodge City or their 3rd party representative will be responsible for installation of the blower sheave kits.

10 health & safety

Dodge City

- Dodge City will identify and inform Seller's personnel of any site specific hazards present in the work place that could impact the delivery of Seller's scope of supply and agrees to work with Seller to remove, monitor, and control the hazards to a practical level.
- Dodge City will provide training to Seller's personnel on all site specific and standard company operating procedures and practices for performing work on site. Such training programs may include, but are not limited to, general environmental health & safety (EHS), HAZOP, fire protection, drug testing, incident notice, site conduct, standard first aid, chemical receiving, electrical safety, etc. Dodge City will provide a certificate of training for Seller's personnel. This program will be fully documented, training materials will be provided, and attendance list will be kept.
- If any type of lifting devices will be used on site, Dodge City will provide proof of its maintenance, inspection and certification documentation upon request and will assist the SUEZ service representative to complete a safety inspection checklist.
- Where confined space entry may be required, Dodge City will provide early notice and will collaborate with SUEZ in planning adequate staffing and in advising the local fire/rescue department as required.

- ❑ No time or cost provision has been made for preparations such as safety record clearances, drug testing, insurance confirmations or pre-job-training in excess of 1 hour. Prior to finalizing the Purchase Order and the work schedule, Dodge City will advise SUEZ of any pre-job or pre-mobilization requirements. Where these requirements exceed 1 hour, this time will be charged to Dodge City at rates set out in the prevailing SUEZ labor rate sheet.
- ❑ Where certain short duration activities require two people for safety and the SUEZ Service representative is alone at site, Dodge City will cooperate as required to assure that correct safety precautions are taken.
- ❑ Dodge City is responsible for the following environmental provisions:
 - environmental use and discharge permits for all chemicals at Dodge City's facility either listed in this document or proposed for use at a later date;
 - any special permits required for Seller's or Dodge City's employees to perform work related to the water treatment system at the facility;
 - all site testing, including soil, ground and surface water, air emissions, etc.;
 - disposal of all solid and liquid waste from the Seller's system including waste materials generated during construction, start up and operation.
- ❑ Dodge City is responsible for provision of health and safety facilities to Seller's field service representatives to the same extent that they are provided to Dodge City's own employees, including provision of:
 - eyewash and safety showers in the water treatment area;
 - chemical spill response;
 - security and fire protection systems per local codes;

SUEZ

- ❑ All work on site will be performed in accordance with applicable law and will be performed reasonably, in a clean and safe manner. The SUEZ service representative will abide by the more stringent of the applicable health, safety and environmental policies and procedures of either Dodge City or SUEZ.
- ❑ SUEZ will provide all applicable safety training required by SUEZ policies or by state/province or national health and safety regulations. The SUEZ service representative will have undergone workplace hazardous material information system (WHMIS) training and will come equipped with necessary personal protective equipment (PPE).
- ❑ Emergencies - In emergencies affecting the safety of persons, work or property at the site and adjacent thereto, SUEZ will act, without previous instructions from Dodge City, as the situation warrants. SUEZ will notify Dodge City immediately thereafter.

11 ZeeWeed Membrane Module Standard Warranty

This schedule sets out the warranty with respect to ZeeWeed membrane modules (“membrane modules”). No other warranties, expressed or implied are made in connection with the sale of these products, including, without limitation, warranties as to fitness for any purpose or use or merchantability of these products. The warranty provided herein will be the exclusive and sole remedy of Buyer. This warranty is not transferable.

1. Definitions

The following terms shall have the meaning set forth below when used in the warranty document:

- a) “Buyer” means the party purchasing the ZeeWeed Modules from the Seller
- b) “Seller” means a business component of, or legal entity within the SUEZ Water Technologies & Solutions business which is selling the ZeeWeed membranes.

2. Warranty Product

This warranty applies to only the membrane modules supplied under the contract of sale. Membrane module means the hollow fibre ultrafiltration membranes and the potted plastic headers. This warranty does not cover air piping to the membrane module, permeate piping from the membrane module, piping connection fittings, connecting hardware and cassette frames with their associated components including but not limited to spacers, aerator tubes, aerator assemblies, screen, module dummies or module blanks.

3. Scope of Warranty

The Seller warrants that its membrane module(s) will be free of defects due to faulty materials or errors in manufacturing workmanship.

Regular membrane module inspection and normal fibre repair shall be the responsibility of Buyer.

All replacement membrane modules will be shipped on the basis of INCOTERMS 2020 FCA SUEZ manufacturing facility.

All ancillary costs including but not limited to bagging, boxing, crating, freight, freight insurance, applicable taxes, import duties, certifications, brokerage, receiving, forklift services, storage at site, reattachment hardware, hose/clamp/camlock replacement, crane services, installation, fibre repair materials, glycerin flushing, commissioning and waste disposal are the responsibility of Buyer.

4. Warranty Start Date

Membrane warranty will start on the earlier of:

- a) The date that installation of the original membrane module(s) has been substantially completed, or
- b) Three (3) months from the date of delivery of the original membrane module(s) to Buyer.

5. Warranty Duration

Total Warranty Duration: a total of 24 months of full replacement warranty coverage.

6. Notification of Claim

All claims filed under this warranty shall be made in writing by Buyer within 30 days of identifying a defect.

Buyer shall provide the following information:

- a) A description of the defect giving rise to the claim;
- b) Photographs showing the manufacturing defect;
- c) The serial number(s) of the membrane module(s) which is (are) the subject of the warranty claim; and
- d) Operating data and repair history for the life of membrane modules which are the subject of a warranty claim.

7. Verification of Claim

After receipt of written notification of a defect, the Seller will promptly undertake such investigations as, in the Seller's opinion, are necessary to verify whether a defect exists. The Seller reserves the right to require additional data as necessary to validate claims. Buyer may, in the course of these investigations, be requested to return membrane module(s) to the Seller for examination (see

section 11). The Seller may also conduct reasonable tests and inspections at Buyer's plant or premises. If the results of the investigation do not validate the defect claimed, Buyer will reimburse the Seller for all reasonable expenses associated with said investigation, including expenses for all tests, inspections, and associated travel.

8. Satisfaction of Claims

The Seller will have the right to satisfy claims under this warranty in a flexible manner. Such flexibility may include the repair of existing membrane modules or changes in operating protocols or membrane module replacement or by upgrading failed membrane modules with newer membrane module(s) that may embody design and efficiency improvements. Buyer consents to the supply of replacement membrane modules which may be of a different design than original membrane modules.

9. Operating Information

To maintain the membrane module warranty, membrane system operation records from initial start-up date until claim must be maintained by Buyer and made available to the Seller upon request. Records must be provided in sufficient detail as applicable to verify the subject of a warranty claim and can include but is not limited to, operation data including information on feed water quality, temperatures, flows, trans-membrane pressures, aeration rates, permeate quality, cleaning intervals, cleaning chemical concentrations, elapsed time since start-up, relevant analytical data and reporting of any screen bypass events.

Buyer shall maintain and share access to a single reference copy in electronic form of a membrane module map containing the history of activity by membrane module and the serial number for each module. Buyer shall log its procedures performed related to a membrane module including relocation of membrane modules, repairs, replacements and any other noteworthy events.

Buyer authorizes the Seller to conduct any reasonable review of operation and maintenance records or to inspect facilities where membrane modules are installed, upon reasonable notice to Buyer. Such reviews and/or inspections are intended to also assist the Seller and Buyer in detection of membrane system faults and to optimize the care and operation of the membrane modules.

10. Limitation of Warranties

Occurrence of any of the following as reasonably determined by the Seller will void this warranty:

- a) A material failure to operate the membrane system in accordance with Seller's operations and maintenance manual supplied to Buyer as part of the contract, including material failure to adhere to the Seller's specified membrane module cleaning procedures and the use of anything other than Seller-approved membrane module cleaning agents.
- b) Failure to adhere to the preventive maintenance program as presented in the Seller's operations and maintenance manual, in published product manuals and in specifications.
- c) Failure to adhere to all transportation and storage requirements. ZeeWeed membrane modules may be stored up to 12 months from date of receipt and must be transported and stored in original intact packaging out of direct sunlight in ambient temperatures between 5-35 Degrees Celsius. Storage beyond 12 months from date of receipt requires a written request to SUEZ to maintain membrane module warranties.
- d) Introduction of destructive foreign materials and chemical agents into the membrane module.
- e) Failure to maintain and provide system operating data and repair history for the life of membrane modules which are the subject of a warranty claim.
- f) Physical abuse or misuse, incorrect removal or installation of membrane modules by non-Seller personnel including fibre damage caused by operator error in handling of membrane modules or cassettes.
- g) Unauthorized alteration of any components or parts originally supplied by the Seller.
- h) Intentional damage.

11. Return Procedure

In the event that the return of a membrane module is required pursuant to this warranty, Buyer will first obtain a Return Goods Authorization (RGA) number from the Seller. Membrane module(s) shipped to the Seller for warranty examination must be shipped freight prepaid in environmentally controlled freight and storage with ambient air temperature between 5-35 degree Celsius. If Buyer desires temporary replacement membrane module(s) to replace those alleged to be defective and returned to the Seller for warranty examination, Buyer shall be responsible for the cost associated with any such replacements until examination of the returned membrane modules pursuant to this warranty is complete. Any membrane module examined by Seller as part of a warranty claim where the membrane module is subsequently found to be performing as warranted or where a membrane module failure is not

covered under the warranty will be returned to Buyer, freight collect or disposed of by Seller and the cost associated with any membrane analysis and diagnostic work will be levied against the Buyer based on SUEZ standard labour rates.

12. Disclaimer and Limitation on Liability

To the maximum extent permitted by law, in no event shall Seller be liable for any loss of profit or revenues, loss of production, loss of use of equipment or services or any associated equipment, interruption of business, cost of capital, cost of replacement water or power, downtime costs, increased operating costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages arising out of or relating to the performance or actual or alleged breach of the agreement, regardless of whether a claim is based in contract (including warranty or indemnity), extra-contractual liability, tort (including negligence or strict liability), statute, equity or any other legal theory.

12 terms and conditions of sale

a - specific terms and conditions of sale

These terms take precedence over the general terms and conditions of sale.

1 legal entity for contracting

ZENON Environmental Corporation is the name of the Seller, and means a business component of, or legal entity within the SUEZ Water Technologies & Solutions business (SUEZ) which is selling ZeeWeed modules.

Please advise us if this SUEZ entity is not set up in your purchasing system as a vendor and you do have another SUEZ entity set up. We are keen to make the purchase process as convenient as possible for Dodge City.

short form: Where a short reference is required in this document, for convenience, we are called simply **SUEZ**.

2 payment terms

On approved credit, payment terms are net 30 days from customer receipt of invoice. Please see the invoicing schedule in the price section.

3 proposal validity

Prices quoted and proposal terms are valid up to thirty (30) days after the date of issue of this proposal unless confirmed with a purchase order.

4 bonds

Performance or payment bonds are not included in the price. These bonds can be purchased on request but will be at an additional cost.

5 flight booking

Prices quoted for installation which include airfare are either based on timely confirmation of a visit schedule or based on receipt of a purchase order in time to book any flights seven days in advance. Additional airfare charges related to late arrival of a purchase order will be extra and billed through to Dodge City without mark-up.

6 early termination

In the event of contract termination other than as defined in attachment a.15 of this agreement the following will apply:

- SUEZ will initiate delivery of all materials and services for which payment has been received in excess of the value of materials and services provided by SUEZ at the time of cancelation.
- Buyer will, within 30 days, make a payment to SUEZ equal to the value of materials and services provided to the point of termination, less the cumulative sum of payments paid by Buyer.
- Once terminated, there is no option to restart the agreement. No penalties or reimbursements, other than those outlined in this agreement, shall be paid by either party

7 purchase order guidelines

Please ensure that your purchase order has covered the following points. This will ensure accurate and prompt order entry, product delivery, invoicing and accounts receivables processing and will prevent administrative delays for all parties.

- ❑ **legal entity** – Please be sure your purchase order is issued in the name of the specific SUEZ legal entity issuing this proposal cited above. We will be glad to work with your purchasing department to set this entity up as an approved supplier/vendor. Please advise us if this SUEZ entity is not set up in your purchasing system as a vendor and you do have another SUEZ entity set up.
- ❑ **hard copy** – Our strong preference is to receive a hard copy of your purchase order rather than a PO number alone.
- ❑ **proposal number and date** – Please reference the 6-digit proposal number and the proposal date which are found in the footer of each page.
- ❑ **price** – State the total price you are accepting for this order.
- ❑ **taxes** – Provide any required tax exemption certificates.
- ❑ **ship-to address** – Please clearly define the plant site address or delivery location and the receiver's email & telephone. Please specify receiving hours and any special off-loading requirements.
- ❑ **delivery date** – Please include your requested delivery date or agreement start date.
- ❑ **purchase order** – Please send your purchase order to SUEZ by email to service.pocentral.wts@suez.com.

b – general terms and conditions of sale

SUEZ's standard terms and conditions apply. See attachment a.

Note to purchasing agent: The SUEZ's standard set of commercial terms & conditions are written for moderate value transactions to allow an efficient and rapid provision of services and parts. Where corporate agreement terms have been previously agreed, these may be brought forward by either party and applied by mutual consent. If either of these terms sets are not immediately acceptable, please expect a typical 6-10 week cycle of mutual review to build agreement on changes.

13 signed agreement

Through the issue of this proposal, SUEZ signals their intent to enter into an agreement with Dodge City. Dodge City and SUEZ acknowledge that they have read and understood this agreement and agree to be bound by the terms and conditions specified in it.

offered by legal entity: ZENON Environmental Corporation, also known as SUEZ or Seller

accepted by legal entity: City of Dodge City, Kansas also known as Dodge City or Buyer

authorized signature by: _____

title: _____

signature date: _____

signature: _____

x

purchase order no: _____

Upon acceptance of this proposal, please forward the following either

• by email with .pdf attachments or • by postal mail or • by fax.

1) this signature page completed

to:

2) a hard copy of your purchase order, and

3) any required tax exemption certificates

service.pocentral.wts@suez.com

or

SUEZ Water Technologies & Solutions

attention: Contracts Administrator

Please contact

service.pocentral.wts@suez.com

for correct address

or

fax no.: 905 465 3030

This agreement comes into force when SUEZ has issued a formal acceptance of Dodge City's Purchase order or formal acceptance of this Dodge City signed agreement.

doc. control: author: RM filename: Dodge City 208606-2 368 x ZW500D RX12 430ft² May 27 2021
last modified: 5/27/2021 9:41 AM technical review: EN (rev 2) commercial review: TSP(rev2) DOA: JI (rev 0)

attachment a SUEZ standard terms and conditions

general terms and conditions of sale

1. exclusive terms and conditions. Together with any other terms the Parties agree to in writing, these General Terms and Conditions – together with the last proposal in order of time issued by the Seller – form the exclusive terms (“Agreement”) whereby Buyer agrees to purchase, and Seller agrees to sell products and equipment (jointly “Equipment”) and to provide advice, instruction and other services in connection with the sale of that Equipment (“Services”). If Buyer sends to Seller other terms and conditions to which Seller may not respond, including but not limited to those contained in Buyer’s purchase order, such shall not apply. This Agreement may only be revised by a change order approved in writing by both Parties. All terms not defined herein shall be defined in Seller’s proposal.

2. equipment and services. The Equipment to be delivered and the Services to be provided shall be as set out in this Agreement. Unloading, handling, storage, installation, and operation of Buyer’s systems or the Equipment are the responsibility of Buyer. Buyer shall not require or permit Seller’s personnel to operate Buyer’s systems or the Equipment at Buyer’s site.

3. prices and payment. Buyer shall pay Seller for the Equipment and Services in accordance with the payment schedule (as set forth in Seller’s proposal or, if applicable, in any special conditions agreed to in writing by the Parties). Unless otherwise specified in writing, payment is due net thirty (30) days from the date of Seller’s invoice. Seller may require a Letter of Credit or other payment guarantee, in which case the stated amount of the guarantee will be adjusted by Buyer in the event of any currency-based adjustment to prices or payment amounts per the Payment Schedule, and Buyer shall deliver the adjusted guarantee within five (5) days of request by Seller. Buyer agrees to reimburse Seller for collection costs, including 2% (two percent) interest per month (not to exceed the maximum amount permitted by applicable law), should Buyer fail to timely pay. Buyer shall have no rights to make any deduction, retention, withholding or setoff relating to any payments due under this Agreement.

4. taxes and duties. Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Agreement (“Seller Taxes”). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Agreement or the performance of or payment for work under the Agreement other than Seller Taxes (“Buyer Taxes”). The Agreement prices do not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Agreement price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes. Buyer shall furnish Seller with evidence of tax exemption acceptable to taxing authorities if applicable, prior to execution of the Agreement by both Parties or issuance by the Seller of the order acceptance. Buyer’s failure to provide evidence of exemption at time of order will relieve Seller of any obligation to refund taxes paid by Seller.

5. delivery, title, risk of loss. Unless otherwise specified in this Agreement, Seller shall deliver all Equipment to Buyer FCA (Incoterms 2010) Seller’s facility. The time for delivery of the Equipment to Buyer shall be specified in this Agreement. Seller’s sole liability for any delay in delivery of the Equipment shall be as expressly set out in this Agreement. The place of delivery specified herein shall be firm and fixed, provided that Buyer may notify Seller no later than forty-five (45) days prior to the scheduled shipment date of the Equipment of an alternate point of delivery, Buyer shall compensate Seller for any additional cost in implementing the change. If any part of the Equipment cannot be delivered when ready due to any cause not attributable to Seller, Buyer shall designate a climate-controlled storage location, and Seller shall ship such Equipment to storage. Title and risk of loss shall thereupon pass to Buyer and amounts payable to Seller upon delivery or shipment shall be paid by Buyer along with expenses incurred by Seller. Services provided herein shall be charged at the rate prevailing at the time of actual use and Buyer shall pay any increase, and Buyer shall pay directly all costs for storage and subsequent transportation. Failure by Buyer to take delivery of the Equipment shall be a material breach of this Agreement.

Title and risk of loss to the Equipment shall be transferred from Seller to Buyer at the point of delivery upon handover in accordance with this Agreement. Title and risk of loss to the Services shall pass as they are performed.

6. warranties and remedies. Seller warrants that Equipment shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Seller’s warranty does not cover the results of improper handling, storage, installation, commissioning, operation or maintenance of the Equipment by Buyer or third parties, repairs or alterations made by

Buyer without Seller's written consent, influent water which does not comply with agreed parameters, or fair wear and tear.

Unless otherwise expressly provided in this Agreement, the foregoing warranties are valid for:

- (a) chemicals and Services, for six (6) months from their date of delivery or the provision of Services;
- (b) consumables, including filters and spiral wound membranes (other than spiral wound membranes for process treatment), the earlier of twelve (12) months from date of first use or fifteen (15) months from their date of delivery;
- (c) spiral wound membranes for process fluid treatment, ninety (90) days from their date of first use;
- (d) ultrafiltration membranes (ZW500, ZW700B, ZW1000, ZW1500), twelve (12) months from their date of delivery;
- (e) Equipment other than chemicals and consumables, the earlier of, fifteen (15) months from delivery or shipment to storage, or twelve (12) months from start-up/first use;
- (f) software, ninety (90) days from the date of receipt;
- (g) Equipment not manufactured by Seller, the warranty shall be the manufacturer's transferable warranty only,

Any claim for breach of these warranties must be promptly notified in writing, and Buyer shall make the defective item available to the Seller, or the claim will be void. Seller's sole responsibility and Buyer's exclusive remedy arising out of or relating to the Equipment or Services or any breach of these warranties is limited to repair at Seller's facility or (at Seller's option) replace at Seller's facility the defective item of Equipment and re-perform defective Services. In performance of its obligations hereunder, Seller will not control the actual operation of either Buyer's systems or the Equipment at the Buyer's site.

Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period.

The warranties and remedies are conditioned upon (a) proper unloading, handling, storage, installation, use, operation, and maintenance of the Equipment and Buyer's facility and all related system in accordance with Seller's instructions and, in the absence, generally accepted industry practice, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Equipment or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void.

The Buyer will be entitled to assign to a subsequent owner of the Equipment the warranties of the Seller under this Agreement, provided that a prior written notification is sent to the Seller and the assignment agreement contains terms and conditions which provide the Seller with the protections of the warranties and limitations on liability contained in the Agreement. Subject to Buyer's compliance with the foregoing requirement, such warranty rights are expressly assignable by the Buyer to a subsequent owner of the Equipment. Except as provided herein, Buyer is not entitled to extend or transfer this warranty to any other party. The warranties and remedies set forth in this article are in lieu of and exclude all other warranties and remedies, statutory, express or implied, including any warranty of merchantability or of fitness for a particular purpose.

Unless otherwise expressly stipulated in this Agreement, Seller gives no warranty or guarantee as to process results or performance of the Equipment, including but not limited to product quality, flow, production, capacity, membrane life, chemical consumption, regulatory compliance or energy consumption.

7. general indemnity. Seller shall indemnify and hold harmless Buyer from claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Seller or its officers, agents, employees, and/or assigns while engaged in activities under this Agreement. Buyer shall likewise indemnify and hold harmless Seller from claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of the Buyer, its officers, agents, employees, and/or assigns. In the event such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss shall be borne by each Party in proportion to its negligence. For the purposes of this article (i) "Third party" shall not include Buyer or any subsequent owner of the Equipment, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer; and (ii) no portion of the Equipment is "third party property".

8. compliance with laws and permits. All permits, authorizations, and licenses which are required to construct, install and/or operate Buyer's facility or equipment, to use the Equipment, or to manage and dispose of any wastes, discharges, and residues resulting from Buyer's use of the Equipment, shall be obtained and maintained by Buyer at Buyer's sole expense. Buyer is responsible for compliance with all laws and regulations applicable to the storage, use, handling, installation, maintenance, removal, registration, and labeling of all Equipment after delivery of the Equipment, as well as for the proper management and disposal of all wastes, discharges, and residues.

9. buyer's site conditions. Buyer warrants that any data furnished to the Seller concerning conditions at Buyer's site (including but not limited to any existing Buyer facility, equipment or processes, influent water or other substances to be treated or measured with the Equipment) is accurate and complete, and the Seller reserves the right to utilize the most appropriate design compatible with generally accepted engineering practices, and to make changes in details of design, manufacture and arrangement of Equipment unless precluded by any limitations specified in this Agreement. Seller shall notify Buyer of (1) any conditions at Buyer's site which materially differ from those indicated in the data furnished by Buyer, (2) any previously unknown physical conditions at Buyer's site of an unusual nature, not revealed by previous investigations and differing from those ordinarily encountered in the type of work provided for in this Agreement, and (3) the presence of any Hazardous Materials (as defined below), the existence of a contaminated soil, unexploded ordinance, or archaeological remains. If such conditions cause an increase in Seller's cost or in the time required for the performance of Seller's obligations, Seller shall be entitled to an equitable adjustment in the Agreement price and an extension in the time for performance.

10. hazardous materials and wastes. In the event that Seller encounters any Hazardous Materials (meaning toxic substances, hazardous substances, pollutants, contaminants, regulated wastes, or hazardous wastes as such terms may be defined or classified in any law, statute, directive, ordinance or regulations promulgated by any applicable governmental entity) at Buyer's site, other than Hazardous Materials introduced by Seller or that are otherwise the express responsibility of Seller under this Agreement, Buyer shall immediately take whatever precautions are required to legally eliminate such Hazardous Materials so that the Seller's work under this Agreement may safely proceed. At no time shall Seller be deemed to have taken title to or the responsibility for the management or disposal of any wastes, Hazardous Materials, influent water, any resultant product streams, wastewater streams, discharges, cleaning materials, or any other materials or substances processed by the Equipment or otherwise located at Buyer's site. Seller does not take responsibility for and hereby expressly disclaims responsibility for the characterization or disposal of wastes, Hazardous Materials, or for the identification, selection, or management of disposal facilities for any wastes.

11. excusable delays. Seller shall not be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the reasonable control of Seller, including, but not limited to: acts of God, natural disasters, unusually severe weather, fire, terrorism, war (declared or undeclared) epidemics, material shortages, insurrection, act (or omissions) of Buyer or Buyer's contractors/suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay or non-performance, plus such additional time as may be necessary to overcome the effect of the delay or non-performance. If delivery or performance is delayed for a period exceeding 180 (one hundred and eighty) days, either Party may terminate this Agreement without further liability provided that Seller shall be paid an amount equal to that which would be payable to Seller under the article entitled "Termination". If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable adjustment in schedule, price and/or performance, as applicable.

12. emergencies. If the safety of Seller's personnel is threatened or likely to be threatened by circumstances outside the reasonable control of Seller, including but not limited to war, armed conflict, civil unrest, riots, terrorism, kidnapping, presence of or exposure to hazardous materials, unsafe working conditions, or by the threat of such circumstances or a lack of adequate protections against such circumstances, Seller shall be entitled to take all necessary steps to ensure the security and safety of its personnel including the evacuation of personnel until such circumstances no longer apply. Any such occurrence shall be considered an excusable delay event. Buyer shall reasonably assist in the event of any such evacuation.

13. confidentiality, intellectual property. Both Parties agree to keep confidential the other Party's proprietary non-public information, if any, which may be acquired in connection with this Agreement. Buyer will not, without Seller's advance written consent, subject Equipment to testing, analysis, or any type of reverse engineering. Seller retains all intellectual property rights including copyright which it has in all drawings and data or other deliverables (including the Equipment) supplied or developed under this Agreement. Buyer agrees that it will not file patent applications on the Equipment or any development or enhancement of the Equipment, or of processes and methods of using the Equipment, without Seller's express prior written permission. Buyer further agrees that in any event any such patents will not be asserted against Seller or its other buyers based upon purchase and use of such Equipment. Seller grants to Buyer a non-exclusive, non-terminable, royalty free license to use the intellectual property embedded in Equipment delivered to and paid for by the Buyer, as well as any drawings, design or data delivered to and paid for by the Buyer, for the purposes of owning, financing, using, operating and maintaining the relevant Equipment at Buyer's site. Such license may only be assigned to a subsequent owner of the Equipment or to an operations and maintenance subcontractor. Such license does not extend to the re-creation of the Equipment or the manufacture of spares or consumables by Buyer or third parties.

Any software Seller owns and provides pursuant to this Agreement shall remain Seller's property. Seller provides to Buyer a limited, non-exclusive and terminable royalty free project-specific license to such software for the use, operation or maintenance at Buyer's site of any Equipment purchased hereunder to which the software is a necessary component. Buyer agrees not to copy, sub-license, translate, transfer, reverse engineer, or decode the software.

Seller shall indemnify and hold harmless Buyer from any rightful claim of any third party that any Equipment or Service infringe a patent in effect in the USA, or country of delivery (provided there is a corresponding patent issued by the USA), or USA copyright or copyright registered in the country of delivery. If the Buyer notifies the Seller promptly of the receipt of any such claim, does not take any position adverse to the Seller regarding such claim and gives the Seller information, assistance and exclusive authority to settle and defend the claim, the Seller shall, at its own expense and choice, either (i) settle or defend the claim and pay all damages and costs awarded in it against the Buyer, or (ii) procure for the Buyer the right to continue using the Equipment or Service, or (iii) modify or replace the Equipment or Service so that it becomes non-infringing, or (iv) remove the infringing Equipment and refund the price. The above paragraph shall not apply to any misuse of Equipment or Equipment which is manufactured to the Buyer's design, or to alleged infringement arising from the combination, operation, or use of any Equipment or Services with other equipment or services when such combination is part of any allegedly infringing subject matter. The foregoing list of sub-sections (i), (ii), (iii), and (iv) and related terms state the entire liability of the Seller for intellectual property infringement by any Equipment or Service.

14. limitations on liability. Notwithstanding anything else contained in this Agreement, to the maximum extent permitted by law, and regardless of whether a claim is based in contract (including warranty or indemnity), extra-contractual liability, tort (including negligence or strict liability), statute, equity or any other legal theory:

- (a) THE TOTAL LIABILITY OF THE SELLER AND OF ITS INSURER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR USE OF ANY EQUIPMENT OR SERVICES SHALL NOT EXCEED THE TOTAL PRICE PAID BY BUYER UNDER THIS AGREEMENT OR (IN THE CASE OF AN AGREEMENT FOR SERVICES WITH A TERM OF MORE THAN ONE YEAR) THE ANNUAL PRICE PAYABLE BY BUYER UNDER THIS AGREEMENT;
- (b) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCTION, LOSS OF USE OF EQUIPMENT OR SERVICES OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF REPLACEMENT WATER OR POWER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES;
- (c) SELLER'S LIABILITY SHALL END UPON EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, PROVIDED THAT BUYER MAY CONTINUE TO ENFORCE A CLAIM FOR WHICH IT HAS GIVEN NOTICE PRIOR TO THAT DATE BY COMMENCING AN ACTION OR ARBITRATION, AS APPLICABLE UNDER THIS AGREEMENT, BEFORE EXPIRATION OF ANY STATUTE OF LIMITATIONS OR OTHER LEGAL TIME LIMITATION BUT IN NO EVENT – TO THE EXTENT PERMITTED BY APPLICABLE LAW – LATER THAN FIVE (5) MONTHS AFTER EXPIRATION OF SUCH WARRANTY PERIOD.

For the purposes of this article, "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, individually or collectively. If Buyer is supplying Seller's Equipment or Services to a third party, Buyer shall require the third party to agree to be bound by this article. If Buyer does not obtain this agreement for Seller's benefit for any reason, Buyer shall indemnify and hold Seller harmless from all liability arising out of claims made by the third party in excess of the limitations and exclusion of this article.

15. termination. This Agreement and any performance pursuant to it may be terminated by either Party, and the consequences of such termination shall be as set out in the next paragraph, if the other Party

- (a) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or
- (b) fails to make any payment when due or to establish any payment security required by this Agreement or commits a material breach or defaults in its material obligations under this Agreement, and such default is not cured within thirty (30) days of written notice from the other Party.

Upon the termination of this Agreement by Buyer for cause (i) Seller shall reimburse Buyer the difference between that portion of the Agreement price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Agreement price allocable to Equipment completed, and (b) amounts for Services performed before the effective date of termination. Upon the termination of

this Agreement by Seller for cause Buyer shall pay to Seller within thirty (30) days of receipt of invoice the price of all Equipment or Services delivered at the date of termination, plus an amount equal to all costs and expenses incurred in the engineering, sourcing, financing, procurement, manufacture, storage and transportation of the Equipment including materials, work in progress and any cancellation charges assessed against Seller by Seller's suppliers including reasonable overhead and profit on all such costs and expenses. Alternatively, if any schedule of termination payments has been agreed between the Parties, Buyer shall pay to Seller within thirty (30) days of receipt of invoice the amounts set out in that schedule.

Seller shall have the right to suspend performance upon written notice to Buyer in any case where Seller would have the right to terminate the Agreement under this article, without prejudice to Seller's right to terminate this Agreement for cause. Any cost incurred by Seller in accordance with any such suspension (including storage costs) shall be payable by Buyer upon submission of the Seller's invoice(s). Performance of the Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension.

16. governing law, dispute resolution. This Agreement shall be governed by the substantive laws of the State of Kansas. In the event of a dispute concerning this Agreement, the complaining Party shall notify the other Party in writing thereof. Management level representatives of both Parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court closest to the Buyer and the rules of the arbitration will be the Commercial Arbitration Rules of the American Arbitration Association, which are incorporated by reference into this article.

Notwithstanding the foregoing, each Party shall have the right to commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Agreement, in order to seek and obtain a restraining order or injunction to enforce the confidentiality intellectual property provisions set forth in the first two paragraphs of article 13; nuclear use restrictions set forth in article 17, or to seek interim or conservatory measures not involving monetary damages.

17. no nuclear use. Equipment and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, the Buyer warrants that it shall not use or permit others to use the Equipment or Services for such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability.

18. export control. Seller's obligations are conditioned upon Buyer's compliance with all USA and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Equipment (including software and technical data) other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

19. changes. Each Party may at any time propose changes in the schedule or scope of Equipment or Services. All changes to the Equipment or Services shall be subject to mutual agreement via a written change order or variation, which shall only become effective once signed by both Parties. The scope, Agreement price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. It shall be acceptable and not considered a change if Seller delivers Equipment (including Equipment replacement under warranty) that bears a different, superseding or new part or version number compared to the part or version number listed in the Agreement, provided that in no circumstance shall this affect any other of Seller's obligations including those set forth in article 6.

20. conflicts; survival, assignment. If there is any conflict between this Agreement and any written proposal or quotation provided by Seller, then the terms and conditions set forth in this Agreement shall prevail. If any term or condition of this Agreement or any accompanying terms and conditions are held invalid or illegal, then such terms and conditions shall be reformed to be made legal or valid, or deleted, but the remaining terms and conditions shall remain in full force and effect, and this Agreement shall be interpreted and implemented in a manner which best fulfills Parties' intended agreement. Those provisions which by their nature remain applicable after termination shall survive the termination of this Agreement for any reason. Seller may assign or novate its rights and obligations under the Agreement, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Agreement to any party without Buyer's consent, and the Buyer hereby agrees, by signing this Agreement, to such assignment and to execute any document that may be necessary to complete Seller's assignment or novation. This Agreement shall not otherwise be assigned by either Party without the other Party's prior written consent, and any assignment without such consent shall be void.

Seller may (i) manufacture and source the Equipment and any part thereof globally in the country or countries of its choosing; and (ii) may subcontract portions of the Services, so long as Seller remains responsible for such.

21. no third party beneficiary. Except as specifically set forth in the article entitled "Limitations on Liability" and "No Nuclear Use", this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

22. entire agreement. This Agreement embodies the entire agreement between Buyer and Seller and supersedes any previous documents, correspondence or agreements between them. No modification, amendment, revision, waiver, or other change shall be binding on either Party unless agreed in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not specified herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Agreement

attachment b SUEZ labor rate sheet



Water Technologies & Solutions

3239 Dundas Street West
 Oakville, Ontario, CANADA L6M 4B2
 tel: 905 465 3030
 technical support: 866 271 5425

north america on-site hourly rates – \$USD/hr

field service representative		standard	overtime	holiday
field service representative	product support representative	\$175	\$262	\$350
engineer level				
project manager	electrical/controls engineer	\$195	\$292	\$390
process engineer	operator training			

scheduling & technical support contact services at +1 (866) 271-5425 to schedule service. Support is available by phone M-F 8:30am to 5:00pm Eastern time (GMT-5).

conditions

1. Rates are inclusive of travel and living expenses in Canada and the lower US. Remote sites, or those requiring special or urgent travel or accommodations, may incur additional charges.
2. In times of special circumstances (i.e. pandemic/national emergencies) additional costs may be incurred.
3. A minimum booking of 40 hours (one working week) is required for commissioning, startup or training services on capital projects or additional charges may be applied.
4. Travel time is charged at the applicable service rate. Travel hours begin at the SUEZ representative's residence or airport and end at arrival to the hotel or work site, and vice versa.
5. Hours exceeding a 10-hour day or a 40-hour work week may be considered overtime. Holiday rates apply based on US/Canada holidays and/or holidays observed in the country where the work is performed.
6. For extended duration assignments, staff rotations are scheduled on a monthly basis. Site-specific training required by customer will be billed as time worked.
7. Supplies, materials, consumables or services purchased for direct use during service will be charged separately.
8. State/provincial taxes, use taxes, withholding taxes and all other taxes are extra where applicable. Buyer is responsible to provide any applicable tax exemption certificates with its purchase order or work order.
9. All services provided are governed by SUEZ Water Technologies & Solutions general term and conditions. Additional or conflicting terms contained in purchase orders which authorize work are prohibited and shall not apply except where agreed to in writing.
10. For multiple scheduled or recurring site visits, please request a firm service proposal.
11. These rates are valid through December 31, 2021.



Memorandum

To: City Manager
City Commissioners
From: Corey Keller Public Works Director
Date: October 14, 2021
Subject: Approval to Purchase Crack Seal Materials
Agenda Item: Consent Calendar

Recommendation: To purchase Crack Sealing Materials not to exceed \$28,290.00 from PMSI of Wichita KS.

Background: In April of this year staff received a 90/10 grant offer from KDOT to purchase crack sealing materials for the airport. The commission approved the grant offer at the April 19, 2021 meeting. This purchase will fulfil the requirements for the grant and allow the City to be reimbursed for the purchase.

This past month staff received two quotes to purchase crack sealing materials. The quotes received were.

Vance Brothers Inc. \$.56/lb. for Crack Seal and \$.60/lb. Mastic

PMSI \$.53/lb. for Crack Seal and \$.51/lb. Mastic

These materials are quoted by the pound, staff will adjust the weights of materials purchased to match the \$28,290.00 grant offer.

Justification: It has been several years since Runway 02/20 has any type of maintenance work done it. This purchase will allow staff to perform the work necessary to preserve Runway 02/20 as well as other pavement areas on the airfield.

Financial Considerations: KDOT will pay \$25,461.00 and the City will pay \$2,829.00 of this purchase. This will be paid for out of the Airports Maintenance budget.

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

Legal Considerations: None

Attachments: None