

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

Monday, December 20, 2021

7:00 p.m.

MEETING #5200

**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](http://www.facebook.com/cityofdodgecity)

2. Or watch it on our Vimeo page at [www.vimeo.com/cityofdodgecity](http://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** Marsha Couch of Market Place International Ministries

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC HEARING**

Issuance of Industrial Revenue Bonds (Hilmar Cheese Project)

## **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).

Depot Theater Update

City Loyalty Oath Ceremony – Police Chief, Drew Francis

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, December 6, 2021.
2. Appropriation Ordinance No. 24, December 20, 2021.
3. Cereal Malt Beverage License:
  - a. Dodge City Community College, 2501 N. 14<sup>th</sup> Avenue.

4. Approval of Change Order #1 for the 2020 Asphalt Streets Project.
5. Approval of Change Order #1 for the McCaustland Rd. #2 Reroute Project.
6. Approval of Bids for Buildout of CREW Building offices.
7. Approval of Hennessy Hall Lease Agreement with Russel Child Development Center.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3766:** An Ordinance of the City of Dodge City, Kansas Amending the Official Zoning Map of the City, Changing the Property Located at 11305 112 from R-S Residential Suburban to I-2, Heavy Industrial. Report by Planning & Zoning Administrator, Nathan Littrell.

**Resolution No. 2021-28:** A Resolution of the Governing body of the City of Dodge City, Kansas Determining the Advisability of Issuing Industrial Revenue Bonds for the Purpose of Financing the Acquisition, Construction and Equipping of a Commercial Facility to be Located in the City; and Authorizing Execution of Related Documents. Report by Finance Director, Nicole May.

PART A - Approval of Hilmar Development Agreement. Report by Nick Hernandez, City Manager.

**Resolution No. 2021-32:** A Resolution Authorizing the City of Dodge City to Convey Real Estate; and Authorizing the Execution and Delivery of Certain Documents in Connection with that Transaction. Report by Executive Director of Dodge City/Ford County Development Corp., Joann Knight.

**Ordinance No. 3767:** An Ordinance of the City of Dodge City, Kansas Amending the Official Zoning Map of the City, Changing the Property Located on Loretta Avenue, Northwest Avenue, Ross Boulevard From R-S Residential Suburban and R-1 Residential Low Density to R-2, Residential Medium Density and R-3 Residential Higher Density. Report by Planning & Zoning Administrator, Nathan Littrell.

**Resolution No. 2021-29:** A Resolution of the City of Dodge City, Kansas Approving the Execution and Delivery of an Agreement to Release and Assign the City's Opioid Claims to the Kansas Attorney General and Certifying Costs Attributable to Substance Abuse and Addition Mitigation in Excess of \$500. Report by Assistant City Manager/ Legislative Affairs, Ernestor De la Rosa.

**Resolution No. 2021-30:** A Resolution Amending Appendix A of the Dodge City Municipal Code Revising Fees and Rates for Mariah Hills Golf Course. Report by Parks and Facilities Director, Daniel Cecil.

**Resolution No. 2021-31:** A Resolution Describing and Defining the Boundary of the City of Dodge City, Kansas. Report by Director of Engineering Services, Ray Slattery.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. Approval of the Purchase of Two Vehicles for the Police Department. Report by Director of Administration, Ryan Reid.
2. Approval of the Second Amendment Lease Agreement with Depot Theater, Inc. Report by Assistant Manager/Public Affairs, Melissa McCoy.
3. Approval of the Allocation of 2021 Special Alcohol and Drug Tax Funds. Report by Finance Director, Nicole May.
4. Approval of the Audit Engagement Letter with Kennedy McKee for the year ending December 31, 2021. Report by Finance Director, Nicole May.
5. Approval of Quote for Streetlight Installation on the McCaustland Road #2. Report by Director of Engineering, Ray Slattery.
6. Approval of Professional Engineering Agreement with Burns & McDonnell of Kansas City, Mo. Report by Director of Public Works, Corey Keller.
7. Approval of 2022 City of Dodge City Legislative Policy. Report by Assistant City Manager/Legislative Affairs, Ernestor De La Rosa.

## **OTHER BUSINESS**

## **STAFF REPORTS**

## **ADJOURNMENT**

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

Monday, December 6, 2021

7:00 p.m.

MEETING #5199

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## **CALL TO ORDER**

**ROLL CALL** Mayor Rick Sowers, Commissioner Kent Smoll, Brian Delzeit, Blanca Soto, Joseph Nuci.

**INVOCATION BY** Ada Bogart of John 14 Fellowship

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC HEARING**

Mayor Rick Sowers opened the public hearing on the issuance of Revenue Bonds for (Hilmar Cheese Project). City Manager Nick Hernandez spoke and stated that the public hearing was published in the newspaper with the wrong amount therefore there will be no action taken and it will be postponed for a later date. Mayor Sowers asked if there were any public comments. No public comments were made.

## **APPROVAL OF AGENDA**

Commissioner Blanca Soto made a motion to accept the agenda as presented. Commissioner Joseph Nuci seconded the motion. The motion carried 5 - 0.

## **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).

Ray Rodriguez of 2219 Robin Road, Dodge City had a concern on the manner the survey was conducted on his property line.

**CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, November 15, 2021.
2. Appropriation Ordinance No.23, December 6, 2021.
3. Cereal Malt Beverage License:
  - a. Casey's General Store #3783, 2201 N. 14<sup>th</sup> Avenue
  - b. Casey's General Store #3863, 700 W. Wyatt Earp Blvd.
  - c. Pizza Hut, 110 Frontview Street.
4. Approval of Change Order #3 for the Avenue K RCB Replacement Project, SD 1701.

Commissioner Kent Smoll made a motion to accept the consent calendar with a minor correction of a typo error to change nah to nay. Commissioner Brian Delzeit seconded the motion. The motion carried 5 - 0.

**ORDINANCES & RESOLUTIONS****UNFINISHED BUSINESS**

Commissioner Rick Sowers made a motion on the 2022 Sales Tax Budget to split the amount that is currently allocated between the city and county so it gives \$275,000 to each entity and take the \$25,000 back into the organizational funding and back to surplus funds until there can be an interlocal meeting as a group. There was no second, motion died for lack of a second motion.

Commissioner Joseph Nuci made a motion to accept the budget as written. There was no second, motion died for lack of a second motion.

Commissioner Kent Smoll made a motion to approve the Sales Tax Budget with \$550 being distributed with the city and county each receiving \$250,000 and \$50,000 goes to organizational funding. Commissioner Rick Sowers seconded the motion. The motion carried 2 – 3 with Commissioners Rick Sowers and Kent Smoll voting ay, Commissioners Brian Delzeit, Blanca Soto, Joseph Nuci voting nay. Motion fails.

**NEW BUSINESS**

1. Commissioner Brian Delzeit made a motion to approve the bid in the amount of \$75,854.80 from Precision Construction & Contraction LLC for the United Wireless Arena concrete repairs. Commissioner Blanca Soto seconded the motion. The motion carried 5 - 0.

**OTHER BUSINESS**

Discussion on the 2022 Sales Tax Budget.

Commissioner Kent Smoll made a motion to adopt the 2022 Why Not Dodge Budget with the exception of organizational funding, where we will be allocating \$25,000 to county and \$25,000 to city until there can be a meeting. Commissioner Blanca Soto seconded the motion. Motion carried 3 – 2 with Commissioners Joe Nuci and Brian Delzeit voting nay.

Manager Nick Hernandez asked the commission if the COLA could be changed from 1% to 2% for the cost of living increase for city employees. Commissioner Rick Sowers made a motion to adjust the COLA from 1% to 2 %. Commissioner Brian Delzeit seconded the motion. The motion carried 5 – 0.

**STAFF REPORTS**

**ADJOURNMENT**

Commissioner Blanca Soto made a motion to adjourn the meeting. Commissioner Joseph Nuci seconded the motion. The motion carried 5 - 0.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

# CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

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

City or  County of Dodge City, KS

## 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): 004-521718586-F01

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

Name of Corporation Dodge City Community College		FEIN 52-1718586	
Corporation Street Address 2501 N. 14th Avenue		Corporation City Dodge City	State KS
		Zip Code 67801	
Date of Incorporation 1935	Articles of Incorporation are on file with the Secretary of State.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Resident Agent Name Jeff Cermin		Phone No. (979) 255-8881	
Residence Street Address 2006 La Mesa Dr.		City Dodge City	State KS
		Zip Code 67801	

## SECTION 3 – LICENSED PREMISE

Licensed Premise (Business Location or Location of Special Event)	Mailing Address (If different from business address)
DBA Name Dodge City Community College	Name
Business Location Address 2501 N. 14th Avenue	Address
City Dodge City, KS 67801	City State Zip
Email Address(s) Please separate values with a comma. jcermin@dc3.edu	
Business Phone No. (620) 227-9213	<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) Dodge City Community College	

## 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 N/A - DCCC owned by Ford County, KS	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State Zip Code



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Ray Slattery, PE, Director of Engineering Services  
**Date:** December 10, 2021  
**Subject:** Change Order #1, 2020 Asphalt Streets Project, ST 2001  
**Agenda Item:** Consent Calendar

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**Recommendation:** Approve Change Order #1 for the 2020 Asphalt Streets Project for a total decrease in the amount of \$1,368,882.10.

**Background:** The 2020 Asphalt Streets Project was approved at the August 3, 2020 Commission Meeting. Some issues were encountered during the project and Contractor and City agreed to cancel the contract prior to the completion.

**Justification:** This change order finalizes the project.

**Financial Considerations:** Change Order #1 is for a decrease of \$1,368,882.10.

**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 with Klotz Sand Co., 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:** December 9, 2021  
**Subject:** Change Order #1, McCaustland Rd. #2 Reroute Project, ST 2009  
**Agenda Item:** Consent Calendar

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**Recommendation:** Approve Change Order #1 for the McCaustland Rd. #2 Reroute Project for a total increase in the amount of \$10,750.00.

**Background:** The McCaustland Rd. #2 Reroute Project was approved at the December 21, 2020 Commission Meeting. The start date was set for May 10, 2021, however the contractor incurred weather delays on other projects and was not able to start the project until June 7, 2021. The following items were adjusted or added to the project during the construction to date. Price reduction of the KC standard inlet resulted in a reduction of \$2,250.00. The inlet was moved due to utility conflicts. Additional work/pipe to move the grate inlet due to utility conflicts. This was an increase of \$2,800.00. Regrade Drainage Ditch; was an increase of \$9,300.00. This was needed because the ditch had received some sediment and was rutted so that water could not drain from the new storm pipe to the new RCB. Toe-wall for Flume; a 6" toe-wall was added to the bottom of the flumes to keep water from undermining the flume and causing damage.

**Justification:** This change order pays for work required to complete the project to date.

**Financial Considerations:** Change Order #1 is for an increase of \$10,750.00. Funding will be from General Obligation Bonds. Repayment of the bonds will come from AD Valorem Property Taxes collected on the Nor-Am development.

**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 APAC Kansas, Inc., Shears Division the contract dollar amount will be amended.

**Attachments:** Change Order #1

# CITY OF DODGE CITY

## Change Order

CONTRACT FOR: McCausland Rd. 2 Reroute Project

PROJECT NUMBER: ST 2009

CONTRACTOR: APAC Kansas Inc., Shears Division

REQUEST NUMBER: 1

ITEM DESCRIPTION	UNIT	CONTRACT OR PREVIOUS QUANTITY	ADJUSTED QUANTITY	AMOUNT OF OVERRUN OR <span style="color: red;">UNDERRUN</span>	CONTRACT UNIT PRICE	NEW UNIT PRICE	DOLLAR AMOUNT OF CHANGE
KC Standard Curb Inlet	Each	1	0	-1	\$ 12,500.00		\$ (12,500.00)
KC Standard Curb Inlet	Each	0	1	1		\$ 10,250.00	\$ 10,250.00
Additional work/Pipe to Move Grate Inlet	LS	0	1	1		\$ 2,800.00	\$ 2,800.00
Regrade Drainage Ditch	LS	0	1	1		\$ 9,300.00	\$ 9,300.00
Flume for Toewall	Each	0	3	3		\$ 300.00	\$ 900.00
						NET INCREASE	\$ 10,750.00

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: APAC Kansas Inc., Shears Division

\_\_\_\_\_  
Connie Marquez, City Clerk

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

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



# Memorandum

**To: City Manager  
City Commissioners**  
**From: Corey Keller Public Works Director**  
**Date: December 15, 2021**  
**Subject: Approval of Office Construction Costs at the Recycling Center**  
**Agenda Item: Consent Calendar**

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**Recommendation:** To ratify four separate purchases to complete the build out of the office area at the Jane Longmeyer Recycling Center. All four purchase will total \$46,141.53 once the construction is completed.

**Background:** On December 06, 2021, staff solicited quotes for the office construction to finish the office area located at the front portion of the Jane Longmeyer Recycling Facility. This area remained unfinished due to budget constraints when the building was constructed. Much of the unfinished work staff felt could be completed in house at a cheaper cost versus what was being proposed at the time.

Items for this purchase will include most of the construction to build out and finish the offices, HVAC installation and duct work, all electrical work needed to complete the office area, and supplies. The amounts for each purchase are below the \$25,000.00 threshold necessary for Commissions approval however total all together exceed the amount. The quotes received were from licensed contractors able to pull the necessary permits and complete the work. This work will be coordinated separately. The quotes received were:

<b>Construction</b>		
Top Line Construction	\$16,842.00	\$16,842.00
Scott Nicolet Const.	\$30,400.00	
<b>HVAC</b>		
Longhorn H&C	\$14,997.00	\$14,997.00
Webers	\$19,156.00	
<b>Electrical</b>		
Arroyos Elec	\$ 5,500.00	\$ 5,500.00
<b>Supplies</b>		
Sutherlands	\$ 8,802.53	\$ 8,802.53
Meade	\$ 8,521..17	
	<b>Total</b>	<b>\$46,141.53</b>



# Memorandum

**To:** Nick Hernandez, City Manager  
City Commissioners  
**From:** Daniel Cecil, Parks and Facilities Director  
**Date:** December 20, 2021  
**Subject:** RCDC Hennessy Hall Lease Agreement  
**Agenda Item:** Consent Calendar

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**Recommendation:** Staff recommends approving the lease with Russell Child Development Center for space at Hennessy Hall.

**Background:** Russell Child Development Center desires to continue to lease space at Hennessy Hall to house their operations and services. They are a Kansas not-for-profit corporation that supports students and families through various programs operated through grant funding.

The space being leased is on the first floor, room 135. The total space being leased is 466 square feet and is a new five-year lease, beginning January 1, 2022.

**Justification:** Russell Child Development Center is a not-for-profit public service enterprise that is consistent and compatible with other entities currently housed in the facility.

**Financial Considerations:** The annual lease payment will be \$2,796 based on the standard \$6 per sq. ft. base rent. Lease payments are prorated monthly and billed through City Hall.

Because Russell's operations are dependent on grant funding, this lease includes language allowing Russel to terminate the agreement should those funding sources no longer exist.

**Purpose/Mission:** This lease agreement is consistent with the City's core purpose of Ongoing Improvement as it facilitates additional opportunities in the community to provide training and resources that serve the education and development of children in the community.

**Legal Considerations:** The agreement is the standard form used with all Hennessy tenants. The term of this agreement is for five years.

**Attachments:** Lease Agreement  
Exhibit A – Floor Plan

## Hennessey Hall Lease Agreement

This lease agreement is made and entered into by and between the City of Dodge City, Kansas, a municipal corporation (LANDLORD) and Russell Child Development Center, a Kansas not-for-profit corporation (TENANT).

In consideration of the mutual promises and covenants of the parties as set forth herein, the LANDLORD and TENANT agree as follows:

- 1. LEASE PREMISES:** The LANDLORD hereby leases to TENANT part of that property known as Hennessey Hall, located on the former St. Mary's of the Plains College Campus in Dodge City, Kansas. Attached hereto as Exhibit A are the specifications of Hennessey Hall. That portion of the premises hereby leased to TENANT is outlined in red, comprising approximately four hundred sixty-six (466) square feet. The outlined portion of Exhibit A, attached hereto and made a part hereof, is hereinafter collectively referred to as the "leased premises".
- 2. TERM:** The term of this lease shall be for a period of five (5) years commencing January 1, 2022, and terminating December 31, 2026, subject, however, to earlier termination as set forth herein.
- 3. LEASE RENTAL:** For the duration of this lease, the TENANT shall pay to the LANDLORD annual rent in the amount of two thousand, seven hundred ninety-six dollars, (\$2,796.00), representing a square footage rental rate of approximately \$6.00 per square foot, said annual amount to be paid in equal advance monthly installments of two hundred thirty-three dollars (\$233.00), beginning on the first day of January, 2022, for 1st month's rent and continuing monthly thereafter for the duration of this lease, said monthly rental being hereinafter referred to as the "base rent."
- 4. ADDITIONAL RENT:** It is agreed by the parties that, in addition to the base rent as set forth above, the TENANT shall pay an amount representing the TENANT'S proportionate share of any increase in the LANDLORD'S cost for taxes and utilities as set forth in the formula below. The parties understand and agree that, at the present time, Hennessey Hall is exempt from real estate taxes, and the parties anticipate the continued exemption of said facility during the term of this agreement; provided, however, that in the event Hennessey Hall is placed on the tax rolls, then the TENANT shall pay proportionate share of such real estate taxes as set forth below.

The TENANT'S proportionate share of any increases costs for taxes and utilities will be calculated on the following basis:

- (a) If the combined expenses to the LANDLORD for real estate taxes and utilities (electricity, gas, trash, and water) for any year of this lease are more than the taxes and utility costs for the base year, as defined below, then, in that event, the amount of the increase in such tax and utility expenses above the amount of the base year shall be proportioned to the TENANT based on percentage that the leased premises covered by this lease bears to the total usable space in Hennessey Hall. It is agreed that the leased premises covered by this lease is

Supplies will be purchase from both Sutherlands and Meade Lumber not to exceed the \$8,802.53

**Justification:** The City does not have the necessary people on staff to complete this type of work. This work is needed to finish the construction of the building.

**Financial Considerations:** There is \$60,000.00 budget in FY2021 for this purchase. \$13,588.00 of this amount was spent to complete the concrete work on the south side of the building. Leaving \$46,412.00 for this request.

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

**Legal Considerations:** none

**Attachments:** none

approximately four hundred sixty-six square feet and the total usable space for the Hennessey Hall is 38,000 square feet, and that the TENANT'S proportionate percentage of the total building space is 1.2%.

- (b) To figure the rental adjustment, the dollar amount of increase in the combined real estate taxes and utility costs shall be multiplied by 1.2%, the TENANT'S proportionate share of Hennessey Hall. A resulting amount is then divided by four hundred sixty-six (466) square feet and that amount shall then be added to the base rent per square foot rental figure for the coming lease year. It is agreed that in no event shall the annual per square foot rental figure be increased by more than \$1.25 per square foot for any one year.
- (c) The adjusted base rent figure, as provided above, shall be due and payable to the LANDLORD in monthly installments commencing on January 1 of the following year, and on the first day of each month thereafter until the next rental adjustment.
- (d) The "base year" shall be the taxes and utility costs attributable to Hennessey Hall for the calendar year 2022.

- 5. REPAIR AND MAINTENANCE:** Throughout the term of this lease, the LANDLORD shall be responsible for the maintenance and repair of the roof, the exterior portions of all outside walls of Hennessey Hall and shall be responsible for repairs necessitated by structural defects of the building. In addition, the LANDLORD shall be responsible for repair and maintenance of all plumbing, sewer, lighting, electrical, and heating and air conditioning units. LANDLORD shall maintain all portions of the area adjoining the leased premises including sidewalks and parking lots in a clean and orderly condition free and clear of rubbish, snow, ice, and unlawful obstructions.

The TENANT shall be responsible for all interior maintenance of the leased premises, including but not limited to, cleaning, painting, and general upkeep and shall be responsible for the prompt repair of any damage to the leased premises caused by reason of its use of the same, including but not limited to, any damage or needed repairs to any plumbing and electrical facilities located with the leased premises.

The TENANT shall be responsible for repairs, maintenance, and replacement of any improvements or renovation made to the leased premises by the TENANT, including but not limited to telephone lines and equipment, computer wiring, and any special accommodations provided or installed by the TENANT.

- 6. SIGNAGE:** The LANDLORD will provide a community sign identifying the property with a listing of the building tenants at a location near the entrance to the building. The TENANT will be responsible for any individual tenant signage it might desire, the style and location of which shall be subject to prior approval of the LANDLORD.
- 7. JANITORIAL SERVICES:** The LANDLORD shall be responsible for providing janitorial services for the common areas of Hennessey Hall. The common areas shall consist of the foyer, stairs, and common hallways located outside the lease premises. The TENANT will be responsible for providing janitorial services to the leased premises.
- 8. TAXES:** The LANDLORD shall pay all real estate taxes (including special assessments) on Hennessey Hall, if any. The TENANT shall pay all personal property

taxes assessed against personal property owned by the TENANT and located in the leased premises.

9. **USE:** The TENANT shall use and occupy the leased premises for the operation of a business office. The TENANT shall not use or knowingly permit any part of the leased premises to be used for any other purpose, without the prior written consent of the LANDLORD.
10. **TENANT RENOVATIONS:** The TENANT hereby acknowledges that it has had a reasonable opportunity to view and inspect the lease premises prior to the execution of this lease. TENANT and LANDLORD have agreed on certain improvements to the leased space that was completed by LANDLORD prior to TENANT'S occupancy in 2016, if TENANT desires new renovations to leased space, approval will be required by the LANDLORD.
11. The TENANT acknowledges that no representation, statement or warranty, expressed or implied, has been made by or on behalf of the LANDLORD as to the existing condition of the leased premises.

Any future renovations and remodeling desired by the TENANT will be at the sole expense of the TENANT and shall be performed in accordance with plans and specifications as prepared by the TENANT, subject, however, to the prior written approval of the LANDLORD, which approval shall not be unreasonably withheld.

TENANT further covenants and agrees to pay the entire cost of any work on the lease premises undertaken by the TENANT; to procure all necessary permits before undertaking such work; to do all such work in a good and workmanlike manner employing materials of good quality and complying with all governmental requirements. The TENANT further agrees to hold the LANDLORD harmless and indemnified from any injury, loss, claim, or damages to any person or property occasioned by or growing out of such work. The TENANT shall have the right to contest any claimed amounts or claims, arising out of any such work, and the TENANT shall discharge any lien, by bond, or otherwise, at its sole expense.

12. **TERMINATION BY LANDLORD:** In the event of the sale by the LANDLORD of Hennessey Hall which includes the lease premises to a third party, the LANDLORD shall have the option to terminate this lease by providing written notice to the TENANT at least twelve (12) months prior to the termination date.
13. **TERMINATION BY TENANT:** LANDLORD acknowledges TENANT anticipates conduction operations subject to State and Federal government funding. Should TENANT fail to receive adequate funding to continue operations, TENANT may terminate the lease by providing LANDLORD written notice of intent to terminate ninety (90) days prior to termination. Should TENANT terminate the lease under this provision, TENANT shall not rent, lease or sub-lease any other space within Ford County for the purpose of conducting office operations for the term of this lease.
14. **CASUALTY INSURANCE:** The LANDLORD agrees to keep Hennessey Hall insured for the benefit of the LANDLORD against loss of damage by fire and all casualties included in the broadest standard form obtainable of extended coverage or supplemental

contract of endorsements. The TENANT shall have the responsibility to insure all of its interest in the fixtures, equipment, inventory, and other TENANT assets.

- 15. TENANT LIABILITY INSURANCE:** The TENANT shall be responsible for and shall provide total and complete liability insurance in the amount of at least \$500,000 that will save and protect the LANDLORD from any and all claims or demands of any kind or character which may arise or claim to arise against the LANDLORD by reason of the use of leased premises by the TENANT, and the LANDLORD shall be named as an additional insured on such policies.

It is further agreed that the TENANT shall save and hold harmless the LANDLORD from any and all claims, causes of action or losses which may be asserted against the LANDLORD by reason of the TENANT'S use of the leased premises under the terms and conditions of this lease and will further indemnify the LANDLORD for its attorney's fees and other costs, losses or expenses incurred by the LANDLORD in defending against any such claims or causes of action.

- 16. DESTRUCTION:** In the event the leased premises, or any part thereof, be partially destroyed by an act of God, the elements, fire, or other cause covered by insurance carried by the landlord, the LANDLORD, using such insurance proceeds, shall proceed immediately with due diligence to repair, restore, and to replace said leased premises to as good a condition as it was in prior to such damage or destruction. The LANDLORD'S responsibility in this respect should be limited to the amount of insurance proceeds received by the LANDLORD because of the damage or destruction. A just and proportionate part of the monthly rental payments shall be suspended or proportionately abated in accordance with use until the leased premises is put in complete repair. If the leased premises shall, at any time during the life of this lease or an extension thereof, be substantially damaged or destroyed by causes not covered by insurance, this lease shall be subject of cancellation at the option of the LANDLORD by giving TENANT written notice of cancellation within twenty (20) days after the date of such damage or destruction. All rent paid in advance, if any, by the TENANT, that is actually unearned at the date of the damage or destruction, shall be refunded forthwith to the TENANT. If no notice of cancellation is given as aforesaid, or if the leased premises are not substantially damaged or destroyed, this lease shall remain in full force and effect, and the LANDLORD shall proceed immediately with due diligence to repair, restore, and replace the leased premises to as good a condition as they were in immediately prior to the damage or destruction. It is expressly agreed that TENANT'S obligation to pay rent hereunder shall abate during the period of LANDLORD'S repair or reconstruction of the leased premises pursuant to the term of this paragraph; to the extent the premises are untenable.
- 17. UTILITIES:** LANDLORD shall be responsible for the payment of utilities, including water, sewer, trash removal, gas, and electricity for the leased premises. TENANT shall be responsible for any telecommunications and data utilities required.
- 18. ASSIGNMENT BY TENANT:** The TENANT shall not assign this lease nor sublet or permit the leased premises or any part thereof to be used by any others, without the prior written consent of the LANDLORD in each such incident. The written consent of the LANDLORD to an assignment or subletting shall not be construed to relieve the

TENANT from obtaining the consent in writing of the LANDLORD to any further assignment or subletting.

19. **ASSIGNMENT BY LANDLORD:** The LANDLORD shall have the right to assign this lease to another person or entity at any time without approval of the TENANT; provided, however, any such assignment shall not relieve the LANDLORD and its assignee of any obligations incumbent upon it under the provisions of this lease, and the same shall be binding on the LANDLORD'S assignee.
20. **RULES AND REGULATIONS:** The LANDLORD reserves the right to promulgate rules and regulations concerning occupancy of Hennessey Hall of which the leased premises are a part. These rules and regulations shall be in writing and will take effect immediately after notice has been given by serving a copy of the rules and regulations upon the TENANT.
21. **NOTICES:** Any notice under this lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by the party in writing. The LANDLORD hereby designates its address as CITY HALL, 806 N. Second Avenue, P. O. Box 880, Dodge City, Kansas 67801. The TENANT hereby designates its address as 2735 North Jennie Barker Road, Garden City, Kansas 67846
22. **BINDER:** This agreement shall be binding on the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands in the day and year written below.

\_\_\_\_\_  
DATE

CITY OF DODGE CITY,  
A MUNICIPAL CORPORATION

By: \_\_\_\_\_  
Rick Sowers, MAYOR

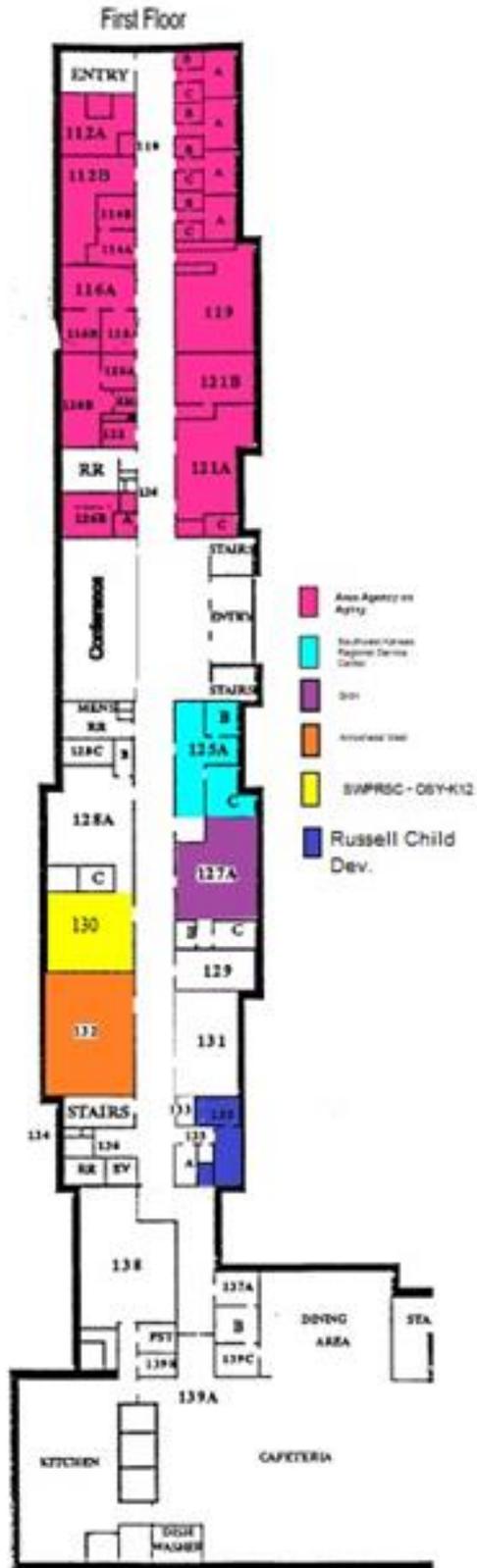
APPROVED:

\_\_\_\_\_  
Connie Marquez, CITY CLERK

RUSSELL CHILD DEVELOPMENT CENTER

By: \_\_\_\_\_  
Rebecca Clancy, Executive Director

# Exhibit A





# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nathan Littrell, Planning & Zoning Administrator  
**Date:** December 20, 2021  
**Subject:** Rezoning for 11305 112 Rd.  
**Agenda Item:** Ordinance #3766

---

**Recommendation:** The Planning Commission held a public hearing on December 14, 2021 and recommends approval of this zoning amendment. It is also City staff's recommendation to approve this rezoning.

**Background:** The applicant wishes to rezone this vacant property (Ag use) from R-2 Residential Suburban to I-2 Heavy Industrial as part of our development agreement with Hilmar. Hilmar plans to build a cheese and whey processing facility at this location. This property was annexed by the City of Dodge City on November 15, 2021. Per City Ordinance, this property was annexed into the City as R-S by default.

**Justification:** The land will be transferred to Hilmar for the development of their production facility. For this type of production and activity, I-2 Heavy Industrial is the most suitable zone. This location for this type of activity is ideal due to its separation from residential and commercial use and access to multiple highways. The rezoning of this property is in agreement with the City's Comprehensive Plan.

**Financial Considerations:** None

**Purpose/Mission:** Approving this rezoning will encourage and support growth and development in our community.

**Legal Considerations:** None

**Attachments:** Ordinance #3766, Map

ORDINANCE NO. 3766

AN ORDINANCE OF THE CITY OF DODGE CITY, KANSAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY, CHANGING THE PROPERTY LOCATED AT 11305 112 ROAD FROM R-S RESIDENTIAL SUBURBAN, TO I-2, HEAVY INDUSTRIAL.

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

SECTION 1: The following described real property located in Dodge City, Ford County, Kansas is hereby rezoned:

A tract of land in the Northeast Quarter (NE/4) of Section Twelve (12), Township Twenty-seven (27) South, Range Twenty five (25) West of the Sixth Principal Meridian, Ford County, Kansas, as originally described and prepared on December 14, 2021, by Charles W. Brooksher, P.S., Kansas License #1281, with Professional Engineering Consultants, P.A., CLS65.

Commencing at a 5/8-inch diameter smooth bar, at the Northeast Corner of the Northeast Quarter of Section 12, Township 27 South, Range 25 West of the Sixth Principal Meridian, Ford County, Kansas; Thence bearing North 89°01'51"West (as the bearing is described in Corporate Warranty Deed, recorded at Book 202, Page 342, with the Office of the Register of Deeds, Ford County, Kansas) along the North line of said Northeast Quarter of Section 12 a distance of 2638.15 feet to a 3/4-inch iron pipe with a red plastic I.D. cap stamped "PEC LS65" inside of an aluminum Ford County monument box at the Northwest Corner of said Northeast Quarter of Section 12; Thence bearing South 01°02'13" West along the West line of said Northeast Quarter of Section 12 a distance of 249.86 feet to the South line of the right of way for U.S. Highway 56 and to the POINT OF BEGINNING; Thence continuing bearing South 01°02'13" West along the West line of said Northeast Quarter of Section 12 a distance of 2402.03 feet to a 3/4-inch iron pipe with I.D. cap stamped "A TO Z LS 1053" at the Southwest Corner of said Northeast Quarter of Section 12; Thence bearing South 89°00'31"East along the South line of said Northeast Quarter of Section 12 a distance of 2644.44 feet to a 1/2-inch diameter rebar, at the Southeast Corner of said Northeast Quarter of Section 12; Thence bearing North 0°54'04"East along the East line of said Northeast Quarter of Section 12 a distance of 2304.49 feet to a point on the South line of the right of way for U.S. Highway 56, said point being distant 348.42 feet south of said Northeast Corner of the Northeast Quarter of Section 12; Thence, following said South line of the right of way for U.S. Highway 56 for the remaining courses, bearing North 68°18'35"West a distance of 272.16 feet; THENCE bearing South 89°56'40"West a distance of 200.06 feet; Thence bearing North 88°37'24"West a distance of 1500.00 feet; Thence bearing South 82°50'45"West a distance of 101.12 feet; Thence bearing North 88°06'09"West for a distance of 584.29 feet to the POINT OF BEGINNING. Subject to road purposes on the North and East

sides thereof. Encompassing 145.30 acres, more or less. (the "Property"). A depiction of the Property is attached hereto as Exhibit "A".

SECTION 2: This ordinance shall take effect, from and following its publication in the official paper, as required by law.

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR SESSION AND APPROVED BY THE MAYOR, THIS TWENTIETH DAY OF DECEMBER, 2021.

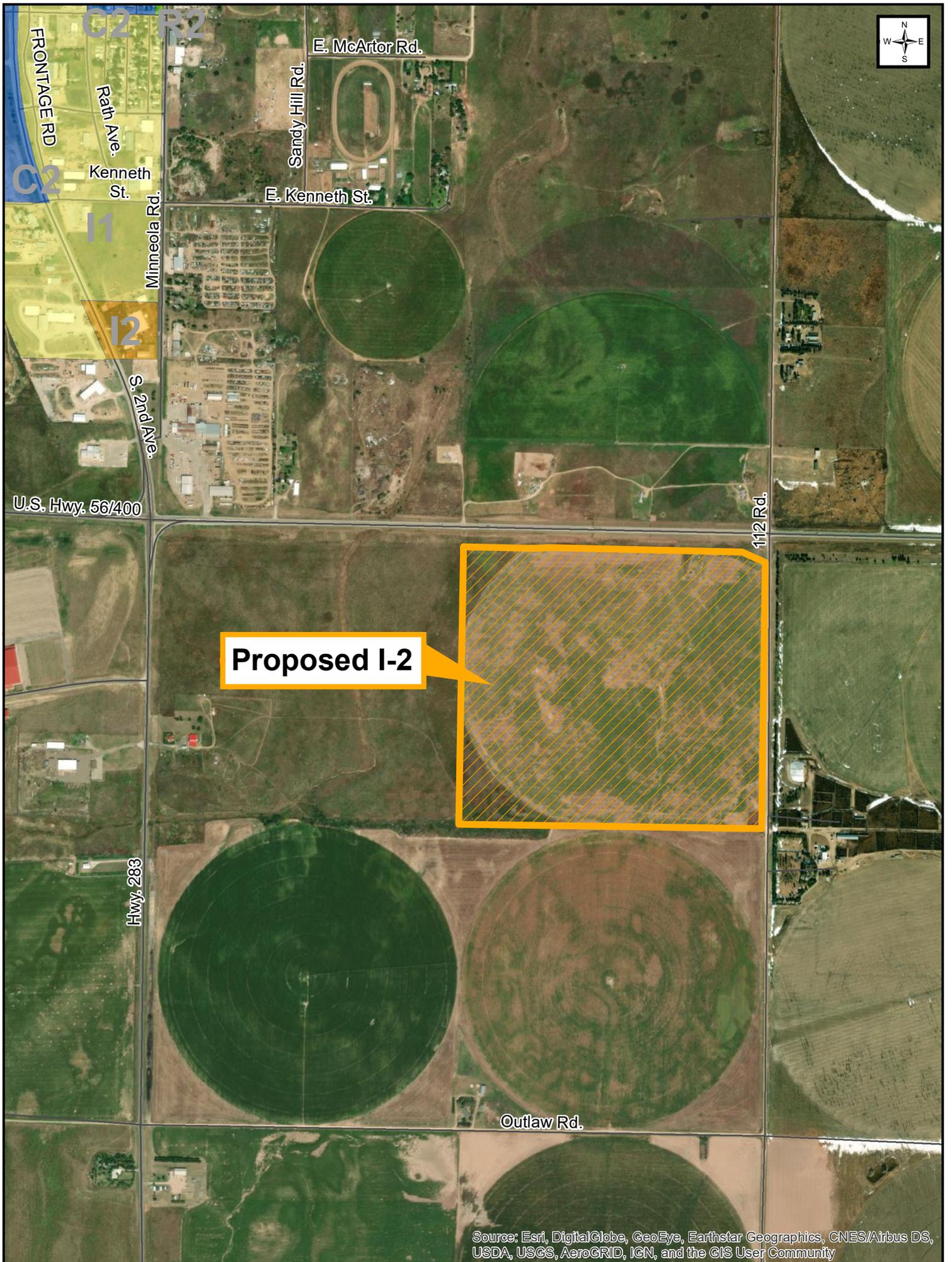
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RICK SOWERS, MAYOR

ATTEST:

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CONNIE MARQUEZ, CITY CLERK



**Proposed I-2**



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nicole May, Finance Director  
**Date:** December 2, 2021  
**Subject:** Resolution 2021-28 and Public Hearing  
**Agenda Item:** Public Hearing and Ordinance and Resolutions

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**Recommendation:** The Tax Abatement Review Committee consisting of representatives from the affected taxing entities recommends approval of the intent to issue Industrial Revenue Bonds and a pro-rated ten-year tax exemption for HCC Properties LTD or Hilmar Cheese Company, Inc. and approval of Resolution No. 2021-28.

**Background:** IRB's are an economic development tool that is statutorily permitted to provide funds to pay the costs of acquisition, construction and equipping a commercial business. They are special revenue bonds. Businesses typically utilize IRB's for the sales tax exemption of materials and equipment or other favorable tax and financing issues. The first step in this process is to issue a letter of intent for the City to issue these bonds. Hilmar Cheese Company, Inc., is asking the City of Dodge City to issue an amount not to exceed \$225,000,000 in Industrial Revenue Bonds to provide funds to pay the costs of the acquisition, construction and equipping of a commercial facility.

This resolution is a resolution of intent and the conditions to actual issuance of the bonds is subject to the passage of an ordinance authorizing the issuance of the bonds.

When the Industrial Revenue Bonds are issued, the City of Dodge City will have no financial obligation, as the bonds are not backed by the City. Hilmar Cheese Company, Inc. will be responsible for repaying the bonds.

Hilmar Cheese Company, Inc. submitted an IRB and tax abatement application. The capital investment by Hilmar is \$225,000,000 in building and improvements, \$1,000,000 in land and \$335,716,878 in furniture, fixtures, and equipment. The abatement is for the building and improvements in the amount of \$225,000,000. The equipment is already exempt.

The committee consisting of Simeon Russell with USD 443, Debbie Cox and Patti Israel with Ford County, Dr. Harold Nolte, Dodge City Community College and Nick Hernandez and Nicole May City of Dodge City met to consider this request. The committee voted unanimously to recommend to the City Commission to grant a 10-year exemption with a declining schedule with one hundred percent (100%) the first year and declining ten percent (10%) each year thereafter.

A notice was published in the Dodge City Daily Globe on November 23, 2021, notifying the public that a Public Hearing will be held on December 6, 2021 to consider the Hilmar Cheese Company, Inc. Tax Exemption request. A notice was also sent to Ford County, USD 443 and Dodge City Community College.

**Justification:** Tax exemptions are eligible for up to 100% for ten years under the constitution property tax exemption laws of the State of Kansas.

**Financial Considerations:** The prorated ten-year scenario offers new tax revenues to the taxing entities in year 1 of the project. The cost benefit for each local taxing entity shows in excess of a 1.91 – 4.00 rate of return. It also shows a .61 rate of return to the State of Kansas. This indicates a favorable project to the local community as well as the State of Kansas.

**Purpose/Mission:** On going community improvement allows jobs to be retained and grown in Dodge City.

**Legal Considerations:** Allowed by the Kansas Constitution.

**Attachments:** Resolution 2021-28 and Cost Benefit Study

**RESOLUTION NO. 2021-28**

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS DETERMINING THE ADVISABILITY OF ISSUING INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A COMMERCIAL FACILITY TO BE LOCATED IN THE CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS**

**WHEREAS**, the City of Dodge City, Kansas (the "Issuer") desires to promote, stimulate and develop the general economic welfare and prosperity of the City of Dodge City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

**WHEREAS**, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the Issuer is authorized to issue revenue bonds for such purposes, and it is hereby found and determined to be advisable and in the interest and for the welfare of the Issuer and its inhabitants that revenue bonds of the Issuer in a principal amount not to exceed \$225,000,000 be authorized and issued, in one or more series, to provide funds to pay the costs of the acquisition, construction and equipping of a commercial facility (the "Project") to be located in the Issuer and to be leased by the Issuer to HCC Properties LTD., a California limited partnership, or Hilmar Cheese Company, Inc., a California corporation (the "Tenant").

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

Section 1. **Public Purpose.** The governing body of the Issuer hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the Issuer, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas.

Section 2. **Authorization to Acquire Project; Intent to Issue Bonds.** The Issuer is hereby authorized to proceed with the acquisition, construction and equipping of the Project and to issue its revenue bonds, in one or more series, in a principal amount not to exceed \$225,000,000 (the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. **Conditions to Issuance of Bonds.** The issuance of the Bonds is subject to: (a) the passage of an ordinance authorizing the issuance of the Bonds; (b) the successful negotiation of a Trust Indenture, Site Lease, Project Lease, Bond Purchase Agreement or other legal documents necessary to accomplish the issuance of the Bonds, the terms of which shall be in compliance with the Act and mutually satisfactory to the Issuer and the Tenant; (c) the successful negotiation and sale of the Bonds to a purchaser or purchasers yet to be determined (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the Issuer; (d) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the Issuer, the Tenant and the Purchaser; (e) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (f) the commitment to and payment by the Tenant or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the Issuer and

the Issuer Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals; and (g) the satisfactory negotiation of an agreement with the Tenant relating to the payment or exemption of all or a portion of property taxes assessed against the Project after issuance of the Bonds.

**Section 4. Property Tax Exemption and Payment in Lieu of Taxes.** The Issuer hereby determines that pursuant to the provisions of K.S.A. 79-201a *Twenty-Fourth*, the Project, to the extent purchased or constructed with the proceeds of the Bonds, should be exempt from payment of ad valorem property taxes for ten years commencing with the year following the year in which the Bonds are issued, provided proper application is made therefor; provided no exemption may be granted from the ad valorem property tax levied: (a) by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; and (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth*. In making such determination the governing body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d. The Tenant is responsible for preparing such application and providing the same to the Issuer for its review and submission to the State Board of Tax Appeals. The tax exemption granted is subject to the execution and delivery by the Tenant of an agreement for payment in lieu of taxes in a form to be approved by the governing body of the Issuer prior to the issuance of the Bonds.

**Section 5. Sales Tax Exemption.** The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

**Section 6. Reliance by Tenant; Limited Liability of Issuer.** It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the Issuer from the Project and not from any other fund or source. The Issuer shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the Issuer shall have no liability to the Tenant.

**Section 7. Execution and Delivery of Bond Purchase Agreement.** At such time as the Tenant has demonstrated compliance with the provisions of this Resolution, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Tenant for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

**Section 8. Further Action.** The Clerk is hereby authorized to deliver an executed copy of this Resolution to the Tenant. The Mayor, Clerk and other officials and employees of the Issuer, including the Issuer's counsel and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) cooperate with the Tenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property; and (b) execution on behalf of the Issuer of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act.

Section 9. **Effective Date.** This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until March 31, 2025, unless extended by affirmative vote of a majority of the Governing Body.

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**ADOPTED** by the governing body of the City of Dodge City, Kansas on December 20, 2021.

[SEAL]

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Mayor

Attest:

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Clerk

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the Issuer adopted by the governing body on December 20, 2021, as the same appears of record in my office.

DATED: December 20, 2021.

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Clerk

# A Tax Abatement Cost-Benefit Analysis of Hilmar Cheese Company 1

The firm is located in: **City of Dodge City 1**

Report Printed: 12/8/2021

Description of the firm's location or expansion in the community:

To build a state of the art cheese and whey protein manufacturing facility, to improve lives for all our stake hlders.

**This report includes an analysis of costs and benefits from the firm for the following taxing entities where the firm is or will be located. These taxing entities are considering tax abatements or incentives for the firm:**

<b>City:</b>	<b>Dodge City 1</b>
<b>County:</b>	<b>Ford</b>
<b>School District:</b>	<b>USD #443</b>
<b>Special Taxing District:</b>	<b>Dodge City Community</b>
<b>State of Kansas</b>	

Contents of this report:

About this Cost-Benefit Analysis Report	Page 2	
Summary of Costs and Benefits for all Taxing Entities	Page 5	
The Economic Impact that the Firm will have on the Community	Page 6	
Costs and Benefits for:		
City:	Dodge City 1	Page 7
County:	Ford	Page 8
School District:	USD #443	Page 9
Special Taxing District:	Dodge City Community	Page 10
State of Kansas		Page 11

This Kansas Tax Abatement Cost Benefit Analysis (CBA) is prepared by the Kansas Department of Commerce for the benefit and use of the State of Kansas and its local units of government. This model was developed to assess the costs and benefits property tax abatement and economic development incentives have on state revenues. The Department of Commerce makes no representations, guarantees, or warranties as to the accuracy, completeness, or suitability of the analysis or information contained in this CBA. The Kansas Department of Commerce specifically disclaims any and all liability for any claims or damages that may result from other uses of the analysis in this CBA.

## **About this Cost-Benefit Analysis Report**

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This cost-benefit analysis report was prepared using a computer program that analyzes economic and fiscal impact. The report shows the impact that the firm, its employees and workers in spin-off jobs will have on the community and the state.

The economic impact over the next ten years is calculated along with the accompanying public costs and benefits for the State of Kansas and the taxing entities included in this analysis.

The analysis also shows the effect of tax abatements and incentives that may be considered for the firm.

Here is how the analysis was performed:

1. Data was entered for the state and community's tax and other rates; the firm and its employees; tax abatements and other incentives being considered for the firm; construction activity; and expected visitors.
2. Using the data entered, as well as some rates built into the computer program, calculations were made of the economic impact of the firm along with the related costs and benefits.

The calculations of impact include direct, indirect and induced impact. Regional economic multipliers, specific to the firm's industry group, were used by the program to calculate the direct and induced or spin-off jobs and earnings in the community.

These are the report sections:

### **Summary of Costs and Benefits for all Taxing Entities**

This report page summarizes the costs and benefits for all taxing entities resulting from the firm and from new direct, indirect and induced jobs.

### **The Economic Impact that the Firm will have on the Community**

This report page shows the number of direct, indirect and induced jobs that will be created in the community, the number of new residents and additional school children, and increases in local personal income, retail sales, economic activity and the property tax base in the first year and over the next ten years.

### **Benefits and Costs for Each Taxing Entity**

These report pages summarize the costs and benefits for the State of Kansas and for each taxing entity as a result of the firm locating or expanding in the Kansas community.

The public benefits include additional revenues from the firm and employees for the taxing entities - - -sales taxes, property taxes, utilities, utility franchise fees, other payments by new residents, Payments in lieu of taxes (PILOT) by the firm and additional school funding. Public costs include the additional costs of public services for new residents and the firm, costs of educating new students that move to the school district, along with tax abatements and incentives provided to the firm.

In addition to a presentation of public costs and benefits, this report also computes the present value of net benefits to be received by each taxing entity; the payback period for incentives and taxes to be abated; the rate of return on investment for each entity, and, cost benefit ratios.

#### **Payback Period**

The investment payback period for each taxing entity was computed. This analysis views the financial incentives, including tax abatement, that the taxing entities are considering for the firm as an investment that the public will be making in the company. The payback period, therefore, is the number of years that it will take each taxing entity to recover the cost of incentives from the net annual benefits that they will receive. This payback period also shows the point in time where the cost and benefits are equal for the level and length of tax abatements and incentives being granted. The payback period is a basis for judging the appropriateness of providing incentives to a firm. Generally, the shorter the payback period the better the investment.

### Present Value

The present value of the expected cash flow over the next ten years for each entity was computed. Present value is a way of expressing in today's dollars, dollars to be paid or received in the future. Today's dollar and a dollar to be received or paid at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. The analysis uses a discount rate that is entered to make the dollars comparable—by expressing them in today's dollars (present value). Generally, a positive present value indicates an acceptable investment.

### Rate of Return on Investment

The rate of return on investment for each taxing entity was also computed. As with the computation of payback, the rate of return analysis views the incentives that each taxing entity is considering as an investment that the public will be making in the company. The rate of return, therefore, is the compound rate of return, over the next ten years, on each taxing entity's investment in the firm. Generally, a positive compound rate of return is considered desirable.

### Benefit to Cost Ratio

The benefit to cost ratio for each taxing entity was also computed. This ratio compares public benefits over a ten year period from the new or expanding firm to public costs during the same period. For example, a benefit to cost ratio of 1.55 (or 1.55 to 1) shows that ten year benefits are 155 percent of public costs. Conversely, a benefit to cost ratio of .75 shows that public benefits are only 75 percent of public costs --costs exceed benefits. Generally, a benefit to cost ratio of 1.30 to 1 is considered acceptable for a taxing entity to grant tax abatements and other financial incentives to a firm.

## **How were the benefits and costs determined?**

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### **City, County, Special Taxing District and State Benefits and Costs**

The Cost Benefit Analysis (CBA) operates with the assumption that 70% of the jurisdiction's revenues and expenditures supports its citizens, and 30% supports its businesses. Therefore, 70% of the revenues/costs (divided by number of residents) are calculated as the average revenue/cost per resident; 30% of these revenues/costs (divided by the number of workers in the jurisdiction) are calculated as the average revenue/cost per worker.

The CBA predicts potential benefits and costs from residents by multiplying the number of new employees moving to the jurisdiction by the average revenue/cost per resident. Benefits and costs from the business expansion are predicted by multiplying the average revenue/cost per worker.

Collection of sales taxes, transient guest taxes and property taxes as well as utility enterprises and franchise fees are potential benefits from an expansion.. Other revenues include fees, permits, license, and other charges.

The program predicts costs by removing utility enterprise expenditures and internal transfers from the general operating budget, and reducing the result to a cost per resident and a cost per worker.

### **School District Benefits and Costs**

Property taxes as well as state and federal payments per full time student are used to predict benefits a school district may realize. The Kansas Department of Education condenses the school district's budget to a cost per student. One new student will not cause the addition of a new classroom or the hiring of another teacher, so it would not be fair to estimate the impact of new students using the average cost per student. The program utilizes a marginal cost per student (10% of the average cost per student, unless a different percentage is requested) to predict the cost to the district when a new student is added. Revenue per student is calculated from the amount of state and federal payment per student that the district receives.

The business predicts the average family size of new employees moving to the jurisdiction and the number of school age children in the family. The CBA can work with percentages, as in a family size of 2.5.

### **Indirect Jobs**

The ripple or spin-off economic activity created by an expansion generates indirect or induced benefits. The number of jobs this activity generates depends largely on the type of business that is expanding and what types of jobs will be needed to support not only the business, but the new employees and their families. The program uses a default of 10% of the number of new employees to predict these jobs. The percentage can be adjusted, depending on community conditions, which also determine whether the indirect workers will be moving from out of state or out of county.

### **Formulas used in this analysis**

- **Present Value** =  $(\text{Total Benefits (for the year)} \div 1 + \text{Discount Rate (5.5\%)})^{\text{Number of Years Abated}}$
- **Compound Rate of Return** =  $((\text{Present Value of Total Costs} \div \text{Present Value of Total Benefits})^{\text{1/Number of Years Abated}}) - 1$
- **Benefit to Cost Ratio** =  $\text{Present Value of Total Benefits} \div \text{Present Value of Total Costs}$
- **Payback Period** = The point where total benefits equal or surpass total costs.

K.S.A. 79-213 (g) allows governmental bodies to seek assistance provided by the Kansas Department of Commerce (COMMERCE) in preparing an application requesting exemption from property taxes. COMMERCE prepared this cost benefit analysis as a service under this statute utilizing data gathered by the requesting governmental body, and makes no recommendation to the Board of Tax Appeals either for or against approval of a request for tax abatement.

## Summary of Costs and Benefits for all Taxing Units

### **Benefits:**

	Sales Taxes	Property Taxes	Utilities and Utility Franchise Fees	Corporate and Personal Income Taxes	Additional School Funding	Other Revenues (Including PILOT)	Total Benefits
City: Dodge City 1	\$1,764,602	\$49,909,312	\$1,695,992			\$6,975,757	\$60,345,662
County: Ford	\$1,263,852	\$49,644,985				\$11,030,170	\$61,939,006
USD #443		\$61,523,004			\$38,205,902		\$99,728,906
Dodge City Community		\$34,945,866				\$2,416,785	\$37,362,651
State of Kansas	\$10,861,935	\$1,616,410		\$28,162,627		\$16,882,551	\$57,523,524

### **Costs, Incentives and Taxes Abated:**

	Costs of Services for the Firm and New Residents	Costs of Educating New Students	Taxes Abated	Incentives	Total Taxes Abated & Incentives	Total Costs
City: Dodge City 1	\$3,665,372		\$15,691,893	\$0	\$15,691,893	\$19,357,265
County: Ford	\$13,990,222		\$15,603,085	\$0	\$15,603,085	\$29,593,307
USD #443		\$4,703,660	\$19,339,798		\$19,339,798	\$24,043,458
Dodge City Community	\$1,159,522		\$11,018,967		\$11,018,967	\$12,178,489
State of Kansas	\$16,236,935	\$16,332,983	\$508,443	\$52,013,895	\$52,522,338	\$85,092,256

### **Net Benefits:**

	Total Benefits	Present Value of Total Benefits	Total Costs (Includes Taxes Abated and Incentives)	Present Value of Total Costs	Benefit to Cost Ratio (Over 10 Years)
City: Dodge City 1	\$60,345,662	\$46,569,148	\$19,357,265	\$15,798,871	2.95 : 1
County: Ford	\$61,939,006	\$47,687,352	\$29,593,307	\$24,949,967	1.91 : 1
USD #443	\$99,728,906	\$76,021,005	\$24,043,458	\$19,019,911	4. : 1
Dodge City Community	\$37,362,651	\$28,815,964	\$12,178,489	\$9,737,698	2.96 : 1
State of Kansas	\$57,523,524	\$45,927,849	\$85,092,256	\$75,616,208	.61 : 1

### **Other**

	Net Benefits	Present Value of Net Benefits	Taxes Abated & Incentives	Present Value of Taxes Abated and Incentives	Payback Period for Taxes Abated and Incentives and Taxes Abated	Compound Rate of Return (Over 10 Yrs)
City: Dodge City 1	\$40,988,398	\$31,028,922	\$15,691,893	\$12,654,721	2 Years	11.42%
County: Ford	\$32,345,699	\$22,737,385	\$15,603,085	\$12,718,089	2 Years	6.69%
USD #443	\$75,685,448	\$57,001,094	\$19,339,798	\$15,596,573	2 Years	14.86%
Dodge City Community	\$25,184,162	\$19,078,265	\$12,570,915	\$8,886,242	3 Years	11.46%
State of Kansas	(\$27,568,732)	(\$29,771,804)	\$52,522,338	\$47,919,891	> 10 Yrs	N/A

## The Economic Impact of this expansion by Hilmar Cheese Company 1

NAICS Code 311513 - Food, beverage, and tobacco product mfg

	<u>In the first year</u>	<u>Over the next ten years</u>
*Number of new direct and indirect jobs to be created	904	904
Number of new residents in the community	78	156
Number of additional students in the local school district	46	91
**Increase in local personal income	\$54,250,560	\$54,250,560
***Increase in local retail sales	\$18,987,696	\$18,987,696
Increase in the community's property tax base	\$786,716,878	\$655,596,082
Land	\$1,000,000	\$1,304,773
Buildings	\$225,000,000	\$293,573,966
Furniture, fixtures & Equipment	\$335,716,878	\$67,143,376
Residential Property	\$73,746	\$481,109

\*The Employment Multiplier for NAICS Code 311513 is 3.4756. The Employment Multiplier is used to estimate the total change in the number of direct and indirect jobs as a result of the expansion.

\*\*The Earnings Multiplier for NAICS Code 311513 is 3.312. The Earnings Multiplier is used for estimating to what degree more personal income will be generated.

\*\*\*The Percentage of Gross Salaries expected to be spent on retail sales is 0.35

Property taxes to be abated by the following taxing entities:

City	<input checked="" type="checkbox"/>	Special Taxing District 1	<input checked="" type="checkbox"/>
County	<input checked="" type="checkbox"/>	Special Taxing District 2	<input type="checkbox"/>
School District	<input checked="" type="checkbox"/>	The State	<input checked="" type="checkbox"/>

Percent of property taxes to be abated on:

	Land	Buildings and Improvements	Furniture, Fixtures & Equipment
Year 1	0.00%	100.00%	0.00%
Year 2	0.00%	90.00%	0.00%
Year 3	0.00%	80.00%	0.00%
Year 4	0.00%	70.00%	0.00%
Year 5	0.00%	60.00%	0.00%
Year 6	0.00%	50.00%	0.00%
Year 7	0.00%	40.00%	0.00%
Year 8	0.00%	30.00%	0.00%
Year 9	0.00%	20.00%	0.00%
Year 10	0.00%	10.00%	0.00%

**City of: Dodge City 1**

**Benefits:**

Year	Sales Taxes	Property Taxes	Utilities and Utility Franchise Fees	Other Municipal Revenues (Including PILOT)	Total
Construction Period	\$604,700	\$0	\$19,390	\$0	\$624,090
1	\$570,785	\$6,504,444	\$143,260	\$508,326	\$7,726,815
2	\$57,989	\$6,142,484	\$145,908	\$602,614	\$6,948,994
3	\$59,729	\$5,786,713	\$150,927	\$620,692	\$6,618,061
4	\$61,521	\$5,426,347	\$156,162	\$639,313	\$6,283,342
5	\$63,366	\$5,072,333	\$161,624	\$658,492	\$5,955,815
6	\$65,267	\$4,717,179	\$167,327	\$678,247	\$5,628,020
7	\$67,225	\$3,920,643	\$173,287	\$739,789	\$4,900,944
8	\$69,242	\$4,014,949	\$179,520	\$719,552	\$4,983,264
9	\$71,319	\$4,112,085	\$186,044	\$741,139	\$5,110,587
10	\$73,459	\$4,212,135	\$212,544	\$1,067,592	\$5,565,731
Total	\$1,764,602	\$49,909,312	\$1,695,992	\$6,975,757	\$60,345,662

**Costs:**

Year	Property Taxes Abated	Incentives	Taxes Abated & Incentives	City Costs for the firm and Municipal Services for New Residents	Total Costs, Taxes Abated & Incentives
Construction Period	\$0	\$0	\$0	\$1,700,000	\$1,700,000
1	\$2,604,038	\$0	\$2,604,038	\$161,483	\$2,765,521
2	\$2,413,943	\$0	\$2,413,943	\$166,328	\$2,580,271
3	\$2,210,099	\$0	\$2,210,099	\$171,318	\$2,381,416
4	\$1,991,851	\$0	\$1,991,851	\$176,457	\$2,168,309
5	\$1,758,520	\$0	\$1,758,520	\$181,751	\$1,940,271
6	\$1,509,397	\$0	\$1,509,397	\$187,204	\$1,696,600
7	\$1,243,743	\$0	\$1,243,743	\$192,820	\$1,436,562
8	\$960,791	\$0	\$960,791	\$198,604	\$1,159,396
9	\$659,743	\$0	\$659,743	\$204,562	\$864,306
10	\$339,768	\$0	\$339,768	\$324,845	\$664,612
Total	\$15,691,893	\$0	\$15,691,893	\$3,665,372	\$19,357,265

**Net Benefits (or Costs)**

Year	Public Benefits	Public Costs, Property Taxes Abated and Incentives	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of taxes abated and incentives
Construction Period	\$624,090	\$1,700,000	(\$1,075,910)	(\$1,075,910)	\$0
1	\$7,726,815	\$2,765,521	\$4,961,294	\$4,961,294	\$2,468,282
2	\$6,948,994	\$2,580,271	\$4,368,723	\$3,925,090	\$2,168,813
3	\$6,618,061	\$2,381,416	\$4,236,644	\$3,607,984	\$1,882,150
4	\$6,283,342	\$2,168,309	\$4,115,033	\$3,321,723	\$1,607,856
5	\$5,955,815	\$1,940,271	\$4,015,544	\$3,072,431	\$1,345,504
6	\$5,628,020	\$1,696,600	\$3,931,420	\$2,851,246	\$1,094,684
7	\$4,900,944	\$1,436,562	\$3,464,382	\$2,381,544	\$854,995
8	\$4,983,264	\$1,159,396	\$3,823,868	\$2,491,628	\$626,051
9	\$5,110,587	\$864,306	\$4,246,281	\$2,622,628	\$407,477
10	\$5,565,731	\$664,612	\$4,901,119	\$2,869,265	\$198,910
Total	\$60,345,662	\$19,357,265	\$40,988,398	\$31,028,922	\$12,654,721

Discounted payback period for taxes abated and incentives .....	2 Years
Compound rate of return over the next ten years on the city's investment of taxes abated and incentives for the firm .....	11.42%
Benefit/Cost Ratio (Over 10 Years).....	2.95 : 1

**Ford County**

**Benefits:**

Year	Sales Taxes	Property Taxes	Other County Revenues (Including PILOT)	Total
Construction Period	\$604,700	\$0	\$0	\$604,700
1	\$70,035	\$6,468,010	\$949,525	\$7,487,570
2	\$57,989	\$6,108,497	\$978,011	\$7,144,498
3	\$59,729	\$5,755,564	\$1,007,352	\$6,822,644
4	\$61,521	\$5,397,285	\$1,037,572	\$6,496,378
5	\$63,366	\$5,045,749	\$1,068,699	\$6,177,815
6	\$65,267	\$4,692,668	\$1,100,760	\$5,858,695
7	\$67,225	\$3,900,706	\$1,133,783	\$5,101,714
8	\$69,242	\$3,994,546	\$1,167,797	\$5,231,585
9	\$71,319	\$4,091,202	\$1,202,830	\$5,365,352
10	\$73,459	\$4,190,758	\$1,383,840	\$5,648,056
Total	\$1,263,852	\$49,644,985	\$11,030,170	\$61,939,006

**Costs:**

Year	Property Taxes Abated	Incentives	Taxes Abated & Incentives	County Costs for the firm and County Services for New Residents	Total
Construction Period	\$0	\$0	\$0	\$7,700,000	\$7,700,000
1	\$2,589,300	\$0	\$2,589,300	\$541,490	\$3,130,790
2	\$2,400,281	\$0	\$2,400,281	\$557,735	\$2,958,016
3	\$2,197,591	\$0	\$2,197,591	\$574,467	\$2,772,057
4	\$1,980,579	\$0	\$1,980,579	\$591,701	\$2,572,279
5	\$1,748,568	\$0	\$1,748,568	\$609,452	\$2,358,020
6	\$1,500,854	\$0	\$1,500,854	\$627,735	\$2,128,589
7	\$1,236,704	\$0	\$1,236,704	\$646,567	\$1,883,271
8	\$955,354	\$0	\$955,354	\$665,964	\$1,621,318
9	\$656,010	\$0	\$656,010	\$685,943	\$1,341,953
10	\$337,845	\$0	\$337,845	\$789,168	\$1,127,013
Total	\$15,603,085	\$0	\$15,603,085	\$13,990,222	\$29,593,307

**Net Benefits (or Costs)**

Year	Public Benefits	Public Costs, Property Taxes Abated and Incentives	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of taxes abated and incentives
Construction Period	\$604,700	\$7,700,000	(\$7,095,300)	(\$7,095,300)	\$0
1	\$7,487,570	\$3,130,790	\$4,356,780	\$4,129,650	\$2,589,300
2	\$7,144,498	\$2,958,016	\$4,186,482	\$3,761,355	\$2,156,538
3	\$6,822,644	\$2,772,057	\$4,050,587	\$3,449,535	\$1,871,498
4	\$6,496,378	\$2,572,279	\$3,924,098	\$3,167,598	\$1,598,756
5	\$6,177,815	\$2,358,020	\$3,819,795	\$2,922,656	\$1,337,889
6	\$5,858,695	\$2,128,589	\$3,730,106	\$2,705,244	\$1,088,488
7	\$5,101,714	\$1,883,271	\$3,218,443	\$2,212,476	\$850,156
8	\$5,231,585	\$1,621,318	\$3,610,267	\$2,352,446	\$622,507
9	\$5,365,352	\$1,341,953	\$4,023,399	\$2,484,969	\$405,171
10	\$5,648,056	\$1,127,013	\$4,521,043	\$2,646,757	\$197,785
Total	\$61,939,006	\$29,593,307	\$32,345,699	\$22,737,385	\$12,718,089

Discounted payback period for taxes abated and incentives .....	2 Years
Compound rate of return over the next ten years on the county's investment of taxes abated and incentives for the firm.....	6.69%
Benefit/Cost Ratio (Over 10 Years).....	1.91 : 1

**School District: USD #443**

**Benefits:**

Year	Property Taxes	Additional State, Federal and Other School Funding (Including PILOT)	Total
1	\$8,016,771	\$3,332,720	\$11,349,491
2	\$7,570,913	\$3,432,702	\$11,003,615
3	\$7,132,946	\$3,535,683	\$10,668,629
4	\$6,688,835	\$3,641,753	\$10,330,588
5	\$6,252,818	\$3,751,006	\$10,003,824
6	\$5,815,139	\$3,863,536	\$9,678,676
7	\$4,833,473	\$3,979,442	\$8,812,915
8	\$4,949,745	\$4,098,825	\$9,048,571
9	\$5,069,505	\$4,221,790	\$9,291,296
10	\$5,192,859	\$4,348,444	\$9,541,303
Total	\$61,523,004	\$38,205,902	\$99,728,906

**Costs:**

Year	Additional Costs	Property Taxes Abated	Total
1	\$368,376	\$3,209,400	\$3,577,776
2	\$379,427	\$2,975,114	\$3,354,541
3	\$390,810	\$2,723,882	\$3,114,692
4	\$414,610	\$2,454,899	\$2,857,433
5	\$427,048	\$2,167,325	\$2,581,935
6	\$427,048	\$1,860,287	\$2,287,335
7	\$439,860	\$1,532,877	\$1,972,736
8	\$453,055	\$1,184,147	\$1,637,203
9	\$466,647	\$813,114	\$1,279,762
10	\$961,293	\$418,754	\$1,380,047
Total	\$4,703,660	\$19,339,798	\$24,043,458

**Net Benefits (or Costs)**

Year	Public Benefits	Total Costs and Property Taxes Abated	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of Taxes Abated
1	\$11,349,491	\$3,577,776	\$7,771,716	\$7,366,555	\$3,042,085
2	\$11,003,615	\$3,354,541	\$7,649,074	\$6,872,329	\$2,672,998
3	\$10,668,629	\$3,114,692	\$7,553,937	\$6,433,036	\$2,319,695
4	\$10,330,588	\$2,857,433	\$7,473,156	\$6,032,457	\$1,981,635
5	\$10,003,824	\$2,581,935	\$7,421,889	\$5,678,742	\$1,658,295
6	\$9,678,676	\$2,287,335	\$7,391,340	\$5,360,539	\$1,349,165
7	\$8,812,915	\$1,972,736	\$6,840,179	\$4,702,191	\$1,053,756
8	\$9,048,571	\$1,637,203	\$7,411,368	\$4,829,239	\$771,589
9	\$9,291,296	\$1,279,762	\$8,011,534	\$4,948,158	\$502,203
10	\$9,541,303	\$1,380,047	\$8,161,256	\$4,777,849	\$245,151
Total	\$99,728,906	\$24,043,458	\$75,685,448	\$57,001,094	\$15,596,573

Discounted payback period for taxes abated and incentives .....	2 Years
Compound rate of return over the next ten years on the school district's investment of taxes abated and incentives for the firm .....	14.86%
Benefit/Cost Ratio (Over 10 Years).....	4 : 1

**Special Taxing District: Dodge City Community**

**Benefits:**

Year	Property Taxes	Additional Revenues	Total
1	\$4,565,073	\$197,934	\$4,763,007
2	\$4,308,991	\$203,872	\$4,512,864
3	\$4,054,600	\$209,989	\$4,264,589
4	\$3,801,282	\$216,288	\$4,017,571
5	\$3,550,064	\$222,777	\$3,772,841
6	\$3,300,318	\$229,460	\$3,529,779
7	\$2,740,621	\$236,344	\$2,976,965
8	\$2,806,470	\$243,434	\$3,049,904
9	\$2,874,294	\$250,737	\$3,125,031
10	\$2,944,152	\$405,948	\$3,350,101
Total	\$34,945,866	\$2,416,785	\$37,362,651

**Costs:**

Year	Additional Costs	Property Taxes Abated	Total
1	\$94,965	\$1,828,575	\$1,923,540
2	\$97,814	\$1,695,089	\$1,792,903
3	\$100,748	\$1,551,948	\$1,652,696
4	\$103,771	\$1,398,693	\$1,502,464
5	\$106,884	\$1,234,846	\$1,341,730
6	\$110,090	\$1,059,910	\$1,170,000
7	\$113,393	\$873,366	\$986,759
8	\$116,795	\$674,675	\$791,470
9	\$120,298	\$463,277	\$583,575
10	\$194,765	\$238,588	\$433,353
Total	\$1,159,522	\$11,018,967	\$12,178,489

**Net Benefits (or Costs)**

Year	Public Benefits	Total Costs and Property Taxes Abated	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of Taxes Abated
1	\$4,763,007	\$1,923,540	\$2,839,468	\$2,691,439	\$1,733,246
2	\$4,512,864	\$1,792,903	\$2,719,961	\$2,443,756	\$1,522,957
3	\$4,264,589	\$1,652,696	\$2,611,893	\$2,224,324	\$1,321,660
4	\$4,017,571	\$1,502,464	\$2,515,107	\$2,030,236	\$1,129,049
5	\$3,772,841	\$1,341,730	\$2,431,111	\$1,860,126	\$944,823
6	\$3,529,779	\$1,170,000	\$2,359,779	\$1,711,420	\$768,695
7	\$2,976,965	\$986,759	\$1,990,207	\$1,368,141	\$600,384
8	\$3,049,904	\$791,470	\$2,258,434	\$1,471,593	\$439,617
9	\$3,125,031	\$583,575	\$2,541,456	\$1,569,677	\$286,133
10	\$3,350,101	\$433,353	\$2,916,748	\$1,707,553	\$139,676
Total	\$37,362,651	\$12,178,489	\$25,184,162	\$19,078,265	\$8,886,242

Discounted payback period for taxes abated and incentives .....	3
Compound rate of return over the next ten years on the taxing district's investment of taxes abated and incentives for the firm .....	11.46%
Benefit/Cost Ratio (Over 10 Years).....	2.96 : 1

**State of Kansas**

**Benefits:**

Year	Sales Taxes	Property Taxes	Corporate and Personal Income Taxes	Other State Revenues (Including PILOT)	Total
Construction Period	\$6,869,550		\$5,151,518	\$0	\$12,021,068
1	\$369,319	\$210,741	\$2,007,271	\$1,472,673	\$4,060,005
2	\$356,632	\$198,999	\$2,067,489	\$1,516,854	\$4,139,974
3	\$367,331	\$187,340	\$2,129,514	\$1,562,359	\$4,246,544
4	\$378,351	\$175,765	\$2,193,399	\$1,609,230	\$4,356,745
5	\$389,702	\$164,278	\$2,259,201	\$1,657,507	\$4,470,688
6	\$401,393	\$152,768	\$2,326,977	\$1,707,232	\$4,588,370
7	\$413,435	\$126,957	\$2,396,786	\$1,758,449	\$4,695,627
8	\$425,838	\$130,010	\$2,468,690	\$1,811,203	\$4,835,741
9	\$438,613	\$133,155	\$2,542,750	\$1,865,539	\$4,980,057
10	\$451,771	\$136,395	\$2,619,033	\$1,921,505	\$5,128,704
Total	\$10,861,935	\$1,616,410	\$28,162,627	\$16,882,551	\$57,523,524

**Costs:**

Year	Property Taxes Abated	Incentives	Taxes Abated & Incentives	State Costs for the firm and Services for New Residents	Cost of Educating New Students	Total
Construction Period	\$0	\$620,445	\$620,445	\$9,800,000	\$0	\$10,420,445
1	\$84,375	\$45,809,445	\$45,893,820	\$1,387,036	\$1,424,734	\$48,705,590
2	\$78,216	\$620,445	\$698,661	\$898,647	\$1,467,476	\$3,064,784
3	\$71,611	\$620,445	\$692,056	\$910,607	\$1,511,501	\$3,114,163
4	\$64,539	\$620,445	\$684,984	\$422,925	\$1,556,846	\$2,664,755
5	\$56,979	\$620,445	\$677,424	\$435,613	\$1,603,551	\$2,716,588
6	\$48,907	\$620,445	\$669,352	\$448,681	\$1,651,658	\$2,769,690
7	\$40,299	\$620,445	\$660,744	\$462,141	\$1,701,207	\$2,824,093
8	\$31,131	\$620,445	\$651,576	\$476,006	\$1,752,244	\$2,879,825
9	\$21,377	\$620,445	\$641,822	\$490,286	\$1,804,811	\$2,936,918
10	\$11,009	\$620,445	\$631,454	\$504,994	\$1,858,955	\$2,995,404
Total	\$508,443	\$52,013,895	\$52,522,338	\$16,236,935	\$16,332,983	\$85,092,256

**Net Benefits (or Costs)**

Year	Public Benefits	Public Costs, Property Taxes Abated and Incentives	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of taxes abated and incentives
Construction Period	\$12,021,068	\$10,420,445	\$1,600,623	\$1,517,178	\$620,445
1	\$4,060,005	\$48,705,590	(\$44,645,586)	(\$42,318,091)	\$43,501,251
2	\$4,139,974	\$3,064,784	\$1,075,190	\$966,007	\$627,713
3	\$4,246,544	\$3,114,163	\$1,132,381	\$964,351	\$589,364
4	\$4,356,745	\$2,664,755	\$1,691,991	\$1,365,803	\$552,931
5	\$4,470,688	\$2,716,588	\$1,754,100	\$1,342,122	\$518,320
6	\$4,588,370	\$2,769,690	\$1,818,680	\$1,318,990	\$485,445
7	\$4,695,627	\$2,824,093	\$1,871,534	\$1,286,561	\$454,220
8	\$4,835,741	\$2,879,825	\$1,955,915	\$1,274,472	\$424,566
9	\$4,980,057	\$2,936,918	\$2,043,139	\$1,261,902	\$396,408
10	\$5,128,704	\$2,995,404	\$2,133,300	\$1,248,899	\$369,672
Total	\$57,523,524	\$85,092,256	(\$27,568,732)	(\$29,771,804)	\$47,919,891

Discounted payback period for taxes abated and incentives .....	> 10 Yrs
Compound rate of return over the next ten years on the state's investment of taxes abated and incentives for the firm .....	-4.86%
Benefit/Cost Ratio (Over 10 years).....	.61 : 1



# Memorandum

**To: Mayor and City Commissioners**  
**From: Nick Hernandez, City Manager**  
**Date: December 20, 2021**  
**Subject: Hilmar Development Agreement**  
**Agenda Item: New Business Part A**

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**Recommendation:** Staff Recommends approval of the Hilmar Development Agreement

**Background:** Hilmar Cheese and Hilmar Ingredients intend to design, develop, construct and operate a new cheese and ingredient production and distribution facility on the Site, which will consist of an approximately 400,000 square foot Project, along with other infrastructure and amenities in the southwest corner of 112<sup>th</sup> and US56/400. Hilmar intends to employ approximately 247 full-time equivalent ("FTE") employees at the Project. The Agreement requires Hilmar to commence construction on the Project by June 30, 2022 and to complete by March 31, 2025. This agreement is a culmination of several months of discussions and revisions which have led to this action to be taken by the Commission.

**Justification:** The proposed project and agreement lay out the terms on incentives, timing, and responsibilities. In the attached executive summary and formal development agreement, responsibilities are laid out in great detail.

**Financial Considerations:**

Funding for the project will come from revenues derived from water and wastewater fees and development of the project will be completed with General Obligation Revenue Bonds. The City will have significant wastewater infrastructure costs in addition to the costs displayed in the incentive portion of this agreement.

**Purpose/Mission:**

This project aligns with our core purpose and all of our core values of Safety; Honesty, Integrity and Respect; Ongoing Improvement; and Working Towards Excellence

**Legal Considerations:** This agreement has been developed and approved between Hilmar legal counsel and Todd LaSala, partner for Stinson LLP. with guidance from the City Attorney and City Staff.

**Attachments:** Executive Summary  
Development Agreement

**12/16/21 EXECUTIVE SUMMARY**  
**HILMAR CHEESE DEVELOPMENT AGREEMENT**

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1. **Parties.** The City of Dodge City (the "City") and two California-based "developer" entities -- Hilmar Cheese Company and HCC Properties, Ltd., jointly and severally (collectively, "Hilmar").

2. **The Site.** Approximately 144 acres generally located at the intersection of County Road 112 and Highway 400. The Site is currently owned by the City. Hilmar will initially pay the City \$479,200 for the Site, but all of that purchase price is entirely refundable to Hilmar if and when they complete construction of the Project described below.

3. **The Project; Timing.** Hilmar intends to design, develop, construct and operate a new cheese and ingredient production and distribution facility on the Site, which will consist of an approximately 400,000 square foot Project, along with other infrastructure and amenities (the "Project"), all of which is described in Section 2.3 of the Agreement and generally shown on Exhibit B. Hilmar intends to employ approximately 247 full-time equivalent ("FTE") employees at the Project. The Agreement requires Hilmar to commence construction on the Project by June 30, 2022 and to complete by March 31, 2025.

4. **Conditions.** This Agreement is conditional in nature. Neither party is obligated to do the things described below unless and until the conditions described in Section 3.1 are satisfied or waived. However, if and when we close on Hilmar's acquisition of the Site, all of the conditions are deemed to be satisfied and waived at that closing. These conditions include:

- a. The City's satisfaction with Hilmar's private financing for the Project;
- b. Hilmar's inspections and satisfaction with the condition of the Site, including platting & zoning and title and survey of the Site; and
- c. Hilmar's satisfaction with an incentive package described in detail in Exhibit C, including a number of incentives that are provided by the State, Ford County and other development partners.

5. **IRB Property Tax Abatement; Payments In Lieu of Taxes ("PILOTS").** The City would agree, pursuant to § 12-1740 et seq. of the Kansas statutes, to issue Industrial Revenue Bonds ("IRBs") in a principal amount not to exceed \$225,000,000, to construct, develop and equip the Project. In lieu of the general ad valorem real property taxes and, if applicable, personal property taxes (the "Ad Valorem Taxes") which will be 100% abated by the issuance of the IRBs referenced herein for a 10-year period following completion of the Project, Hilmar agrees in Section 4.2 of the Agreement to pay a payment in lieu of taxes (a "PILOT") on an agreed-upon schedule. There would not be a PILOT payment in the first year of the IRBs after the Project is completed, but starting in Year 2 of the term of the IRBs, Hilmar would pay a PILOT equal to 10% of the Ad Valorem Taxes which would otherwise be due if the Project were not exempt from taxes. In Year 3, the PILOT would increase by an additional 10% (to a total of 20% of the Ad Valorem Taxes that would otherwise be due), and the PILOT would then increase by 10% each year thereafter until the PILOT is ultimately equal to 90% in the 10<sup>th</sup> (and final year) of the term of the IRBs. An estimated PILOT schedule is attached to the Agreement as Exhibit F to show what these PILOT payments may look like for each of the impacted taxing jurisdictions, but it is important to

remember that these amounts are only estimates – they are likely to change based on actual assessed value and appraised value of the Project after it is completed. In connection with the IRBs, Hilmar has also agreed to certain remedies (including clawback payments) as follows:

a. If Hilmar fails to open – or if they open and subsequently close the facility, then Hilmar would be obligated to pay 100% of its Ad Valorem Taxes in the years that follow, and the City can recapture a portion of the previously-abated taxes as shown in the chart in Section 4.3(d) of the Agreement.

b. Similarly, if Hilmar fails to maintain at least 180 FTE employees at the project, then Hilmar would be obligated to pay 100% of its Ad Valorem Taxes in the years that follow, and the City can recapture a portion of the previously abated-taxes as shown in the chart in Section 4.3(d) of the Agreement.

6. **The City's Infrastructure Obligations.** The City is agreeing to provide and pay for significant public infrastructure improvements (the "Public Infrastructure") in connection with the Project. If all of the conditions described in Section 3.1 of the Agreement are satisfied or waived and Hilmar closes on the acquisition of the Site, then the City is obligated to provide and pay for the following: (i) an expansion of the water treatment facility, (ii) water treatment connections and hook ups, (iii) an on-site lift station, (iv) a fire-line loop and fire hydrants, and (v) a water utility tie in. All of this Public Infrastructure is required to be completed on or before September 1, 2023. Accordingly, the City will be starting and spending money on this Public Infrastructure on a parallel course with Hilmar and their design and development of their facility, but the City will need to complete its work well in advance of Hilmar. This represents one of the biggest risks to the City in this Project. Please also note the following:

a. To somewhat mitigate the City's risks, in Section 7.2(b), Hilmar has agreed that if Hilmar fails to timely commence construction on its facility by June 30, 2022, then (1) the City's deadlines to complete the Public Infrastructure shall be extended, and (2) if the City gives them notice and a 90-day opportunity to cure, Hilmar would pay \$2.5M to the City as liquidated damages.

b. Hilmar is very concerned about the City completing the Public Infrastructure on time. In Section 7.2(c), Hilmar requires that (1) they receive any liquidated damage payments resulting from delays received from the City's contractors, and (2) they have self-help rights – the ability to step in and take over the Public Infrastructure work if the City misses its deadline.

7. **Other Incentives.** In addition to free land, the IRB abatements and the City's obligations to provide Public Infrastructure as described above, the City is also providing the following incentives to Hilmar to incentivize the Project:

a. Upon Hilmar's completion of the facility, the City agrees to pay Hilmar a \$500,000 cash incentive – an amount equal to 50% of the cost of certain additional land that we are no longer providing to Hilmar.

b. The City agrees to waive (i) all water utility connection fees; (ii) construction permit fees in connection with the Project (including without limitation, all building permit, site disturbance permit and utility excavation permit fees), and (iii) electric and gas franchise fees that it would otherwise be entitled to from the Project for a period of ten (10) years commencing upon substantial completion of the Project by Hilmar.

c. There are also specific agreements in Section 4.5 about water charges, monthly wastewater services charges that Hilmar will pay.

8. **Use and Operation Obligations.** During the term of this Agreement (which is for 10 years or until the end of the life of the IRBs), Developer agrees to certain ongoing operational covenants for the Project. Among other things, Developer agrees to continuously operate the Project in conformance with industry standards. Developer also agrees to maintain and repair the Project and to fully comply with law. Developer also agrees to obtain insurance for the Project and to rebuild any damaged portion of the Project with insurance proceeds after a fire or other casualty.

9. **Indemnity.** In Section 7.11 of the Agreement, Developer will provide the City with a fairly broad indemnification for design and construction of the Project, as well as damage and injury to persons or property that occurs on the Site. Developer also indemnifies the City for certain environmental issues in Section 7.15.

10. **Prohibition on Sales/Assignment.** In Section 7.12 of the Agreement, the parties generally agree that Developer may not assign this Agreement or convey the Project or Site without the approval of the City (in its reasonable discretion). However, the City specifically agrees and pre-approves transfers to Affiliates of Hilmar.

11. **Mortgages and Documents Recorded Against the Site.** Section 7.7 of the Agreement gives Hilmar very broad rights to mortgage and borrow against the Site and the Project – including the right to use the Site and Project as collateral for loans involving other, unrelated projects. A memorandum of this Agreement (and the City's IRB documents) will be recorded against title to the Site and will generally be superior to any of Hilmar's loan documents until the Project is substantially completed. However, after completion, Hilmar and its lender can require the City to subordinate its documents to the lenders – meaning that a lender who could potentially foreclose on the Site would not be subject to the City's documents. In that scenario, the Agreement (and the incentives provided herein) would terminate and not be available going forward thereafter.

12. **Default and Remedies.** In addition to the remedies specifically discussed above in this Executive Summary, the parties agree in Section 9.3 of the Agreement that they have whatever rights and remedies as may be available at law and equity, and they further agree as follows:

a. If Hilmar defaults, the City may (i) terminate this Agreement, (ii) enforce the City's rights and IRB remedies (including clawback rights) described in Section 4.2(d) of the Agreement, (iii) terminate the IRB financing and/or Abatement IRBs, and/or (iv) rescind the waiver of fees and charges provided in Section 4.4.

b. Both parties' liability for monetary amounts under this Agreement shall be limited to the actual damages; neither party will ever be liable for any remote or consequential damages.

## HILMAR CHEESE DEVELOPMENT AGREEMENT

**THIS HILMAR CHEESE DEVELOPMENT AGREEMENT** (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") between the City of Dodge City, Kansas (the "City") and Hilmar Cheese Company, Inc., a California corporation ("Hilmar Cheese"), and HCC Properties Ltd., a California limited partnership ("HCCP") (collectively, Hilmar Cheese and HCCP are "Hilmar" hereunder).

### RECITALS:

A. The City owns approximately 144 acres of real property in Ford County, Kansas, which is more particularly described on Exhibit A attached hereto (the "Site").

B. Hilmar intends to purchase the Site, and design, develop, construct and operate a new cheese and ingredient production and distribution facility on the Site, which will consist of an approximately 400,000 square foot building, along with other infrastructure and amenities (the "Project"), all as more particularly described in Section 2.3 below. Hilmar intends to employ approximately 247 full-time equivalent ("FTE") employees at the Project. All of the rights and obligations under this Agreement shall run to each of Hilmar Cheese and HCCP and any of the same may own the Site and the Improvements that constitute the Project and/or operate the Project as described herein.

C. Subject to the terms and conditions set forth in this Agreement, Hilmar shall have development rights on the Site to design, develop, construct and operate the Project as generally depicted on the Development Plan attached hereto as Exhibit B (the "Development Plan").

D. In order to attract the Project to the Site, the City will, subject to the terms and conditions set forth in this Agreement, (i) deliver and convey the Site to Hilmar for the consideration provided for herein, (ii) provide industrial revenue bond ("IRB") financing to Hilmar in connection with the Project, (iii) waive certain City fees, (iv) construct and operate a new on-site lift station at no cost to Hilmar, and (iv) provide utility, fire, water and other connections and infrastructure for the Site at no cost to Hilmar.

E. The parties agree that the Project is not financially feasible without the public-private partnership as set forth in this Agreement and Exhibit C, and therefore the parties wish to enter into this Agreement to provide the financing and other incentives for the Project described in the body of this Agreement and to formalize their respective rights and obligations thereto, and to memorialize their understanding and agreement that Hilmar's obligations under this Agreement are contingent on satisfaction of the conditions set forth in Section 3.1 below, including without limitation Section 3.1(f) regarding Hilmar's timely receipt of all of the additional financing and other incentives set forth in Exhibit C (i.e., the additional financing and other incentives that are not being provided by the City).

### AGREEMENT

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

### ARTICLE I. DEFINITIONS AND INTERPRETATION

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

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(c) reference to any gender includes each other gender;

(d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(e) reference in this Agreement to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;

(f) each of the items or agreements identified on the attached Index of Exhibits are deemed part of this Agreement to the same extent as if set forth herein;

(g) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

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

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

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

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

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

## **ARTICLE II. APPOINTMENT OF HILMAR -- GENERAL AGREEMENT-DOCUMENTS**

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

2.2 Transfer of the Site. At the Closing, the City shall convey the Site to Hilmar pursuant to one or more special warranty deed(s) (collectively, the "Deed"), subject only to the Permitted Encumbrances (as defined in Section 3.1(d) below). In consideration for the Deed, Hilmar shall pay to the City a purchase price in an amount equal to Four Hundred Seventy-Nine Thousand Two Hundred

Dollars (\$479,200.00) for the Site (the “Purchase Price”). The form of the Deed has been agreed to by the parties and is attached hereto as Exhibit D. The City shall be responsible for and shall pay any and all recording fees, transfer taxes, and similar costs related to the transfer of the Site. The City shall also be responsible for and shall pay any and all title fees, escrow fees, and similar costs incurred by the parties hereto in connection with the transfer of the Site.

2.3 Development Plan. The City and Hilmar hereby agree that the Development Plan for the Site shall be as described below and as depicted on Exhibit B attached hereto. Hilmar covenants and agrees that all buildings, parking facilities and other improvements described below with respect to the Project shall be developed, constructed and completed on the Site in substantial accordance and compliance with the terms and conditions of this Section 2.3 and the Development Plan. Subject to Article 6 and the other terms and provisions set forth in this Agreement, Hilmar shall have the sole right to, and shall be responsible for, the design, construction, equipment and completion of the Improvements, and shall operate and use the Improvements in the manner described in this Section 2.3 in accordance with all Applicable Laws and Requirements and in compliance with Article 7 hereof. The parties further agree as follows:

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

(i) The Production Facility. The design, development, construction and completion of a new cheese and ingredient production and distribution facility comprised of an approximately 400,0000 square foot building, with other infrastructure and amenities to conduct a cheese and ingredient manufacturing operation.

(ii) Parking Lots, Drives and Lighting Improvements. The design, development and construction and completion of the parking lots for the Project, including employee/visitor parking, and tanker parking, parking lot signage and striping, lighting improvements for the parking lots, including light poles, fixtures and electrical service thereto (the “Parking Improvements”). The Parking Improvements shall include no less than the number of spaces required by the Applicable Laws and Requirements.

(iii) Landscaping and Irrigation. The design, development and construction and completion of landscaping, islands, dry detention basins, green space and irrigation systems benefiting the Project, all as designed and installed by Hilmar within a commercially reasonable time period (not to exceed 365 days) after completing the production facility and related improvements.

(iv) Infrastructure. The design, development and construction and completion of infrastructure improvements, including without limitation, sewer, stormwater and water main improvements, irrigation systems, sidewalks, drives and other pedestrian and vehicular thoroughfares (the “Infrastructure Improvements”), except for and excluding those to be provided by the City pursuant to Section 4.3 below.

(v) Other. Any and all other Improvements required by the Development Plan and all Applicable Laws and Requirements.

(b) Amendments or modifications made to the Development Plan described in this Section 2.3 shall be in full compliance with all Applicable Laws and Requirements and Hilmar shall have the right, in its reasonable discretion, to modify the scope, scale, or physical

parameters of the Development Plan (each, a “Permitted Modification”), under the following conditions:

- (i) To the extent modifications are required by Applicable Laws and Requirements;
- (ii) To the extent modifications are required to maintain costs within Hilmar’s budget;
- (iii) To the extent of modifications to the applicable Improvements to accommodate new technologies or amenities or rebranding which may be necessary or desirable due to market or industry changes or conditions during the time that the Project is being developed or operated; and
- (iv) To expand any Improvements.

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

### **ARTICLE III. CONDITIONS**

3.1 Conditions. Neither party shall be obligated to proceed to Closing unless and until each of the following conditions and requirements has been satisfied in full:

(a) Private Financing. Upon (i) receipt of a fully-executed non-disclosure agreement in the form and content acceptable to Hilmar, which shall be signed by the City’s third-party representative who will perform the analysis contemplated in this paragraph, (ii) agreement between the parties regarding the scope and logistics of the analysis contemplated in this paragraph, and (iii) agreement between the parties regarding the specific third-party representative who will perform the analysis contemplated in this paragraph, Hilmar will provide, for confidential review by such third-party representative only, certain confidential and proprietary information regarding the terms and conditions of Hilmar’s private financing, including equity and evidence that Hilmar has procured and will, upon the Closing, close on financing transactions for Hilmar’s Private Contribution, the net proceeds of which, when added to the demonstrable equity commitments of Hilmar, are sufficient and available to fully fund the hard and soft costs for the Project.

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

(c) Inspection. The City shall allow Hilmar access to the Site for purposes of inspecting the Site (the “Investigations”), including, without limitation, a Phase 2 environmental site assessment and any other environmental studies deemed necessary by Hilmar; provided, however, that: (i) Hilmar must schedule such Investigations with the City; (ii) Hilmar will maintain the results of any such Investigations confidential, except to such regulatory agencies (e.g., the Kansas Department of Health and Environment), third-party consultants, lenders, investors or attorneys as reasonably necessary to advise Hilmar with regard to the Investigations; (iii) if Closing does not occur, Hilmar shall repair any and all damage caused by the

Investigations, and shall restore the Site to substantially the same condition it was in prior to such Investigations; and (iv) Hilmar agrees to indemnify and hold the City, its agents, officers, contractors and employees harmless from any and all injuries, losses, liens, claims, judgments, liabilities, costs actually incurred, expenses or damages (including reasonable attorneys' fees and court costs) sustained by the City which result from or arise out of Hilmar's or its authorized representatives' presence at the Site to conduct Investigations pursuant to this Section 3.1(c). Notwithstanding any provision herein to the contrary, the indemnity contained in the preceding sentence shall survive the termination of this Agreement or the Closing, but shall not apply with respect to (x) any claims of diminution in the value of the Site as a consequence of the results revealed by the Investigations, including without limitation the Phase 1 commissioned by the City, (y) the exposure or release of Hazardous Substances located in, on, or under the Site, unless introduced to it by Hilmar or Hilmar's agents, employees, or contractors, or (z) any claims arising by discovery of any adverse condition or legal noncompliance of the Site. The City has, at its cost, provided Hilmar a Phase 1 environmental assessment conducted by Terracon dated November 9, 2021 for the Site (the "Phase 1"), which Hilmar shall, at its option, be allowed to be added as "reliance parties." The City shall be responsible for and shall pay any and all fees and costs related to the Phase 1 and Phase 2 environmental site assessments. If Hilmar is not satisfied in all respects as to the condition of the Site (including without limitation any conditions described in the Phase 1 or Phase 2), then Hilmar shall have the right, exercisable by written notice given to the City on or before the Closing, to terminate this Agreement. In the event that Hilmar shall fail to exercise its right to terminate this Agreement pursuant to this Section 3.1(c) before the Closing, Hilmar shall be deemed to have waived this condition and accepted and acquired the Site "as is, where is", except and to the extent specifically provided in the City's representations in Section 7.15 of this Agreement. Except as to any specific representations expressly provided in this Agreement, Hilmar agrees that it is relying solely on its own investigation of the Site and not on any information provided or to be provided by the City, its staff, officers, or agents and that if Hilmar does not exercise its right to cancel and terminate under this Section 3.1(c), then with regard to any obligation of the City, subject to any representations or City obligations in this Agreement, Hilmar shall be deemed and considered to be fully and completely satisfied with the Site and all parts and aspects thereof.

(d) Title/Survey Review. The City, at its sole cost, shall provide to Hilmar copies of a commitment for title insurance (a "Title Commitment") for the Site together with copies of Schedule B exception documents disclosed therein from High Plains Land and Title Company (the "Title Company") which Title Commitment shall show Hilmar as the proposed insured and commit to deliver a title policy to Hilmar at Closing in an amount equal to \$479,200, insuring good and marketable title to the Site and deleting all standard exceptions. The City shall pay any and all fees, costs and expenses related to the Title Company's issuance of the title policy (but only in connection with the initial insured amount of \$479,200). Hilmar may, in its sole discretion and its sole cost and expense, opt to direct the Title Company to keep the "purchase price" open in the policy to facilitate construction escrow payments. The City will, at its sole expense, also obtain a current ALTA survey of the Site (the "ALTA Survey"), certified to Hilmar, its Affiliates, and (if applicable) any bond trustee and lenders. Hilmar may, within ninety (90) days of the later of (i) receipt of both the Title Commitment and the ALTA Survey from the City, or (ii) the Effective Date, notify the City in writing of any objections Hilmar has to the Title Commitment or ALTA Survey ("Title Objection Date"). Any matters to which Hilmar does not object in writing prior to the Title Objection Date shall be considered Permitted Encumbrances. With regard to any items to which Hilmar does timely object, the City shall notify Hilmar within five (5) business days of the City's receipt of such objection(s) as to whether or not the City will agree, in its sole discretion, to cure any such objection(s). Within ten (10) business days of any notice to Hilmar that the City will not agree to cure any such objection(s), Hilmar shall have the

right, exercisable by written notice given to the City to terminate this Agreement. If Hilmar does not exercise this right of termination, then any liens, encumbrances or other title matters shown on said Title Commitment or survey shall be considered to be “Permitted Encumbrances”. If Hilmar has already obtained the Title Commitment and ALTA Survey provided for in this Section 3.1(d), the City will reimburse Hilmar for the costs thereof at or prior to the Closing.

(e) IRB Financing. The City's Commission shall have approved a Resolution of Intent for the IRB financing described in Section 4.2 below.

(f) Incentives. Hilmar shall have received the incentives, or satisfied itself, in its sole and absolute discretion, that it will receive the incentives detailed in Exhibit C (“Incentives”). Notwithstanding the foregoing, Hilmar hereby acknowledges and agrees that the numbers provided on Exhibit C are estimates only and that, with regard to Incentives provided by third-parties, the City is not representing or guaranteeing that it can or will cause any such Incentives to be provided to Hilmar (except such Incentives provided by the City as specifically set forth in the body of this Agreement) or any of the amounts described therein. Hilmar shall be solely responsible for evaluating each of the Incentives described in Exhibit C and satisfying itself, in its sole and absolute discretion, with the value and availability of the same.

(g) Other Agreements. Hilmar shall have entered into, or satisfied itself that it will be able to successfully enter into, on terms and conditions acceptable to Hilmar, in its sole and absolute discretion, any and all other necessary or appropriate agreements with the City and/or third parties with respect to the Site, the Improvements, the Incentives and any and all matters related thereto.

3.2 Termination. Upon any such termination of this Agreement pursuant to this Article 3, this Agreement shall terminate, and, except as specifically set forth herein, the parties hereto shall have no further duty or obligation hereunder and without limiting the generality of the foregoing, Hilmar shall be solely liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby, and the City shall be solely liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby.

3.3 Waiver of Conditions. If any of the conditions set forth in Section 3.1 hereof are not satisfied and the City and Hilmar nonetheless have a Closing of the transaction described herein as set forth in Section 5.1 below, both the City and Hilmar shall be deemed to be satisfied as to the conditions in Section 3.1 and any corresponding provisions of this Agreement and shall be deemed to have waived the same.

#### **ARTICLE IV. FINANCING — SOURCE OF FUNDS – CITY INCENTIVES**

4.1 Source of Funds. The public benefits and incentives offered to attract the Project shall also include industrial revenue bond (“IRB”) financing as defined and set forth in Section 4.2 below. Reference is hereby made to the summary of preconstruction estimated costs of the Project (the “Summary Project Budget”) attached hereto as Exhibit E and by this reference made a part hereof. All of the costs of the Project shall be paid with cash, equity and/or debt provided by or through Hilmar (the “Private Contribution”); the City shall have no obligation to directly pay or reimburse any of the costs of the Project – the City's only contribution to the financing of the Project shall be through the IRB financing as provided for below.

4.2 **IRB Financing.** Notwithstanding anything set forth herein to the contrary, Hilmar has requested the issuance of IRBs for the Project (the "**Abatement IRBs**") for the purpose of obtaining an abatement of ad valorem property taxes for the Project and an exemption on construction materials. The City will advance and adopt a resolution of intent for Abatement IRBs in an amount not to exceed \$225,000,000.00 for the Project. The Abatement IRBs, if issued, shall be for the purpose of providing ad valorem tax abatement for one hundred percent (100%) of the ad valorem property taxes for the Project, provided however, that Hilmar shall, during the entire term of the Abatement IRBs, pay a payment-in-lieu-of-taxes (the "**PILOT**") for the Project as set forth in **Exhibit F** attached hereto. The schedule attached as **Exhibit F** may subsequently be modified and amended based on the actual appraised value and assessed value of the Project and/or any changes to the mill levy as described in the footnotes in **Exhibit F**. The parties hereby agree as follows:

(a) In connection with the issuance of the Abatement IRBs referenced herein for the Project, the general ad valorem real property taxes and, if applicable, ad valorem personal property taxes (collectively, the "**Ad Valorem Taxes**") shall be 100% abated for the Project for the taxable years 2024 through and including 2033 (except for and excluding, pursuant to K.S.A. 12-1742, the USD 443's capital outlay levy imposed pursuant to K.S.A 72-53,113 [the "**Capital Outlay Levy**"]). In lieu of Ad Valorem Taxes, Hilmar shall pay by separate check to the Treasurer of Ford County, Kansas, or other appropriate officer, a payment in lieu of taxes (the "**PILOT Payment**") in an amount for each year which is equal to that set forth on **Exhibit F** attached hereto.

(b) Upon issuance of the Abatement IRBs, the City and Hilmar shall enter into a separate Payment In Lieu of Taxes Agreement (a "**PILOT Agreement**") to govern the abatement and PILOT Payments. The parties hereby agree that the form of the PILOT Agreement will be substantially similar to that which is attached to this Agreement as **Exhibit G**. Among other things, the PILOT Agreement shall provide for the following terms and conditions:

(i) The PILOT Payments shall be paid by or through Hilmar by separate check to the Treasurer of Ford County, Kansas, or other appropriate officer.

(ii) The PILOT Payment shall be billed by statement of the Director of the Department of Records and Tax Administration of Ford County, Kansas (the "**Director**"), or other appropriate officer, currently issued by approximately November 20<sup>th</sup> of each year, and shall be paid by each year of the term of Abatement IRBs as follows: (x) one hundred percent (100%) on or before December 20<sup>th</sup> for the then-current calendar year; or (y) one-half (1/2) on or before December 20<sup>th</sup> and the remainder for such calendar year, without interest, on or before May 10<sup>th</sup> of the following calendar year (or as otherwise required by law); or (z) as otherwise required by law for the distribution of tax statements and the payment thereof. It is understood and agreed that Hilmar may elect either option (x) or (y) above at its discretion, but if a change in law occurs as provided in (z) above, the PILOT Payment shall be paid as thereby required by law.

(iii) All special assessments, wastewater, storm-water utility fees and other non-ad valorem taxes or charges shall not abate and shall continue to be the obligation of Hilmar until paid.

(iv) The school districts' capital outlay levy provided in K.S.A. 72-53,113 or any other mills that are not abated pursuant to Applicable Laws and Requirements shall continue to be paid by Hilmar.

(v) Should Hilmar fail to make payments stated in this Agreement, penalties and/or interest will be assessed against Hilmar by the Ford County Treasurer in accordance with applicable state laws relating to late tax payments.

(c) Hilmar hereby agrees that Hilmar shall, during the Term of this Agreement, provide to the City an annual report filed with the City Manager's office on or before January 31<sup>st</sup> of each year to provide information about the employment associated with and use of the Project. The form of such annual reports is hereby attached as **Exhibit H**. Within nine (9) months of Hilmar's submission of the annual report form in each year, the City shall have the right to audit and examine records of Hilmar in order to verify the information furnished by Hilmar to the City as required by this Agreement.

(d) Subject to Force Majeure or such other event or circumstances reasonably outside of Hilmar's control, if at any time subsequent to six (6) months after full operation of the Project during the Term of this Agreement, (x) Hilmar maintains fewer than the equivalent of 180 FTEs at the Project for a period of one hundred twenty (120) days or longer, or (y) if Hilmar fails to open the Project, or subject to Section 7.2(a), opens and subsequently closes, or permanently closes the Project, then, subject to Section 9.3, Hilmar shall be obligated to pay for the following tax abatement year (*i.e.*, the tax abatement year following the year in which Hilmar failed as described in (x) and/or (y) above), an amount which is equal to one hundred percent (100%) of the Ad Valorem Taxes for the Project which would otherwise have been due for such tax abatement year if the Project were not exempt from ad valorem taxation, and the City may elect to terminate the Abatement IRBs in its discretion. In addition to the foregoing, if and to the extent that Hilmar should fail as described in subsections (x) and/or (y) above, subject to Section 9.3, Hilmar shall also be required to pay the below-specified percentage of all Ad Valorem Taxes for the applicable tax year in which Hilmar fails to meet such requirements and for all prior tax abatement years, that would have otherwise been due for the Project if the Project had not been exempt from ad valorem taxation (hereinafter, the "Recaptured Abated Taxes"), in accordance with the following chart:

<u>ABATEMENT YEAR</u>	<u>EMPLOYMENT YEAR</u>	<u>REPORTED ON</u>	<u>PERCENTAGE RECAPTURED</u>	<u>TAX YEARS RECAPTURED</u>
2024	2023	n/a	n/a	n/a
2025	2024	1/31/25	100%	2024
2026	2025	1/31/26	90%	2024 & 2025
2027	2026	1/31/27	80%	2024, 2025 & 2026
2028	2027	1/31/28	70%	2024, 2025, 2026 & 2027
2029	2028	1/31/29	60%	2024, 2025, 2026, 2027 & 2028
2030	2029	1/31/30	50%	2024, 2025, 2026, 2027, 2028 & 2029
2031	2030	1/31/31	40%	2024, 2025,

<u>ABATEMENT YEAR</u>	<u>EMPLOYMENT YEAR</u>	<u>REPORTED ON</u>	<u>PERCENTAGE RECAPTURED</u>	<u>TAX YEARS RECAPTURED</u>
				2026, 2027, 2028, 2029 & 2030
2032	2031	1/31/32	30%	2024, 2025, 2026, 2027, 2028, 2029, 2030 & 2031
2033	2032	1/31/33	20%	2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031 & 2032

Nothing in this Section 4.2(d) shall be construed to require Hilmar to make “double payment” of Ad Valorem Taxes for any given year, or Ad Valorem Taxes in addition to PILOT Payments for any given year, it being the intention of the parties that if Hilmar should fail as described in subsections (x) and/or (y) above, Hilmar would pay only the Ad Valorem Taxes, or such percentage of Ad Valorem Taxes as applicable pursuant to this Section 4.2(d).

(e) In connection with the issuance of the Abatement IRBs referenced herein, the City and Hilmar shall enter into a mutually agreeable lease-lease back or transfer-lease back agreement regarding the Site.

4.3 City Utility and Infrastructure Obligations. Subject to and conditioned upon satisfaction of all of the conditions described in Section 3.1 above and Closing on the Site, the City hereby agrees to construct for, provide to, and repair and maintain for, Hilmar the following utility connections and infrastructure on or before September 1, 2023, all at the sole cost and expense of the City:

(a) Water utility tie-in and connection as specified on **Exhibit I**, including a waiver of all connection fees with such water utility connection;

(b) A fire line loop and fire hydrants for the Project, all as specified on **Exhibit J** attached hereto;

(c) An on-site lift station to be constructed and operated by the City.

4.4 Waiver of Permit and Franchise Fees. The City hereby agrees to waive (a) all construction permit fees in connection with the Project (including without limitation, all building permit, site disturbance permit and utility excavation permit fees), and (b) electric and gas franchise fees that it would otherwise be entitled to from the Project for a period of ten (10) years commencing upon substantial completion of the Project by Hilmar. Except as specifically set forth in the prior sentence or specifically set forth elsewhere in this Agreement, the City is not waiving any other fees or charges which are otherwise incurred by Hilmar and/or the Project in accordance with Applicable Laws and Requirements.

4.5 Charges and Fees Payable by Hilmar. Notwithstanding the City's specific obligations in Sections 4.3 and 4.4 above, Hilmar hereby agrees to pay the following fees and charges in connection with the Project:

(a) Hilmar will pay monthly water charges for the Project, which are estimated as set forth on Exhibit K attached hereto. The monthly water charge will be increased annually based on the (5) year average of the Consumer Price Index;

(b) Hilmar will pay a monthly wastewater service charge to treat up to 45,000,000 gallons of wastewater per month, and Hilmar will pay a surcharge for any volume exceeding 45,000,000 gallons of wastewater per month. In connection with these monthly charges, Hilmar may discharge the outlined poundages for six (6) constituents as more particularly described on Exhibit L attached hereto. A surcharge of \$0.0480 per pound will be added to Hilmar's monthly charges for any overages of the poundages shown on Exhibit L for each constituent. The aforementioned wastewater charges will be increased annually based on the five (5) year average of the Consumer Price Index.

## **ARTICLE V. CLOSING**

5.1 Closing. The Closing shall be the date on which the following occur: (i) the conditions set forth in Section 3.1 hereof are fulfilled or waived, (ii) Hilmar pays the Purchase Price to the City, and (iii) the City delivers the Deed and possession of the Site to Hilmar in accordance with the terms and conditions of this Agreement. It is hereby recognized, stipulated and agreed by Hilmar and the City that neither party shall have any duty to proceed with Closing or to do or perform any of the duties or obligations to be performed at Closing unless and until each and all of the conditions described in Article 3 have either been satisfied or waived in accordance with the applicable provisions of Article 3. Notwithstanding anything herein to the contrary, Closing must occur on or before June 1, 2022 (the "Outside Date"), or either party shall have the right to terminate this Agreement.

## **ARTICLE VI. CONSTRUCTION OF IMPROVEMENTS AND INFRASTRUCTURE IMPROVEMENTS**

6.1 Architect. Hilmar shall select such architects, engineers and other design professionals and consultants as are necessary to provide construction documents and construction oversight services for the Improvements to be designed, constructed and completed by Hilmar on the Site (the "Design Professional(s)"). All agreements respecting architectural and engineering services shall be between Hilmar and/or its affiliates and such Design Professionals.

6.2 Design and Plans and Specifications. Hilmar shall prepare plans and specifications for the Improvements (the "Plans and Specifications"), the design of which is compatible with the Development Plan and all Applicable Laws and Requirements.

6.3 General Contractor and Construction Documents. Hilmar shall select a general contractor (the “General Contractor”) for the Project. Hilmar represents that its construction documents relative to the Improvements (the “Construction Documents”) will require and provide for the design, development, construction, equipping and completion of the Improvements in accordance with the Development Plan, the Plans and Specifications and all Applicable Laws and Requirements.

6.4 INTENTIONALLY DELETED.

6.5 Responsibility for Design and Construction. Hilmar shall, subject to the terms of this Agreement and the Development Plan, have the sole right, and the responsibility, to design, manage, operate and construct the Project. Notwithstanding anything set forth herein to the contrary, the Plans and Specifications shall be prepared by a Design Professional and shall require that a Design Professional render a certificate upon the completion of the work required thereby that said work has been completed in accordance with all Applicable Laws and Requirements.

6.6 Permits and Reviews. Hilmar hereby recognizes, stipulates and agrees that: (a) in the design, construction, completion, use or operation of the Improvements, Hilmar, or its General Contractor, shall, except as waived in Sections 4.3 and 4.4, procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required; and (b) nothing herein shall be construed as any release by the City of the responsibility of Hilmar to comply with, and satisfy the requirements of, all Applicable Laws and Requirements; the City agreeing, however, that it will expedite all plan review and permitting in connection with the design and construction of the Improvements to enable both parties to timely satisfy their obligations pursuant to this Agreement.

6.7 Periodic Meetings with Hilmar. From the Effective Date until Substantial Completion of the Improvements, Hilmar hereby agrees to meet with the City and/or its representatives periodically to review and discuss the design, development and construction of the Improvements and the Project.

6.8 Commencement of Construction. Hilmar hereby agrees that Hilmar shall Commence Construction of the Project on or before June 30, 2022 (the “Commencement Date”), subject only to Force Majeure or such other event or circumstances reasonably outside of Hilmar’s control.

6.9 Completion Date. Hilmar hereby agrees that Hilmar shall Substantially Complete construction of the Project no later than March 31, 2025 (the “Completion Date”), subject only to Force Majeure or such other event or circumstances reasonably outside of Hilmar’s control. If Hilmar timely satisfies this obligation, or if Hilmar Substantially Completes the construction of the Project within one (1) year following March 31, 2025, the City shall pay to Hilmar (a) an additional cash incentive or rebate in an amount equal to the Purchase Price, and (b) a cash incentive in the amount of Five Hundred Thousand Dollars (\$500,000.00) in lieu of providing additional property to the Site, each within ten (10) days after Substantial Completion.

## **ARTICLE VII. USE AND OPERATION**

7.1 Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon the later to occur of: (a) ten (10) years from the Effective Date, or (b) expiration or termination of the IRB financing described in Section 4.2 above (the “Term”).

7.2 Use and Operation.

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

(i) Use the Site only for the Permitted Uses.

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

(iii) Subject to Section 6.9, open and occupy, or cause to be occupied, each use in the Project by the Completion Date and thereafter continuously operate and conduct business without interruption, use, occupy and operate all of the same, other than such minor portions thereof as are reasonably required for maintenance, storage and office purposes; furnish and install all trade fixtures and permitted signs; open for business and remain open during the entire Term, in accordance with standards and in such manner as to help establish and maintain a high reputation for the Project. Notwithstanding the foregoing, the parties hereby agree as follows:

A. Subject to Section 6.9, the Project shall be continuously open during the Term, subject to Hilmar's (1) reasonable rules and regulations for use, (2) security and management restrictions, and (3) right to temporarily close as necessary for repair, maintenance, etc.

B. Each use within the Project or any portion thereof may be closed temporarily for periods during casualty and/or reconstruction; and each use within the Project may be temporarily closed during remodeling, but in no event shall such temporary closure exceed a period of nine (9) months, or such longer period as is reasonable under the circumstances (not to exceed 12 months, except in the event of Force Majeure or such other event reasonably outside of Hilmar's control).

(iv) Perform its duties to repair, restore and replace the Improvements as set forth in Sections 7.10(b) and (d).

(b) Hilmar recognizes that its covenants in this Section 7.2 are a material consideration to the City and that in addition to the conveyance of the Site by the City and the portion of the Incentives provided by the City pursuant to the terms set forth in the body of this Agreement, the City must also provide water, sewer and other public infrastructure to enable the development of the Project (the "Public Infrastructure"). Much of the Public Infrastructure must be commenced by the City prior to Closing in order to meet Hilmar's schedule, and the City has agreed to commence such Public Infrastructure work based on the commitments of Hilmar as set forth in this Agreement. The City would not design, construct and complete the Public Infrastructure but for Hilmar's commitment to the Project. Accordingly, Hilmar recognizes and agrees that if Hilmar shall (x) elect not to proceed to Closing in violation of its obligations pursuant to this Agreement, or (y) following the completion of the Closing, fail to open and occupy, or cause to be occupied, the Project and thereafter continuously operate and conduct business therein as described in Section 7.2(a) above in violation of its obligations pursuant to this Agreement, the City will be damaged by such failure and will never receive the tax benefits that it anticipates and will rely on from Hilmar's construction of the Project and opening and continued operation of its business in and from the Project. Accordingly, in the event of the occurrence of (x) or (y) above, and subject to Sections 6.8 and 6.9, as applicable, Hilmar agrees as follows:

(i) If Hilmar fails to Commence Construction of the Project on or before the Commencement Date, then all performance dates required of the City for Public Infrastructure as set forth in **Exhibit N** shall be extended by one day for each day that Hilmar fails to Commence Construction of the Project thereafter; and

(ii) If Hilmar fails to satisfy its obligations under Section 6.9 above, and Hilmar shall fail to cure the same within ninety (90) days following receipt of a notice from the City – including a reference therein to this subsection 7.2(b)(ii) (the "7.2(b)(ii) Default Notice") -- then Hilmar shall pay to the City an amount equal to \$2,500,000 as liquidated damages (and not as a penalty) within sixty (60) days after the expiration of the ninety (90) day cure period unless Hilmar has cured such failure – and Hilmar recognizes that such liquidated damage payment is to reimburse the City for fair and reasonable damages related to the Public Infrastructure work that the City will have previously committed to construct and complete; provided, however, that if Hilmar shall ultimately complete the Project within six (6) months after the expiration of all notice and cure periods described in this subsection (ii), then no liquidated damages shall be due, or if they have been paid, Hilmar shall be entitled to a refund of such liquidated damages paid.

(c) The City recognizes that its covenant to complete certain Public Infrastructure in accordance with the schedule and chronology set forth in **Exhibit N** attached hereto and to timely perform various other covenants pursuant to this Agreement are material considerations for Hilmar to construct the Project. Hilmar would not construct the Project but for the City's commitment to the Project and agreement to satisfy such covenants. Accordingly, Hilmar shall have a right to reasonably approve any of the City's construction contracts for the Public Infrastructure obligations described in **Exhibit N**. And the City further recognizes and agrees that if the City shall (1) fail to complete the Public Infrastructure in accordance with the schedule and chronology set forth in **Exhibit N**, subject to Force Majeure, or (2) fails to otherwise timely perform any of its other covenants pursuant to this Agreement, Hilmar will be damaged by such failure as a result of being unable (x) to perform pursuant to agreements with third-parties Hilmar is entering into in reliance on the City's covenants made in this Agreement, and (y) to realize the operation of its business in and from the Project. Accordingly, the City hereby agrees that if it shall fail to complete the Public Infrastructure in accordance with the schedule and chronology set forth in **Exhibit N**, subject to Force Majeure, the following shall apply:

(i) All performance dates required of Hilmar in Sections 6.8 and 6.9 shall be extended by one day for each day that the City fails to meet any deadline set forth in **Exhibit N**; and

(ii) The City shall assign to Hilmar the rights to any and all damages, including, without limitation, liquidated damages, that it shall be entitled to receive as a result of such delay pursuant to the City's construction contract for such portion of the Public Infrastructure; it being agreed that the City shall have no liability to Hilmar for any breach or default of its contractor under or with respect to such construction contracts, or any delays in performance thereunder.

(iii) In addition to the other rights and remedies described herein, regardless of any other cure periods set forth in this Agreement, Hilmar may, in its sole discretion, after ten (10) days' written notice to the City of the City's failure to complete the Public Infrastructure in accordance with the schedule and chronology set forth in **Exhibit N**, subject to Force Majeure, cure such failure by performing the City's obligations with

respect to the Public Infrastructure, in which event the City shall, within thirty (30) business days of receipt of an invoice from Hilmar, reimburse Hilmar for the amount expended by Hilmar up to the amount budgeted for such Public Infrastructure obligations in accordance with KSA 10-1100 *et. seq.*

7.3 Maintenance and Use. During the Term, Hilmar shall cause the Project to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated production facilities operated in the United States, and will make all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations on the Site. Hilmar may make additions, alterations and changes to the Project so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements, and as long as the same do not materially adversely affect Hilmar's ability to perform its obligations under this Agreement.

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

7.5 Payment of Taxes and Other Charges. Subject to the Abatement IRBs granted to Hilmar pursuant to Section 4.2 of this Agreement, during the Term of this Agreement, Hilmar, and its respective Affiliates (if any), shall pay when due all real estate taxes and assessments on the property it owns within the City. In the event that the Hilmar shall fail to pay all such applicable real estate taxes and assessments after any notice and cure periods set forth in Section 9.1 hereof, the parties understand and agree that, among other things, the City may terminate the IRB financing and rescind its waiver of the fees described in Section 4.4 above. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit Hilmar from contesting the assessed value of the properties, Improvements or the taxes thereon in good faith by appropriate proceedings; provided, however, that Hilmar shall pay any and all amounts that are contested under protest while any such proceedings are pending. Hilmar shall promptly notify the City in writing of a protest of real estate taxes or valuation of Hilmar's property within the Site.

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

7.7 Liens and Encumbrances. During the Term, except for Permitted Mortgage(s), the Memorandum of Agreement and IRB Documents (each as defined below), Hilmar shall not create or cause any lien, charge or encumbrance upon the Site, or any part thereof, and shall promptly cause to be discharged or terminated all such liens, charges and encumbrances that are not Permitted Encumbrances, Permitted Mortgage(s), the Memorandum of Agreement or the IRB Documents.

(a) Permitted Mortgage(s). For purposes hereof, the term "Permitted Mortgage(s)" shall mean any lien, encumbrance, security interest, charge, mortgage, deed of trust, restriction or memoranda recorded, filed, or otherwise placed on or against the Project, the Site, the Improvements, or any part thereof by or with the consent of Hilmar and/or its affiliates following the Closing (except and excluding the Memorandum of Agreement and IRB Documents). In this

regard, the City and Hilmar acknowledge and agree that Hilmar and its affiliates intend to use, from time to time, the Project, the Site and the Improvements as collateral to secure various current and future loans and for other financing activities related to its and its affiliates' business operations, including, without limitation, future growth and expansion.

(b) Priority of Recorded Documents. Hilmar understands and agrees that at the Closing, a memorandum of agreement for this Agreement (the "Memorandum of Agreement") shall be recorded against the Site, and that thereafter, at closing of the Abatement IRBs, other memoranda and bond documents will be recorded against the Site (the "IRB Documents"). The Memorandum of Agreement and IRB Documents will be superior to the Permitted Mortgage(s) on title and the holder of any Permitted Mortgage(s) will be required to subordinate to the Memorandum of Agreement and IRB Documents prior to Substantial Completion of Project; provided however, that:

(i) at any time prior to Substantial Completion, upon request by Hilmar, the City, as well as any Person with respect to whom the City has control, including, without limitation, the bond trustees, may subordinate the Memorandum of Agreement and/or the IRB Documents, to the Permitted Mortgages placed or to be placed against the Project, the Site or the Improvements or any part thereof, by providing written consent of the same to Hilmar, and

(ii) upon and after Substantial Completion, the City, as well as any Person with respect to whom the City has control, including, without limitation, the bond trustees, shall subordinate the Memorandum of Agreement and the IRB Documents to the Permitted Mortgages placed or to be placed against the Project, the Site or the Improvements or any part thereof from time to time.

The City represents, warrants, acknowledges and agrees that, other than the Memorandum of Agreement and the IRB Documents, no liens, encumbrances, security interests, charges, mortgages, deeds of trust, restrictions or memoranda in favor of the City (or by any other Persons acting through or under the City) will be recorded, filed or otherwise placed against the Project, the Site or the Improvements in connection with this Agreement, the issuance of the Abatement IRBs referenced herein, and/or the entering into or execution of the various other agreements, documents or instruments related to the Project, the Site, the Improvements, the Incentives or similar items.

7.8 Licenses and Permits. During the Term, Hilmar shall procure and maintain all licenses and permits, and allow all inspections and/or investigations required by Applicable Laws and Requirements or otherwise necessary in the operation of its business and affairs in, on or about the Project.

7.9 Insurance. During the Term, Hilmar shall maintain or cause to be maintained (by each Tenant, or otherwise) insurance with respect to the Project and operations covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations (including but not limited to property and casualty, worker's compensation, general liability and employee dishonesty) and in no event in an amount less than that required by the Insurance Specifications attached hereto as Exhibit M, and made a part hereof. Each policy or other contract for such insurance shall: (i) name the City as an additional insured (with respect to liability insurance in an amount equal to \$500,000, but not property/casualty insurance), and (ii) contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least thirty (30) days after written notice of

cancellation to Hilmar and each other insured, additional insured, loss payee and mortgage payee named therein.

7.10 Damage, Destruction or Condemnation.

(a) INTENTIONALLY DELETED.

(b) If, at any time during the Term, the Improvements or any part thereof shall be damaged or destroyed by a Casualty (the "Damaged Facilities"), Hilmar, to the extent insurance proceeds are made available to Hilmar, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities to match or exceed prior functionality.

(c) If at any time during the Term, title to the whole or substantially all of the Improvements shall be taken in condemnation proceedings or by right of eminent domain, Hilmar, at its sole discretion, may terminate this Agreement as of the date of such taking. For purposes of this Section 7.10(c), "substantially all of the Improvements" shall be deemed to have been taken if the City and Hilmar, each acting reasonably and in good faith, determine that the untaken portion of the Project, including the Parking Improvements, cannot be practically and economically used by Hilmar for the purposes and at the times contemplated by this Agreement.

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

7.11 Indemnity. Hilmar shall indemnify and save the City and its governing body members, directors, officers, employees and agents ("City Indemnitees") harmless from and against all loss, liability, damage or expense that arises out of: (a) the design, construction and completion of the Project by Hilmar; (b) the use or occupation of the Project by Hilmar, its Affiliates or any of their respective employees, representatives, agents (including without limitation contractors and subcontractors), vendors, tenants, licensees and/or invitees; and (c) damage or injury, actual or claimed, of whatsoever kind or character occurring after Closing, to persons or property occurring or allegedly occurring in, on or about the Project. Hilmar shall also indemnify and save the City Indemnitees harmless from and against, all costs, reasonable counsel fees, expenses and liabilities incurred by them or by Hilmar in any action or proceeding brought by reason of any such claim, demand, expense, penalty or fine. If any action or proceeding is brought against the City Indemnitees by reason of any such claim or demand, Hilmar, upon notice from the City, covenants to resist and defend such action or proceeding on demand of the City Indemnitees. Notwithstanding the foregoing, the City hereby agrees that (i) nothing herein shall be deemed to make Hilmar liable for any remote or consequential damages, (ii) the indemnity provisions herein shall not be deemed to make Hilmar liable for any of the City's obligations under this Agreement, including without limitation, the obligations to provide or pay for the Public Infrastructure (unless and only to the extent that Hilmar exercises its self-help/cure rights as set forth in Section 7.2(c)(iii) above – and in such case, Hilmar's payment obligation is only for amounts in excess of the City's budgeted amounts as described in Section 7.2(c)(iii) above), and (iii) no party benefited by this indemnity shall be indemnified against liability for damage arising out of bodily injury to persons or damage to property caused by the said party's own respective willful and malicious acts or omissions or negligence. The foregoing covenants contained in this Section 7.11 shall be deemed continuing covenants, representations and warranties for the benefit of the City and any successors and assigns of the City, and shall survive the termination, satisfaction or release of this Agreement, or any other instrument. However, the parties hereby agree that the indemnification set forth in this Section 7.11 runs with the land, and in the event of a

foreclosure by the holder of a Permitted Mortgage or an assignment, transfer or conveyance approved by the City (or otherwise permitted under Section 7.12 below), the City agrees that it will only look to the owner of the Site and/or assignees to this Agreement for matters arising or occurring after the date of such foreclosure, assignment, transfer or conveyance; the City will not look to Hilmar Cheese or HCCP for matters occurring or arising after the date of any such foreclosure, assignment, transfer or conveyance.

7.12 Prohibition on Sales, Etc. Except for Permitted Mortgage(s) and as otherwise provided herein, during the Term, Hilmar will not, without the prior written consent of the City: (a) assign, sell, or otherwise transfer the Site or the Improvements (but Hilmar may sell equipment associated with the Project as it deems necessary); (b) merge with or into another corporation (or other entity) or sell or transfer to another Person substantially all of its assets; or (c) assign this Agreement or its rights to the public financing and/or incentives provided herein. The City shall not unreasonably withhold, condition or delay its consent to any of the aforesaid. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of Hilmar under this Agreement and agree to be subject to all the conditions and restrictions to which Hilmar is subject. Hilmar shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release Hilmar. The parties further agree as follows:

(a) The parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named; and

(b) The foregoing restrictions on assignment, transfer and conveyance and the restriction in this Section 7.12 shall not apply to: (i) any lien or security interest, including any Permitted Mortgage(s), granted to secure indebtedness to any lender; or (ii) any transfer of some or all of the rights and/or obligations under this Agreement, or the Site or the Improvements, to a person or entity that is controlled by Hilmar, which Hilmar controls, or that is under common control with Hilmar (an "Affiliate"), it being understood by the parties that Hilmar may hold title and its interests in the Site, the Project and the Improvements in Hilmar Cheese, HCCP and/or HCC Properties and may freely transfer all or a portion of the same at any time to any of such entities in its sole discretion without notice to the City.

7.13 Utilities. Except for the City's specific waiver of certain fees and charges in Section 4.3 and 4.4 above, during the Term, all utility and utility services used by Hilmar in, on or about the Project shall be paid for by Hilmar and shall be contracted for by Hilmar in Hilmar's own name, and Hilmar shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

7.14 Access. During the Term, Hilmar hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the Project at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement or, to the extent Hilmar has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the Project. Except as otherwise provided in this Agreement, the City shall pay all costs it incurs under this Section 7.14. Nothing contained in this Section 7.14 shall restrict or impede the right of the City to enter the Project pursuant to any Applicable Laws and Requirements.

7.15 Environmental Matters. The City represents that, to the City's Knowledge, which representations will be true on the Effective Date and at Closing, and will survive the Closing and delivery of the Deed to Hilmar for a period of two (2) years: (i) except for conditions identified in the

Phase 1 and Phase 2 environmental site assessments, and except for Hazardous Substances used in the course of ordinary farming practices at the Site (in compliance with all applicable Environmental Regulations), there is not environmental contamination on or under the Site, (ii) the Site is in full compliance with Environmental Regulations, and (iii) there are not underground storage tanks in, under or on the Site. Hilmar hereby agrees that, by Closing on the transactions contemplated by this Agreement, Hilmar shall assume responsibility, as between the City and Hilmar, for the costs of any remediation of any environmental conditions occurring upon the Site after Closing, except to the extent arising out of or related to (x) the matters raised in the Phase 1 environmental assessment conducted by Terracon and dated November 9, 2021, (y) the failure of any representation made by the City in this Section 7.15 to be true on the Effective Date and at Closing, or (z) the negligence or intentional misconduct of any City Indemnitee. Further, Hilmar shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Project in violation of any Environmental Regulation; shall not permit any Hazardous Substance that is in violation of any Environmental Regulations to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulations; shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations; shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulation; and shall comply with all other Environmental Regulations which are applicable to the Project.

(a) Without limiting the generality of the foregoing, Hilmar hereby specifically agrees that Hilmar shall install and properly operate a calamity tank at the Project to protect against chemical spills and to safeguard the City's sewer system from matters originating at the Project.

(b) Without limiting the generality of the foregoing, Hilmar will monitor and adjust the pH level of the Project's effluent prior to entering the on-site lift station. A pH limit of 10 is required to enter the City's system.

(c) From and after Closing, Hilmar shall indemnify the City against, shall hold the City harmless from, and shall reimburse the City for, any and all claims, demands, judgments, penalties, fines, liabilities, costs, damages and expenses, including court costs and attorneys' fees incurred by the City (prior to trial, at trial and on appeal) in any action against or involving the City, resulting from any breach of the foregoing covenants of Hilmar or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Project subsequent to Closing; provided, however, that Hilmar has no obligation pursuant to this Section 7.15(c) with respect to claims, demands, judgments, penalties, fines, liabilities, costs, damages and expenses, including court costs and attorneys' fees incurred by the City (prior to trial, at trial and on appeal) arising out of or related to (i) the failure of any representation made by the City in Section 7.15 to be true on the Effective Date and at Closing, or (ii) the negligence or intentional misconduct of any City Indemnitee, or (iii) the matters raised in the Phase 1 environmental assessment conducted by Terracon and dated November 9, 2021. The foregoing covenants contained in this Section shall be deemed continuing covenants, representations and warranties for the benefit of the City and any successors and assigns of the City, and shall survive the termination, satisfaction or release of this Agreement, or any other instrument.

7.16 Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the

City to act in its capacity as a public body. Further, nothing herein shall relieve Hilmar from complying with all Applicable Laws and Requirements.

## **ARTICLE VIII. SPECIAL PROVISIONS**

### 8.1 Special Agreements of Hilmar.

(a) Hilmar recognizes, stipulates and agrees that it will actively market and advertise the Project in the region in and around Dodge City, Kansas as Hilmar has done with other, similar projects.

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

(c) Hilmar agrees to be an active, dues-paying member in the Dodge City Chamber of Commerce and Dodge City/Ford County Development Corporation.

## **ARTICLE IX. DEFAULT AND REMEDIES**

9.1 Default by Hilmar. Subject to such longer notice and cure periods as provided elsewhere in this Agreement, Hilmar shall be in default under this Agreement if:

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

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

(c) INTENTIONALLY DELETED;

(d) Hilmar shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within sixty (60) days; or any execution or attachment shall issue against Hilmar whereupon the Project, or any part thereof, or any interest therein of Hilmar under this Agreement shall be taken and the same is not released prior to judicial sale thereunder; or Hilmar's interest in all or substantially all of the Project, the Site and the Improvements is sold pursuant to a foreclosure sale initiated by one or more of Hilmar's lenders or a deed-in-lieu of foreclosure is executed by or on behalf of Hilmar in connection with a foreclosure action initiated by one or more of Hilmar's lenders with respect to all or substantially all of the Project, the Site and the Improvements (each of the events described in this subparagraph being deemed a default under the provisions of this Agreement); or

(e) Hilmar materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within a reasonable period of time after notice from the City.

9.2 Default by the City. The City shall be in default under this Agreement if the City (i) fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Hilmar has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected, or (ii) the City materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within a reasonable period of time after notice from Hilmar.

9.3 Rights and Remedies. Except as otherwise expressly provided herein, the rights and remedies reserved by the parties hereunder and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. If a default by a party occurs under this Agreement and is continuing, the non-defaulting party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the defaulting party of any provision of this Agreement. The parties shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. The Parties further agree that:

(a) In addition to the other rights and remedies in this Section 9, whenever a material default by Hilmar shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may also: (i) terminate this Agreement, (ii) enforce the City's rights and remedies described in Section 4.2(d) above, (iii) terminate the IRB financing and/or Abatement IRBs, and/or (iv) rescind the waiver of fees and charges provided in Section 4.4.

(b) In addition to the other rights and remedies in this Section 9 or elsewhere in this Agreement, whenever a material default by the City shall have occurred and be continuing, Hilmar may also terminate this Agreement.

(c) A defaulting party's liability for monetary amounts under this Agreement shall be limited to the actual amount, if any, in question, and under no circumstances shall either party be liable for any remote or consequential damages.

(d) Notwithstanding any other provision to the contrary in this Agreement, a Hilmar default pursuant to Section 9.1(d) following Substantial Completion shall result in the automatic termination of this Agreement, without further action by any of the parties hereto, whereupon neither party shall have any liability to the other party under this Agreement, including, without limitation, any remedy available or right to damages under Section 4.2(d) or otherwise, such termination being the sole remedy of both parties.

If this Agreement is terminated by either party (or automatically terminated) as set forth herein, the parties hereby understand and agree that the following obligations shall also terminate and no longer be enforceable thereafter: (i) the City's obligation to provide the Abatement IRBs (which the City may terminate in its sole discretion), and (ii) the City's obligations to provide the infrastructure, waive fees or limit charges and fees in Sections 4.3 through 4.5.

9.4 Legal Actions.

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

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

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

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

**ARTICLE X.  
MISCELLANEOUS**

10.1 Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

10.2 Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, riots, insurrection, global pandemic (e.g., COVID-19), environmental remediation required by the appropriate Government Authorities, discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or delay construction, war, terrorism, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (“Force Majeure”), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

10.3 Covenants of Parties.

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

(i) Organization. Hilmar Cheese is a corporation duly formed and validly existing under California law. HCCP is a limited partnership duly formed and validly

existing under California law. Hilmar Cheese and HCCP will each be duly authorized to conduct business in the State on or before the date of the Closing. Hilmar Cheese and HCCP are each duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. Following the Closing, Hilmar Cheese and HCCP shall each: (1) preserve and keep in full force and effect its corporate or other separate legal existence, and (2) remain qualified to do business and conduct its affairs in the State and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

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

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

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

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

(b) Representations and Warranties of the City.

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

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

(iii) No Consents. Except as set forth in Section 3.1(b) hereof, no consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authorities or regulatory body or third party is required for the due execution and delivery by the City of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authorities or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions contemplated hereby.

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

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

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

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

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

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

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

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

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

**If to the City:**

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

With a copy to:

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

And a copy to:

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

**If to Hilmar:**

Jason Price  
Hilmar Cheese Company  
8901 North Lander Ave  
Hilmar, California 95324  
Telephone: 209-656-2803

With a copy to:

Tim Larson  
Fennemore Law  
8080 North Palm Avenue,  
Third Floor, Fresno, CA 93711  
Telephone: 559-446-3204  
Facsimile: 559-432-4550

and

Karl Hesse  
Foulston Siefkin LLP  
1551 North Waterfront Parkway, Suite 100  
Wichita, Kansas 67206  
Telephone: 316-267-6371  
Facsimile: 316-267-6345

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

10.12 Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

10.13 Agreement Runs With the Land; Recording. The Parties understand and agree that this Agreement runs with the land. Additionally, Hilmar and the City shall execute and deliver a mutually agreeable Memorandum of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Ford County, Kansas. Such Memorandum of Agreement shall be promptly recorded against the Site by Hilmar at Hilmar's cost after execution, and proof of recording shall be provided to the City and shall state that a copy of this Agreement shall be on file with the City Clerk.

10.14 Survivorship. Notwithstanding the termination of this Agreement, Hilmar's obligations of insurance and indemnification set out in Sections 7.9, 7.11 and 7.15 shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during the Term.

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

10.16 Tax Implications. Hilmar acknowledges and represents that: (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Hilmar any advice regarding the federal or state income tax implications of this Agreement and the transactions contemplated hereby, and (b) Hilmar is relying solely upon its own tax advisors in this regard.

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

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

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

10.20 Joint and Several Liability. Hilmar Cheese and HCCP hereby each agree with the City that they shall be jointly and severally liable for all of Hilmar's obligations described herein, and that the City may enforce the terms and conditions of this Agreement against any or all of the aforementioned entities.

10.21 Further Assurances. From and after the Effective Date, City and Hilmar shall, and shall instruct their respective affiliates to, cooperate with the other party and such other party's representatives to execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions, as may be necessary, appropriate or desirable in order to carry out the provisions hereof and consummate the transactions contemplated by this Agreement and to give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

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







## **INDEX OF EXHIBITS**

- A The Site –Legal Description
- B Development Plan
- C Incentives
- D Form of Deed
- E Summary Project Budget
- F PILOT Schedule
- G Form of PILOT Agreement
- H Annual Employment Report Form
- I Water Utility Tie-In Specifications
- J Fire Line Loop Specifications
- K Estimated Water Charges
- L Wastewater Service Charges
- M Insurance Specifications
- N Public Infrastructure Schedule and Chronology

**ANNEX 1**  
**DEFINITIONS**

“**Abatement IRBs**” means the industrial revenue bonds issued by the City for the purpose of an abatement of ad valorem property taxes and an exemption on construction materials set forth in Section 4.2.

“**Ad Valorem Taxes**” means the general ad valorem real property taxes and the ad valorem personal property taxes to be 100% abated as set forth in Section 4.2(a).

“**Affiliate**” means any person, entity or group of persons or entities which controls Hilmar, which Hilmar controls or which is under common control with Hilmar, including, without limitation, HCC Properties Ltd, a California limited partnership. As used herein, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” means this Hilmar Cheese Development Agreement by and between the City and Hilmar.

“**ALTA Survey**” means the American Land Title Association survey to be obtained by the City or Hilmar at the City’s sole expense set forth in Section 3.1(d).

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

“**Capital Outlay Levy**” means, pursuant to K.S.A. 12-1742, the USD 443’s capital outlay levy imposed pursuant to K.S.A. 72-53,133 set forth in Section 4.2(a).

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

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

“**City's Knowledge**” as used in Section 7.15 of the Agreement means the knowledge of City Manager Nick Hernandez, as well as the City’s other employees, agents, and representatives, each having an affirmative duty of inquiry.

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

“**Commence Construction**” means the issuance of appropriate permits for construction of the Improvements and the undertaking of a continuous program of construction for such Improvements.

“**Commencement Date**” means the time by which Hilmar agrees to Commence Construction of the Improvements as described in Section 6.8.

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

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

**“Consumer Price Index”** means the Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services in U.S. City Average.

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

**“Damaged Facilities”** means any part or the whole of the Project to the extent that the same is damaged or destroyed by a Casualty as set forth in Section 7.10(b).

**“Deed”** means the special warranty deed(s) as set forth in Section 2.2(a).

**“Design Professional(s)”** means the architects, engineers and other design professionals and consultants referenced in Section 6.1.

**“Development Plan”** means the plan agreed to by Hilmar and the City as more fully described in Recital C, Section 2.3 and **Exhibit B** attached hereto.

**“Effective Date”** means the date of this Agreement first above written.

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

**“Force Majeure”** is defined in Section 10.2.

**“General Contractor”** means the contractor(s) selected pursuant to Section 6.3.

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

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

**“HCCP”** means HCC Properties Ltd., a California limited partnership.

"**HCC Properties**" means HCC Properties Corporation, a California corporation, which is general partner of HCCP.

"**Hilmar**" means, collectively, Hilmar Cheese and HCCP.

"**Hilmar Cheese**" means Hilmar Cheese Company, Inc., a California corporation.

"**Improvements**" means those certain improvements to be constructed in the Project as more particularly described in Section 2.3(a).

"**Incentives**" means those inducements from the City and other third parties described in Section 3.1(f) and listed in **Exhibit C**.

"**Infrastructure Improvements**" means any infrastructure improvements provided for in Section 2.3(a)(iv).

"**Insurance Specifications**" means the insurance requirements on Hilmar in connection with the Project as generally described in Section 7.9 and more fully set forth in **Exhibit M** attached hereto.

"**Investigations**" means those investigations to be conducted by Hilmar as set forth in Section 3.1(c).

"**IRB**" means those industrial revenue bonds as set forth in Recital D and more fully described in Section 4.1.

"**IRB Documents**" means those certain memoranda or other documents to be recorded against the Site at the closing of the Abatement IRBs as described in Section 7.7(b).

"**Memorandum of Agreement**" means a memorandum of this Agreement to be recorded against the Site at Closing as described in Section 7.7(b).

"**Outside Date**" means the date by which Closing must occur, or either party shall thereafter have the right to terminate this Agreement pursuant to Section 5.1.

"**Parking Improvements**" means any parking improvements provided for in Section 2.3(a)(ii).

"**Permitted Encumbrances**" means those encumbrances accepted by Hilmar in accordance with Section 3.1(d).

"**Permitted Mortgage(s)**" is defined in Section 7.7.

"**Permitted Uses**" means a cheese, ingredient and other by product production and distribution facility and ancillary uses related thereto, including but not limited to, warehousing, research and development, and all other uses incidental to a milk processing facility.

"**Permitted Modification**" means those certain modifications to the scope and physical parameters of the Development Plan under the conditions set forth in Section 2.3(b).

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

"**PILOT**" means a payment-in-lieu-of-taxes set forth in Section 4.2 and **Exhibit F**.

“**PILOT Agreement**” means the agreement to be entered into between the City and Hilmar upon the issuance of the Abatement IRBs set forth in Section 4.2(b) and in a form substantially similar to **Exhibit G**.

“**PILOT Payment**” means the payment in lieu of taxes to be paid by Hilmar to the Treasurer of Ford County, Kansas, or other appropriate officer, set forth in Section 4.2(a) and in an amount for each year as set forth in **Exhibit F**.

“**Plans and Specifications**” means those plans and specifications generally described in Section 6.2.

“**Private Contribution**” means those funds paid by Hilmar (or Affiliate) as and when needed for all costs of the Project as set forth in the Summary Project Budget and Section 4.1.

“**Project**” means that certain venture to be constructed, developed and completed by Hilmar as described in Recital B, Section 2.3, and elsewhere in this Agreement.

“**Public Infrastructure**” means the water, sewer and other infrastructure improvements that the City will design, construct and complete in connection with the development of the Project as described in Section 7.2(b).

“**Purchase Price**” means the amount of money to be paid by Hilmar in exchange for the Site as set forth in Section 2.2(a) of this Agreement.

“**7.2(b)(ii) Default Notice**” means that certain notice that may be given by the City to Hilmar pursuant to Section 7.2(b)(ii) hereof.

“**Site**” means that certain approximately 144 acre parcel of real property, less a portion in the northeast quarter, which is owned by the City and to be sold to Hilmar, generally described in Recital A and as legally described on **Exhibit A** attached hereto.

“**State**” means the State of Kansas.

“**Substantial Completion**” means the stage in the progress of the construction of the Project, or as to any particular portion thereof, when said construction is sufficiently complete so that the Project or such particular portion can be occupied or utilized for its intended use.

“**Summary Project Budget**” means the summary budget for the Project, including the portions of the Project to be funded with public financing as described in Section 4.1 and as set forth on **Exhibit E** attached hereto.

“**Term**” means the term of this Agreement as set forth in Section 7.1.

“**Title Commitment**” means the commitment for title insurance provided by the Title Company as provided Section 3.1(d).

“**Title Company**” means High Plains Land and Title Company as referenced in Section 3.1(d).

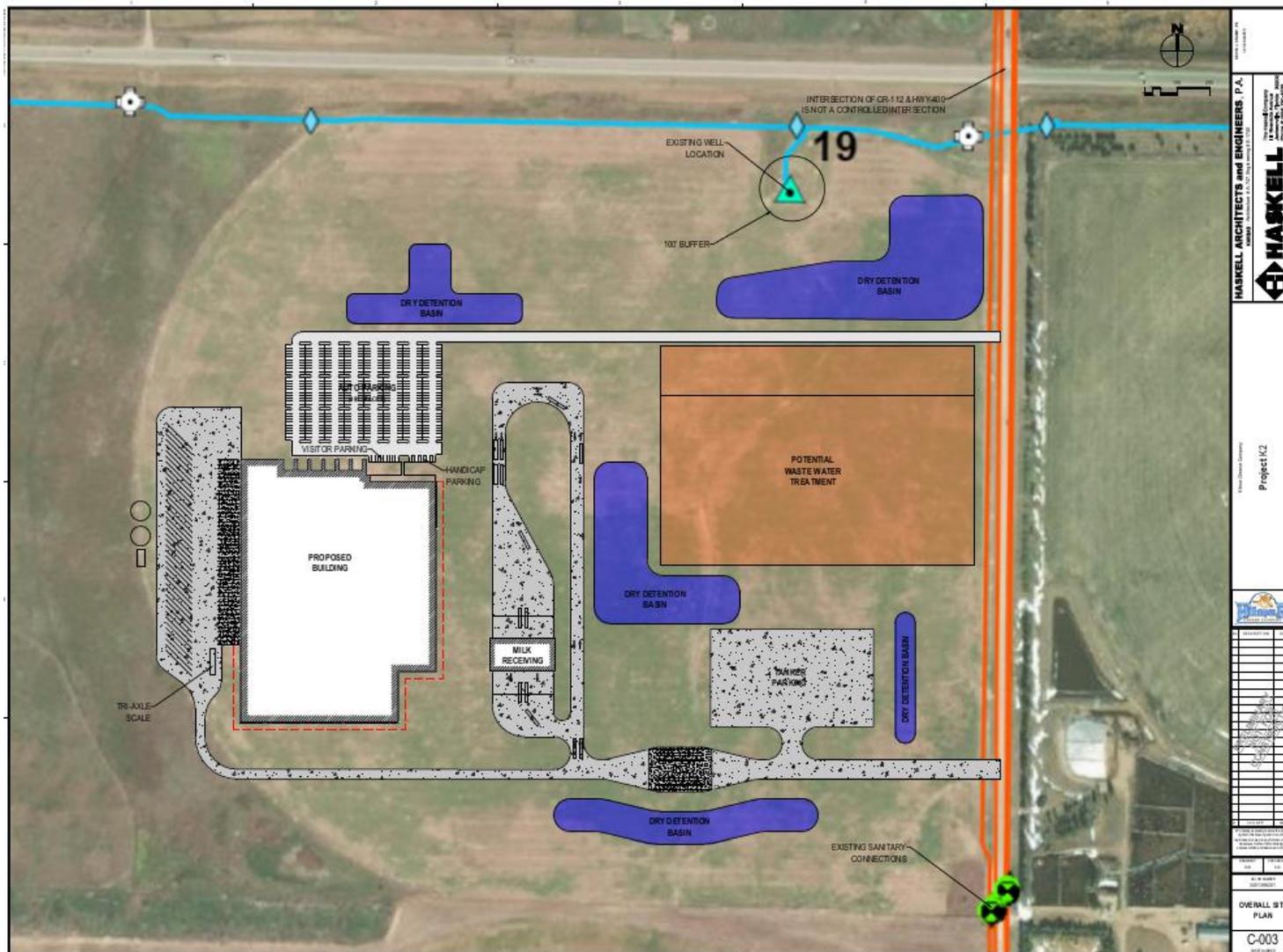
“**Title Objection Date**” means that certain date by which Hilmar must notify the City in writing of any objections Hilmar has to the Title Commitment or ALTA Survey as further described in Section 3.1(d).

**EXHIBIT A**

**The Site – Legal Description**

Northeast Quarter of Section 12, Township 27 South, Range 25 West, minus Road Right-of-Way, containing 144 +/- Acres, less and except an area to be agreed upon by the parties which will include a portion in the northeast corner of the Site where the well and well house are located and, at Hilmar's sole option, areas of the Site impacted by environmental concerns contained in either the Phase 1 or Phase 2 environmental assessments of the Site conducted by Terracon.

**EXHIBIT B**  
**Development Plan**



**EXHIBIT C**

**Incentives**

<b>Entity</b>	<b>Program/Description</b>	<b>Incentive</b>	<b>Notes</b>
<b><u>State of Kansas</u></b>			
1	Promoting Employment Across Kansas (Peak)	\$6,746,445	up to
2	Job Creation Fund (JCF)	\$3,000,000	
3	High Performance Incentive Program (HPIP)	\$11,248,750	Estimate after Credit Sale
4	Construction Sales tax Exemption	\$42,083,685	
5	Estimated Machinery and Equipment Property Tax Savings	\$64,136,425	
6	Kansas Industrial Training (KIT)	\$197,600	up to
7	Water Utility Sales Tax Exemption	\$447,408	
8	Electric Utility Sales Tax Exemption	\$4,510,600	
9	Gas Utility Sales Tax Exemption	\$1,696,130	
10	Kansas Department of Transportation Road Improvements	\$8,800,000	80% Cost Share with County
<i>Subtotal</i>		\$142,867,043	
 <b><u>City of Dodge City</u></b>			
1	Site Purchase Price Rebate	\$479,200	
2	Payment In Lieu of Additional Site	\$500,000	50% Cost Share with County
3	Water Utility Tie In/Connection Fees	\$64,957	
4	Fire Line Loop and Hydrants On Site	\$632,753	
5	Water Infrastructure	\$4,752,478	
6	Franchise Fees	\$4,278,395	10 Year Estimate
7	Permit Fees	\$235,000	
8	Lift Station/Surge Tank On Site	\$650,000	
9	Estimated Property Tax Exemption	\$7,517,644	10 Year Estimate
<i>Subtotal</i>		\$19,110,427	
 <b><u>Ford County</u></b>			
1	Road Improvements	\$2,200,000	20% Cost Share with State

2	Payment In Lieu of Additional Site	\$500,000	50% Cost Share with City
3	Site Improvement Grants	\$5,000,000	up to
4	Estimated Property Tax Exemption	\$7,767,900	10 Year Estimate
	<i>Subtotal</i>	\$15,467,900	
 <u>School District - USD 443</u>			
1	Estimated Property Tax Exemption	\$6,253,200	10 Year Estimate
	<i>Subtotal</i>	\$6,253,200	
 <u>Dodge City Community College</u>			
1	Estimated Property Tax Exemption	\$5,483,025	10 Year Estimate
2	Training	\$1,600,000	
	<i>Subtotal</i>	\$7,083,025	
 <u>Victory Electric</u>			
1	First 4 Year Rate Reduction	\$11,092,672	
2	System Upgrades and Infrastructure	\$6,800,000	
3	Victory/Sunflower Economic Development Rider	\$1,700,000	
	<i>Subtotal</i>	\$19,592,672	
 <u>Black Hills Energy</u>			
1	Connection Fee/Infrastructure	\$305,985	
	<i>Subtotal</i>	\$305,985	
 <b>TOTAL</b>		 <b>\$210,680,252</b>	

**EXHIBIT D**

**Form of Deed**

**KANSAS SPECIAL WARRANTY DEED**

**THIS INDENTURE**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **CITY OF DODGE CITY, KANSAS**, a municipal corporation ("Grantor"), and **HCC PROPERTIES LTD., A CALIFORNIA LIMITED PARTNERSHIP** ("Grantee"), whose mailing address is 8901 N. Lander Avenue, Hilmar, California 95324.

**WITNESSETH, THAT GRANTOR**, in consideration of the sum of Four Hundred Seventy-Nine Thousand Two Hundred and NO/100 Dollars (\$479,200.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents **GRANT, SELL, AND CONVEY** unto Grantee, its successors and assigns, all of that certain real estate situated in the County of Ford and State of Kansas, as described on Exhibit A attached hereto (the "Property").

**SUBJECT TO:** (a) easements, restrictions, declarations, and reservations of record, if any; (b) taxes and assessments, general and special, not now due and payable; and (c) the rights of the public in and to parts thereof, in streets, roads or alleys.

**AND SUBJECT TO** that certain Hilmar Cheese Development Agreement dated as of \_\_\_\_\_, 2021 executed by Grantor and Grantee, among others, as amended (the "Development Agreement") and a record of which Development Agreement has been made against the Property by recording a Memorandum of Development Agreement against the Property on or about the date hereof.

**TO HAVE AND TO HOLD THE PROPERTY**, together with all and singular the rights and appurtenances thereto in anywise belonging, to Grantee, its successors and assigns, forever; and Grantor binds itself, its successors and assigns, to **WARRANT AND FOREVER DEFEND** all and singular the Property to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

*[Remainder of page intentionally left blank; signature page follows.]*



**EXHIBIT E**

**Summary Project Budget**

Land, Building & Fixtures	\$225,000,000.00
Machinery & Equipment	\$262,000,000.00
Total Cost:	\$487,000,000.00

**EXHIBIT F**  
**PILOT Schedule**

Estimated Property Taxes	10 year Declining Abatement	Payable to taxing entities	USD 443 (Excl. 8 Mills for Capital Outlay)	Dodge City (2020- 26%)	Ford County(2020- 25%)	Dodge City Comm College (2020- 17%)	State of Kansas (2020- 1%)
2020 Mill Levy		173.57	49.000	44.549	46.032	32.492	1.50
Year 1	0%						
Year 2	10%	\$ 506,388.51	\$ 136,613.85	\$ 124,204.29	\$ 128,338.95	\$ 90,588.92	\$ 4,182.06
Year 3	20%	\$ 1,012,777.03	\$ 273,227.70	\$ 248,408.59	\$ 256,677.91	\$ 181,177.85	\$ 8,364.11
Year 4	30%	\$ 1,519,165.54	\$ 409,841.55	\$ 372,612.88	\$ 385,016.86	\$ 271,766.77	\$ 12,546.17
Year 5	40%	\$ 2,025,554.05	\$ 546,455.40	\$ 496,817.18	\$ 513,355.82	\$ 362,355.69	\$ 16,728.23
Year 6	50%	\$ 2,531,942.57	\$ 683,069.25	\$ 621,021.47	\$ 641,694.77	\$ 452,944.62	\$ 20,910.28
Year 7	60%	\$ 3,038,331.08	\$ 819,683.11	\$ 745,225.77	\$ 770,033.73	\$ 543,533.54	\$ 25,092.34
Year 8	70%	\$ 3,544,719.59	\$ 956,296.96	\$ 869,430.06	\$ 898,372.68	\$ 634,122.46	\$ 29,274.40
Year 9	80%	\$ 4,051,108.10	\$ 1,092,910.81	\$ 993,634.36	\$ 1,026,711.64	\$ 724,711.39	\$ 33,456.45
Year 10	90%	\$ 4,557,496.62	\$ 1,229,524.66	\$ 1,117,838.65	\$ 1,155,050.59	\$ 815,300.31	\$ 37,638.51
		\$ 22,787,483.09	\$ 6,147,623.29	\$ 5,589,193.27	\$ 5,775,252.97	\$ 4,076,501.55	\$188,192.55
Appraised value	111,521,511						
Assessed valuation	27,880,378						
/1000	27,880.38						
2020 mill levy 181.629							
<p>[1] This schedule assumes an appraised value of \$111,521,511.00 and an assessed value of \$27,880,378. If the actual appraised value and/or assessed value are different than the estimates set forth herein, the parties agree to update this schedule and amend the DA to replace this Exhibit E with modified PILOT amounts based on the actual appraised value and assessed value.</p>							
<p>[2] This schedule assumes a mill levy of 181.629. If the mill levy is increased or decreased hereafter, then the parties agree to update this schedule and amend the DA to replace this Exhibit F with modified PILOT amounts based on the modified mill levy.</p>							

**EXHIBIT G**

**Form of PILOT Agreement**

[To be attached following mutual agreement by the parties and approval of the City's Commission]



**EXHIBIT I**

**Water Utility Tie-In Specifications**







**EXHIBIT L**

**Wastewater Service Charges**

<b>PROBABLE WASTEWATER SERVICE CHARGES</b>			
<b>Hilmar Cheese Facility</b>			
BILLING DATES:	From:	Standard Month	
	To:		
Monthly Service Charge:			<b>\$135,000</b>
<b>Monthly Results</b>			
CBOD	3763	mg/L	
TDS	2164	mg/L	
O & G	636	mg/L	
Sodium	282	mg/L	
Chlorides	346	mg/L	
FLOW	45,000,000.00	Gallons	
<b>Monthly Surcharges:*</b>			
CBOD	1,412,254	Total lbs	\$0
TDS	812,149	Total lbs	\$0
O & G	238,691	Total lbs	\$0
Sodium	105,835	Total lbs	\$0
Chlorides	129,854	Total lbs	\$0
<b>TOTAL SERVICE CHARGES:</b>			<b>\$135,000</b>
<b>*Surcharges are based on the following:</b>			
Volume charge based on flow per million gallons per month < = 45MG			\$3,000.00
Volume charge based on flow per million gallons per month > 45MG			\$3,250.00
CBOD >	1,650,000	lbs. per month (4397 mg/l)	\$0.0480
TDS >	980,000	lbs. per month (2611 mg/l)	\$0.0480
O & G >	350,000	lbs. per month (933 mg/l)	\$0.0480
Sodium >	137,000	lbs. per month (365 mg/l)	\$0.0480
Chlorides >	141,500	lbs. per month (377 mg/l)	\$0.0480
lbs = mg/L * flow (MGM)* 8.34 (lbs/gal)			
Wastewater pH range 6 to 10			

## EXHIBIT M

### Insurance Specifications

1. Worker's Compensation (as applicable). Hilmar may self-insure, to the extent allowed by applicable law. The self-insured retention shall be that which is standard in the industry. Hilmar will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. If self-insurance is not available under applicable state law, coverage will be purchased in accordance with the statutory requirements.
2. Comprehensive General Liability. Hilmar will purchase and maintain with primary limits of not less than \$1,000,000.
3. Automobile Liability (as applicable). Hilmar will purchase and maintain with primary limits of not less than \$1,000,000.
4. Excess Liability. Hilmar will purchase and maintain excess liability insurance in an amount not less than \$10,000,000.
5. Property Insurance. Hilmar will purchase property insurance with deductibles and limits standard to those in the industry. Earthquake and flood insurance, as well as fired vessel, boiler and machinery, and underground collapse, will be acquired if required by Hilmar's lender for the Project.

**EXHIBIT N**  
**Public Infrastructure Schedule and Chronology**

<u>Public Infrastructure</u>	<u>City's Completion Date</u>
Water Treatment Facility Expansion	September 1, 2023
Water Treatment Connections and Hookup	September 1, 2023
Onsite Lift Station	September 1, 2023
Fire line loop and fire hydrants	September 1, 2023
Water utility tie-in	September 1, 2023



# Memorandum

**To:** City Commissioners

**From:** Joann Knight, Executive Director, Dodge City/Ford County Development Corp.

**Date:** 12/30/2021

**Subject:** Purchase Contract for Industrial Park Land

**Agenda Item:** Resolution No. 2021-32

---

**Recommendation:** Staff recommends the approval of Resolution No. 2021-32 allowing the City of Dodge City to sign the Resolution and Warranty Deed for the sale of land at the Dodge City Industrial Park.

**Background:** The Dodge City/Ford County Development Corporation has received an offer from 2022 Dodge City, LLC, a Kansas limited liability company, to purchase approximately 36.5 acres of land at the Dodge City Industrial Park. When the park was originally started, to enable the use of a Community Development Block Grant for installation of sewer and water systems, the City was required to have title to the benefitting real estate. Therefore, the City of Dodge City took title to the real estate as "Trustee" for the Dodge City/Ford County Development Corporation.

**Justification:** The development of the Dodge City Industrial Park is critical to the continued success of development in our region.

**Financial Considerations:** The developer plans to build a 217,000 sq. ft. package and cargo distribution and warehouse facility, together with associated uses, including, but not limited to, office, customer counter/customer operations, loading and unloading, outside parking, washing, and storage of tractors, trailers, trucks, automobiles, and other vehicles, for continuous 24-hour operations on all days of the year. The developer will also build out Jayhawk Road to connect with Allen Road and Chaffin Road, completing an avenue to disperse traffic from both roads.

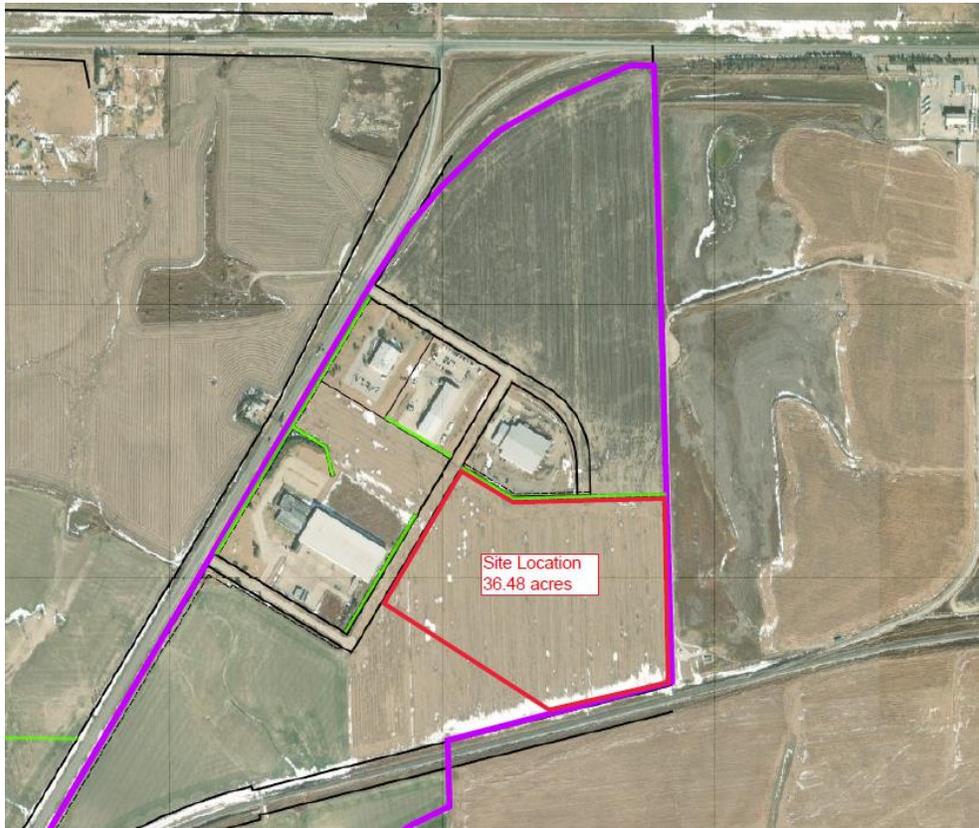
**Purpose/Mission:** This project helps meet the mission of the Development Corporation and City to bring economic development to our community.

**Legal Considerations:**

**Attachments:** Exhibit A – Site location and building layout



*Exhibit A*





**FISCHER**  
DEVELOPMENT &  
CONSTRUCTION  
INCORPORATED

STATE OF CONNECTICUT  
REGISTERED PROFESSIONAL ENGINEER  
NO. 10000

PROJECT: [REDACTED]

DATE: [REDACTED]

SCALE: [REDACTED]

BY: [REDACTED]

CHECKED BY: [REDACTED]

DATE: [REDACTED]

C.I. 1

## RESOLUTION NO. 2021-32

### A RESOLUTION AUTHORIZING THE CITY OF DODGE CITY, KANSAS TO CONVEY REAL ESTATE; AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION WITH THAT TRANSACTION

WHEREAS, the City of Dodge City, Kansas (the "City") has consistently monitored the real estate needs and requirements surrounding its current facilities and the community in general; and,

WHEREAS, the City, wishes to sell certain real estate located in Ford County, Kansas, specifically described as follows:

A tract of land in the East Half of Section 21 and the West Half of Section 22, Township 26 South, Range 24 West of the Sixth Principal Meridian, Dodge City, Ford County, Kansas described as follows:

Beginning at the Southwest Corner of Tract 3, Dodge City Industrial Park, Tract 3, Dodge City, Ford County, Kansas; thence S 58°13'28" E 350.04 feet to a Southerly Corner of said Tract 3, Dodge City Industrial Park; thence N 89°18'26" E 871.68 feet along the South Line of said Tract 3 to the West Line of the Koch Fertilizer Dodge City, LLC tract recorded in Book 244, page 848 in the Ford County Register of Deeds Office; thence S 01°21'15" E 1104.43 feet to the North right of way line of the BNSF Railroad; thence S 76°48'07" W 620.01 feet along the North right of way line of BNSF Railroad; thence N 58°13'57" W 1250.33 feet to the Easterly right of way line of Jayhawk Drive; thence N 31°46'03" E 895.33 feet to the point of beginning, containing 36.5 acres.

("Premises"); and,

WHEREAS, the Governing Body of the City has determined that it would be in the City's best interest to sell the Premises to 2022 DODGE CITY, LLC, a Kansas limited liability company, for the sum of four hundred thirty-seven thousand seven hundred sixty and 00/100 dollars (\$437,760.00), by private contract.

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

The Governing Body of the City of Dodge City, Kansas, does hereby approve the sale of the Premises described above to **2022 DODGE CITY, LLC, a Kansas limited liability company**, and does further authorize and direct the Mayor, City Manager, and City Clerk to execute and deliver on behalf of the City of Dodge City, Kansas all documents necessary to complete the sale of the above Premises to **2022 DODGE CITY,**

**LLC, a Kansas limited liability company,** and does hereby confirm and ratify any and all such actions taken by such persons to complete said sale.

Adopted this \_\_\_\_\_ day of December, 2021 by the Governing Body of the City of Dodge City, Kansas.

CITY OF DODGE CITY, KANSAS

By: \_\_\_\_\_  
**Rick Sowers, Mayor**

ATTEST:

\_\_\_\_\_  
**Connie Marquez, City Clerk**

RELEASE OF RIGHT TO REPURCHASE UNDER THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND LIEN FOR THE DODGE CITY/CHAFFIN INDUSTRIAL PARK, A PLANNED INDUSTRIAL CENTER

This Release of Right to Repurchase under the Declaration of Covenants, Conditions, Restrictions and Lien for the Dodge City/Chaffin Industrial Park, a Planned Industrial Center (this "Release") is made this the \_\_\_\_ day of December, 2021, by the Dodge City - Ford County Development Corporation (the "Declarant").

RECITALS:

A. Declarant entered into that certain Declaration of Covenants, Conditions, Restrictions and Lien for the Dodge City/Chaffin Industrial Park, a Planned Industrial Center, which was recorded with the Ford County Register of Deeds on August 31, 1994 in Book 83, Page 153 (the "Declaration");

B. The Declarant is selling to 2022 Dodge City, LLC, a Kansas limited liability company ("Buyer"), the real property legally described on Exhibit A attached hereto (the "Property"); and

C. As part of the consideration for Buyer's purchase of the Property from the Declarant, the Declarant has agreed to release the Property from the right of repurchase as described in Paragraph 4.9 of the Declaration.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Declarant hereby agrees to fully release the Property and Buyer from the terms and conditions of Paragraph 4.9 of the Declaration, and agrees that the Declarant no longer has the right to repurchase the Property under the Declaration. This Release shall inure to the benefit of and be enforceable by Buyer and its successors and/or assigns as the owner of the Property as described herein.

IN WITNESS WHEREOF, the Declarant has executed and delivered this Release as of the day and year first above written.

**DECLARANT:**

DODGE CITY - FORD COUNTY  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Joann Knight, Executive Director

## **EXHIBIT A**

### LEGAL DESCRIPTION OF PROPERTY

A tract of land in the East Half of Section 21 and the West Half of Section 22, Township 26 South, Range 24 West of the Sixth Principal Meridian, Dodge City, Ford County, Kansas described as follows:

Beginning at the Southwest Corner of Tract 3, Dodge City Industrial Park, Tract 3, Dodge City, Ford County, Kansas; thence S 58°13'28" E 350.04 feet to a Southerly Corner of said Tract 3, Dodge City Industrial Park; thence N 89°18'26" E 871.68 feet along the South Line of said Tract 3 to the West Line of the Koch Fertilizer Dodge City, LLC tract recorded in Book 244, page 848 in the Ford County Register of Deeds Office; thence S 01°21'15" E 1104.43 feet to the North right of way line of the BNSF Railroad; thence S 76°48'07" W 620.01 feet along the North right of way line of BNSF Railroad; thence N 58°13'57" W 1250.33 feet to the Easterly right of way line of Jayhawk Drive; thence N 31°46'03" E 895.33 feet to the point of beginning, containing 36.5 acres.

**CORPORATION DEED  
General Warranty**

**THIS INDENTURE, Made this \_\_\_\_ day of December, 2021 between**

**CITY OF DODGE CITY, KANSAS, INDIVIDUALLY AND AS TRUSTEE,**

a municipal corporation duly organized, incorporated and existing under and by virtue of the State of Kansas and having its principal place of business at Ford County in the State of Kansas, as the party of the first part and as grantor, and

**2022 DODGE CITY, LLC, a Kansas limited liability company**

and having its principal place of business at Ford County in the State of Kansas, as the party of the second part:

WITNESSETH, That said party of the first part, in consideration of other good and valuable consideration and the sum of Ten and 00/100 Dollars, the receipt of which is hereby acknowledged, does by these presents, Grant, Bargain, Sell and convey unto said party of the second part, its successors and assigns, all of that certain real estate, situated in Ford County and the State of Kansas, as described on Exhibit A, attached hereto.

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, forever.

And said party of the first part and grantor for itself, its successors and assigns, does hereby covenant, promise and agree, to and with said party of the second part, that at the delivery of these presents it is lawfully seized in its own right, of an absolute and indefeasible estate of inheritance, in fee simple, of and all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances, of what nature or kind soever, except easements, restrictions and assessments of record; and that it will warrant and forever defend the same unto said party of the second part, its successors and assigns, against said party of the first part, its successors and assigns, and all and every person whosoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the party of the first part has hereunto caused this Deed to be signed on its behalf by its Mayor thereunto duly authorized so to do, and has caused its corporate seal to be hereunto affixed the day and year above written.

CITY OF DODGE CITY, KANSAS, INDIVIDUALLY AND AS TRUSTEE

\_\_\_\_\_  
Rick Sowers, Mayor

ATTEST:

\_\_\_\_\_  
Connie Marquez, City Clerk

STATE OF KANSAS, COUNTY OF FORD, SS:

BE IT REMEMBERED that on this \_\_\_\_ day of December, 2021 before me, the undersigned, a notary public in and for the State and County aforesaid came Rick Sowers, Mayor, and Connie Marquez, City Clerk of the City of Dodge City, Kansas, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

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

[SEAL]

---

Notary Public

My Appointment Expires: \_\_\_\_\_



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nathan Littrell, Planning & Zoning Administrator  
**Date:** December 20, 2021  
**Subject:** Rezoning change for Sunview Development  
**Agenda Item:** Ordinance #3767

---

**Recommendation:** The Planning Commission held a public hearing on December 14, 2021 and recommends denial of this zoning amendment, citing concerns about putting in higher density next to existing low density lots. City staff recommends approving this rezoning amendment.

**Background:** The applicant wishes to rezone these vacant properties located on platted Cecil St., Loretta Ave., Northwest Ave., Plains St., and Ross Blvd. to R-2 Residential Medium Density and R-3 Residential Higher Density. This property is currently zoned R-S and platted for 1 acre lots. The proposed development will consist of single-family homes in the proposed R-2 zoned area and a mixture of duplexes and townhouses in the proposed R-3 area.

This property was designated as a Rural Housing Incentive District (RHID) in December of 2009.

On December 14, 2021, the Planning Commission held a Public Hearing for this proposed rezoning. The Hearing was well attended, with many adjacent property owners voicing concerns over the proposed rezoning and development. Some of the concerns included, but were not limited to:

- The impact of increased traffic through the existing neighborhood and surrounding area due to the new development.
- The compatibility of the proposed development density with the adjacent existing development
- Whether or not any covenants still existed that would prohibit this type of development, and if not, if they were abolished legally.

The Planning Commissioners voted 3-0 with one abstention to recommend denying this zoning amendment, with comments and reasons given being:

- The adjacent property owner opposition
- Incompatibility of the proposed development density with the adjacent existing development.

- Specific comments included being in favor of developing this area, but not supporting R-3 in this area and the smaller lot sizes of the proposed single-family housing.
- Developer was asked to resubmit with a lower density development.

**Justification:** This proposed zoning change will allow for denser residential development of smaller lot, affordable single-family housing and multi-family housing that has been identified by the Community Housing Assessment Team(CHAT) as a need of the community. Placing the single-family housing on the eastern portion next to the existing low density residential provides a transition to the proposed higher density residential on the western portion along the property of the High School.

The proposed development layout will not have any direct access to the existing neighborhood to the east will only initially be accessed from the north via Ross Blvd. initially. A second point of access at the south end will be added once Loretta Ave. is extended north to Ross Blvd. Plans for the Loretta Ave. extension are currently underway.

This property was previously zoned and platted with the intent to develop the property into 1-acre lots. This proposed rezoning consists of property platted by the Country Acres and Scottsdale subdivisions which were adopted in 1960 and 1967, respectively. This area remains undeveloped. Utilities are accessible, making this property ideal for development.

The proposed development could initially increase traffic on Ross Blvd. The City anticipates needing to monitor traffic in this area and adjust traffic signals as deemed necessary. Once Loretta Ave. is constructed, a second access to the development will be made before the development is fully built out. The construction of Loretta Ave. will include a second entrance to the High School, greatly improving the traffic flow in this area.

The rezoning of this property is in agreement with the City's Comprehensive Plan. This property's identified future land use included both single-family and multi-family residential.

#### Zoning Amendment Criteria

The Planning Commission and City Commission must find that the map amendment is in agreement with the Comprehensive Plan or, in the absence of such a finding, that one or more of the following apply:

- That the original zoning classification given to the property was inappropriate or improper based on the Comprehensive Plan.
  - The original zoning of R-S Residential Suburban and R-1 Residential Low Density do not allow for multi-family housing and other denser residential development as called for in the Comprehensive Plan.

- That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the Comprehensive Plan and which have substantially altered the basic character of the area.
  - The Comprehensive Plan anticipated a need for higher density residential development in this area.

In addition to other factors which may be relevant to a particular application, The Planning Commission and City Commission may consider the following criteria:

- The character of the neighborhood.
  - By transitioning the density by having the lower proposed density immediately adjacent to the existing low density residential best preserved the character of the existing adjacent neighborhood.
- The extent to which the proposed use would be in harmony with surrounding zoning and uses.
  - The transition from higher density in the west to lower density in the east provides a transition of the high level of activity at the High School to the lower density residential developments.
- The suitability of the property for the allowed uses under present zoning.
  - 1 acre and larger lots are less suitable next to a High School.
- The length of time the property has remained vacant as zoned, if applicable.
  - This property was platted for one to two acre lots in 1967 and 1960.
- The extent to which approval of the application would detrimentally affect nearby properties.
  - By transitioning from lower density near the existing low density existing properties to higher density, it minimizes any detrimental effects.
- The extent to which transportation, utilities and services are available and adequate.
  - Utilities such as water and sewer are immediately adjacent to the proposed development. The proposed development would be initially accessed solely by Ross Blvd. A second access from Loretta Ave. would be created once Loretta Ave. is constructed.
- The extent to which the proposed use would impact the environment, including storm water runoff.
  - Stormwater management of the development will be designed with the platting process.
- The extent to which there is a need for the use in the community.
  - The CHAT study has shown a substantial need for this type of development by the community.
- The ability of the proposed use to comply with all applicable standards of this Ordinance and other relevant development codes.
  - There are no apparent indications that there will be any conflicts with applicable zoning standards or development codes.

- The gain, if any, to the public health, safety and welfare due to the denial of the application; as compared to the hardship on the applicant, if any, as a result of denial of the application.
  - There are no apparent gains to the public health, safety and welfare due to the denial of the application. Denial of this application would create substantial hardship on the applicant in not allowing the development of this property to commence.
- The recommendation of professional staff.
  - It is City Staff's recommendation to approve this application for zoning amendment.

**Financial Considerations:** None

**Purpose/Mission:** Approving this rezoning will encourage and support growth and development in our community. This proposed development will help address identified housing shortages.

**Legal Considerations:** In accordance to K.S.A. 12-757, The actions the Governing Body may take are:

- Confirm Planning Commission's recommendation of denial with a majority vote.
- Override Planning Commission's recommendation by approving this zoning amendment with a 2/3 majority vote.
- Return such recommendation to the Planning Commission with a statement specifying the basis for the governing body's failure to approve or disapprove.

**Attachments:** Ordinance #3767, Map, Conceptual Plat, Pictures

ORDINANCE NO. 3767

AN ORDINANCE OF THE CITY OF DODGE CITY, KANSAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY, CHANGING THE PROPERTY LOCATED ON LORETTA AVENUE, NORTHWEST AVENUE, ROSS BOULEVARD FROM R-S RESIDENTIAL SUBURBAN AND R-1 RESIDENTIAL LOW DENSITY TO R-2, RESIDENTIAL MEDIUM DENSITY AND R-3 RESIDENTIAL HIGHER DENSITY.

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

SECTION 1: The following described real property located in Dodge City, Ford County, Kansas is hereby rezoned:

A tract of land in the Southwest Quarter (SW/4) of Section Fifteen (15), Township Twenty-six (26) South, Range Twenty five (25) West of the Sixth Principal Meridian, Ford County, Kansas,

Tract 1: R-2 Residential Medium Density

Lots 5-8, of Block 13; Lots 1-4 of Block 14; Lots 1-7 of Block 15; Lots 8-14 of Block 16  
Scottsdale Subdivision  
Dodge City, Ford County, Kansas

Lots 1 & 4 of Block 9; Lots 2 & 3 of Block 10  
Country Acres Subdivision  
Dodge City, Ford County, Kansas

Tract 2: R-3 Residential Higher Density

Lots 5-8, of Block 14; Lots 8-13 Block 15  
Scottsdale Subdivision  
Dodge City, Ford County, Kansas

Lots 2 & 3, Block 9  
Country Acres Subdivision  
Dodge City, Ford County, Kansas

SECTION 2: This ordinance shall take effect, from and following its publication in the official paper, as required by law.

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR  
SESSION AND APPROVED BY THE MAYOR, THIS TWENTIETH DAY OF  
DECEMBER, 2021.

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RICK SOWERS, MAYOR

ATTEST:

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CONNIE MARQUEZ, CITY CLERK



W. Ross Blvd.

Proposed R-2

Proposed R-3

PLAINS

CECIL

LORETA

NORTHWEST

CENTER

Plains St.

Center Ave.

Cecil St.

Country Acres Dr.

W. Frontview St.

Northwest Ave.

FRONTVIEW ST.

U.S. Hwy. 50

U.S. HIGHWAY 50

Loretta Ave.

COUNTRY ACRES

C2

R1

RS

C0



# Single-Family Houses



# Townhouses





# Memorandum

**To:** City Commission and City Manager  
**From:** Ernestor De La Rosa, Assistant City Manager  
**Date:** December 20, 2021  
**Subject:** Resolution 2021-29  
**Agenda Item:** Ordinances and Resolutions

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**Recommendation:** Staff recommends approval of Resolution No. 2021-29 approving the execution and delivery of an agreement to release and assign the City's opioid claims to the Kansas attorney general and certifying costs attributable to substance abuse and addiction mitigation.

**Background:** In 2019, the City of Dodge City filed suit to recover damages sustained by the City related to the opioid epidemic. In 2021, the Kansas Legislature passed the Kansas Fights Addiction Act ([HB 2079](#)) to govern the distribution of settlement funds to the state from opioid producers and distributors. Pursuant to this legislation, local governments will be receiving 25% of settlement funds.

**Justification:** Cities are required to certify, by resolution, that the City has had or will have at least \$500 in costs related to opioid abused or addiction mitigation and that the City is able to utilize any settlement funds on purposes approved in the Memorandum of Understanding and the various settlements.

**Financial Considerations:** None from the City.

**Purpose/Mission:** Together we promote open communications with our community members to improve quality of life and preserve our heritage to foster a better future.

**Legal Considerations:** None

**Attachments:** Resolution No. 2021-29

**RESOLUTION NO. 2021-29**

**A RESOLUTION OF THE CITY OF DODGE CITY, KANSAS, APPROVING THE EXECUTION AND DELIVERY OF AN AGREEMENT TO RELEASE AND ASSIGN THE CITY'S OPIOID CLAIMS TO THE KANSAS ATTORNEY GENERAL AND CERTIFYING COSTS ATTRIBUTABLE TO SUBSTANCE ABUSE AND ADDICTION MITIGATION IN EXCESS OF \$500.**

**WHEREAS**, in 2021, the Kansas Legislature enacted HB 2079, the Kansas Fights Addiction Act (the "Act"), authorizing litigating municipalities such as the City of Dodge City to access opioid litigation settlement funds and become eligible for certain state grants by entering an agreement releasing the city's opioid litigation claims to the Attorney General and assigning any future opioid litigation claims to the Attorney General (the "Agreement"); and

**WHEREAS**, the City of Dodge City sustained damages related to the opioid epidemic; and

**WHEREAS**, the City of Dodge City desires to enter an Agreement releasing and assigning its Claims to the Attorney General in order to access opioid litigation settlement funds and become eligible for certain state grants;

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

**Section 1. Authorization of the Agreement.** City hereby authorizes the release of its legal claims arising from covered conduct to the Attorney General, and the assignment of any future legal claims arising from covered conduct to the Attorney General, pursuant to the Agreement by and between the Attorney General and the City in substantially the form presented to and reviewed by the governing body at this meeting (copies of this document shall be on file in the records of the City), with such changes therein as shall be reviewed by the City Attorney and the officials of the City executing such documents.

**Section 2. Execution of the Agreement.** The Mayor, City Manager, City Attorney, City Clerk and Assistant City Manager are hereby authorized and directed to execute, seal, attest and deliver the Agreement in substantially the form presented to and reviewed by the governing body at this meeting and such other settlement agreements, documents, certificates and instruments as may be necessary and desirable to carry out and comply with the intent of this Resolution, for and on behalf of the City.

**Section 3. Certification of Costs and Expenses.** The City hereby certifies that it has incurred costs and expenses related to substance abuse or addiction mitigation in excess of \$500 and the City can utilize the opioid litigation settlement funds for the lawful purposes established in the Kansas Fights Addiction Act and the settlement agreements. The City Manager, Assistant City Manager and City Attorney are hereby authorized to execute, seal, attest and deliver such other documents, certificates and instruments as may be necessary and desirable to certify these costs and expenses or similar costs and expenses, for and on behalf of the City.

**Section 4. Effective Date.** This Resolution shall be in full force and effect from and after its adoption.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ (month and year) and **SIGNED** by the Mayor.

\_\_\_\_\_  
Mayor

Attested:

\_\_\_\_\_  
City Clerk

REVIEWED AND APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## **Notes**

1. This resolution is intended to capture the minimum requirements of the Act; authorizing the city to enter into an agreement to release and assign any and all current and future opioid claims and certifying city costs associated with opioid abuse treatment and mitigation in excess of \$500. In addition to those necessary components, the draft resolution authorizes city manager or administrator and/or the mayor to execute the agreements necessary for the city to have access to the settlement funds on behalf of the city.
2. The italicized “Whereas” clause will not be necessary unless your city has filed opioid litigation independent of the state.
3. This resolution and any agreements entered into pursuant to the resolution should be reviewed by the city attorney.



# Memorandum

**To:** Nick Hernandez, City Manager  
City Commissioners  
**From:** Daniel Cecil, Parks and Facilities Director  
**CC:** Chris Robinson, Golf Professional  
**Date:** December 20, 2021  
**Subject:** Mariah Hills Golf Course Fees  
**Agenda Item:** Resolution 2021-30

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**Recommendation:** Staff recommends the approval of Resolution 2021-30 for the proposed increases in green fees, cart fees and annual memberships at Mariah Hills Golf Course.

**Background:** Rates and fees are reviewed every couple years to ensure we are within the range that is being charged by municipal courses of similar size with similar offerings in the region. Fees were last reviewed in October 2019. This change would affect green fees, cart fees, memberships and move Friday rounds to the weekend rate instead of the weekday rate. This increase would take effect January 1, 2022.

**Justification:** When the rates were recently reviewed, we found that Mariah Hills was in the low end of charged fees for golf courses in our area. Prices have also been steadily increasing across the country due to the recent resurgence in popularity that golf has received, allowing its participants to social distance but stay physically active. This reflects a fair value for the course and service provided. The Golf Course Advisory Board approved the rate increases at their December 9, 2021, meeting.

**Financial Considerations:** The increase in fees would be as follows: \$1 for all daily green fees and cart fees, \$50 for all gold annual memberships, \$30 for annual family memberships and \$20 for annual single memberships. Based on the number of rounds played in 2021, we could expect increased revenues of \$5,500.00 for green fees, \$4,800.00 for cart fees, \$2,400.00 for moving Friday to the weekend rate and \$8,200.00 in memberships. This totals \$20,900.00 in increased revenues for the course or roughly a 5% increase.

**Purpose/Mission:** Adoption of Resolution 2021-30 meets the City's core value of Ongoing Improvement by providing variable and attractive price points for utilization of Mariah Hills Golf Course and strives to maximize revenue and utilization of the facility.

**Legal Considerations:** There are no legal considerations for this matter.

**Attachments:** Resolution 2021-30  
Golf course rate survey



**RESOLUTION NO. 2021-30**

**A RESOLUTION REVISING FEES AND RATES FOR MARIAH HILLS GOLF COURSE**

**WHEREAS,** The City maintains and operates the Mariah Hills Golf Course to provide recreational opportunities for the citizens of Dodge City; and

**WHEREAS,** The City desires to establish a reasonable and equitable schedule of fees and charges necessary to provide these facilities at a uniform cost to all users; and

**WHEREAS,** The creation of policies and regulations are necessary in order to maintain the golf course and facilities and effectively administrate their use,

**NOW, THEREFORE** be it resolved by the governing body of the City of Dodge City that the following schedule of fees and regulations be established.

**Section I. Definitions**

- A. Junior - Juniors shall be defined as anyone seventeen (17) years of age and younger.
- B. Family – Family’s shall be immediate family and limited to husband and wife, and all children 22 years of age and younger living in the home or enrolled as a full-time student.
- C. Senior- Seniors shall be defined as anyone 62 years of age and older.

**Section II. Fees and Charges**

- A. Standard charges for Daily Fees, Season Passes and other charges shall be as follows:

Daily Fees

Monday - Thursday	22.00
Friday – Sunday & Holidays	25.00
9 Hole	15.00
Twilight Fee	14.00
Junior	10.00
Adult Pass Surcharge	3.00
Junior Pass Surcharge	1.00

Season Passes

Single	500.00
Family	740.00
Senior	400.00
Senior Family	640.00

Junior	150.00
Gold Single	1,250.00
Gold Family	1,500.00
Gold Senior	1,150.00
Gold Senior Family	1,350.00
Other Charges	
Cart Rental (18)	16.00
Cart Rental (9)	11.00
Trail Fee	12.00

\* Gold Passes include season pass, cart rental/trail fee, and unlimited driving range privileges. Gold passes are exempt from surcharges.

### Section III. School Team Program

A. A program for school teams and their coaches is available to any local school district or community college sponsoring a competitive golf team.

#### 1) High School Teams

- a. Fees for high school team members and coaches are \$65 per player.
- b. Team memberships may be used Monday – Friday for team practices and events and are valid only during the team’s regular season of practice and competition.
- c. Any team member wishing to purchase a Junior season pass will receive credit for the paid Team membership and is required to pay only the difference between the Team fee and Junior pass.

#### 2) College Teams

- a. Fees for college team members and coaches are \$275 per player or the college golf team will clean pick the range the entire school year. They will also do a team project on the golf course each semester.
- b. Team Memberships are valid everyday during Fall and Spring semesters.
- c. Any team member wishing to purchase a Single season pass will receive credit for the paid Team membership and is required to pay only the difference between the Team fee and Single pass.

#### 3) Team memberships are exempt from daily surcharges.

- 4) Coaches are allowed to practice and play with their players during the season for all team functions and practices. If a coach wishes to play outside of a team function, they shall be required to pay a daily fee or purchase a season pass.

**Section IV. Special Promotions**

- A. Tournament Rates – A tournament rate of \$15 per player will be available to any event with 50 or more players.
- B. The Golf Course Advisory Board may from time to time determine special promotional rates and fees in order to promote the golf course. Such promotions shall be approved by the City Manager prior to publication and/or implementation.

**Section V. Effective Date**

- C. This Resolution shall take effect following its adoption by the Governing Body.

**ADOPTED AND APPROVED** by the Governing Body of the City of Dodge City this 20<sup>th</sup> day of December, 2022.

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RICK SOWERS, MAYOR

ATTEST:

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CONNIE MARQUEZ, CITY CLERK

2021 GC Rates

	<u>9 GF</u>	<u>18 GF WD</u>	<u>18 GF WE</u>	<u>9 Cart</u>	<u>18 Cart</u>
Carey Park	\$ 17.00	\$ 20.00	\$ 22.00	\$ 8.00	\$ 16.00
Sand Creek Station		\$ 24.00	\$ 34.00		\$ 15.00
Buffalo Dunes	\$ 20.00	\$ 25.00	\$ 30.00	\$ 10.00	\$ 15.00
Emporia Golf Course	\$ 14.00	\$ 18.00	\$ 22.00	\$ 12.00	\$ 16.00
Hesston Golf Course	\$ 17.00	\$ 17.00	\$ 27.00	\$ 10.00	\$ 13.00
Salina Muni	\$ 19.50	\$ 22.50	\$ 24.50	\$ 11.50	\$ 16.25
Willow Tree Golf Course		\$ 15.00	\$ 18.00	\$ 12.00	\$ 24.00
<b>Mariah Hills</b>	\$ 14.00	\$ 21.00	\$ 24.00	\$ 9.00	\$ 15.00
<b>2022 New Rates</b>	<b>\$ 15.00</b>	<b>\$ 22.00</b>	<b>\$ 25.00</b>	<b>\$ 10.00</b>	<b>\$ 16.00</b>

**Memberships**

**2022 New Memberships Rates**

Family Gold	\$ 1,450.00	\$ 1,500.00
Single Gold	\$ 1,200.00	\$ 1,250.00
Senior Family Gold	\$ 1,300.00	\$ 1,350.00
Senior Gold	\$ 1,100.00	\$ 1,150.00
Family	\$ 710.00	\$ 740.00
Single	\$ 480.00	\$ 500.00
Senior Family	\$ 610.00	\$ 640.00
Senior	\$ 380.00	\$ 400.00

**9GF - 9 Hole Green Fee**

**18GF WD - 18 Hole Green Fee Weekday**

**18GF WE - 18 Hole Green Fee Weekend**

**Gold Memberships include - Green fees, Carts and Range**

**Regular Memberships - Members pay \$3.00 green fee, cart fee if they walk and pay for range balls**



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners

**From:** Ray Slattery, PE, Director of Engineering Services

**Date:** December 13, 2020

**Subject:** Resolution 2021-31 – Boundary Resolution Describing the City Limits of the City of Dodge City

**Agenda Item:** Ordinances and Resolutions

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**Recommendation:** Approve Resolution 2021-31, the 2021 Boundary Resolution of the City of Dodge City

**Background:** Each year the City must adjust the boundary resolution that describes the City Limits of the City to account for any additional lands that had been annexed in the past year or correct any errors found in the description. The changes to the boundary are as follows.

- The Addition of the Murfin Property at the corner of US 56/283/400 & 112 Rd.

This property was annexed into the City. It will be the Future site of the Hilmar Cheese facility.

**Justification:** Each year that territory has been added to or excluded from the City, the City is required by KSA 12-517 to adjust the City's boundary by resolution.

**Financial Considerations:** None

**Purpose/Mission:** The City is responsible for following State laws. By updating our boundaries, we have identified what properties should be served by the City and can plan for the long-term improvements to those areas.

**Legal Considerations:** The City is obligated under state statute to update the boundary of the City.

**Attachments:** Boundary Resolution and map showing the additions to and current boundary of the City.

RESOLUTION NO. 2021-31

A RESOLUTION DESCRIBING AND DEFINING  
THE BOUNDARY OF THE CITY OF DODGE CITY

WHEREAS, the City of Dodge City must define the corporate limits of said City by virtue of K.S.A. 12-517 of the General Statutes of Kansas:

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

SECTION 1: That the Corporate limits of the City of Dodge City, Kansas shall be and are as follows, to wit:

(A) Beginning at the intersection of the south right-of-way line of Military Avenue and the east right-of-way line of Avenue P; thence East along the south line of said Military Avenue to the northeast corner of Shuman Tracts; thence South along the east line of Shuman Tracts to the southeast corner of Tract 7, Shuman Tracts; thence East and perpendicular to the east line of said Tract 7 to a point on the east right-of-way line of Road 113; thence South along the east right-of-way line of the Road 113 to a point that intersects the north right-of-way line of Wyatt Earp Blvd; thence East along the north right-of-way line of said Wyatt Earp Blvd to a point that intersects the northerly extension of the east right-of-way line of U.S. Highway 56-283; thence South along the extended east right-of-way line of U.S. Highway 56-283 to a point on the south line of Section 29; thence West along the south line of Section 29 to the west right-of-way line of U.S. Highway 56-283 Overpass; thence South along the west line of the U.S. Highway 56-283 Overpass to the south right-of-way line of the A.T. & S.F. Railroad; thence Southeasterly along the south right-of-way line of said A.T. & S.F. Railroad for a distance of 1904.07 feet; thence North along the right-of-way line of said A.T. & S.F. Railroad for a distance of 50.00 feet; thence Southeasterly along the south right-of-way line of said A.T. & S.F. Railroad for a distance of 250.45 feet; thence South to a point that is 360.00 feet North of the north right-of-way line of U.S. Highway 400; thence Southeasterly and parallel to the north right-of-way line of said U.S. Highway 400 to a point on the west line of Tract 15 of Wilkinson Place No. 2; thence South along the west line of said Tract 15 of Wilkinson Place No. 2 to a point that is 205.00 feet North of the north right-of-way line of U.S. Highway 400; thence Southeasterly and parallel to the north right-of-way line of said U.S. Highway 400 to a point on the east line of Tract 17 of said Wilkinson Place No. 2; thence South along the east line of said Tract 17 of Wilkinson Place No. 2 to the south right-of-way

line of said U.S. Highway 400; thence Southeasterly along the south right-of-way line of said U.S. Highway 400 to the east line Happy Trails Subdivision a replat lots 12&14 of Wilkinson Place No. 1; thence South along the east line of said Happy Trails Subdivision to the southeast corner thereof; thence West along the south line of said Happy Trails Subdivision and continuing to the southwest corner of Tract 9 of Wilkinson Place No. 1; thence North along the west line of said Tract 9 to the south right-of-way line of U.S. Highway 400; thence Northwesterly along the south right-of-way line of said U.S. Highway 400 to a point that is 770.45 feet East of the west line of Section 32, Township 26 South, Range 24 West, thence South for a distance of 200.00 feet; thence West for a distance of 140.00 feet; thence South to a point on the north line of Lot 1, Block 2 Gladden Addition No.2, said point being 476.78 feet east of the east right-of-way line of U.S. Highway 56/283; thence East along said north line of Lot 1, Block 2 Gladden Addition No.2 to the northeast corner thereof; thence South along the east line of said Lot 1, Block 2 to the southeast corner thereof; thence West along the south line of Lot 1, Block 2 and Lot 1, Block 1 of Gladdens Addition No. 2 to the southwest corner thereof; thence North along the west line of said Lot 1, Block 1 of Gladdens Addition No. 2 to the northwest corner thereof, said corner being of the south line of the Northeast Quarter of Section 31, Township 26 South, Range 24 West; thence west along the south line of the northeast quarter of said Section 31 to a point 651.58 west of the southeast corner thereof; thence North a distance of 922.02 feet to a point on the south right-of-way line of East Trail Street 605.87 west of the west right-of-way of U.S. Highway 56/283; thence west along the south right-of-way line of East Trail Street a distance of 142.46 feet; thence South for a distance of 920.00 feet; thence West for a distance of 560.00 feet to the east line of McCaustland Place; thence South along the east line of said McCaustland Place to the southeast corner thereof; thence West along the south line of said McCaustland Place to a point on the east line of the northeast drain of the Dodge City Flood Control Project; thence South along the east line of said northeast drain a distance of 1,601.50 feet; thence Southeasterly along a line having a deflection angle of 54 degrees 13 minutes a distance of 424.98 feet to the west line of McCaustland Road No. 2; thence South along the west line of said McCaustland Road No. 2 for a distance of 150 feet to the north bank of the Arkansas River; thence Northwesterly along the north bank of the Arkansas River to a point on the east line of Section 36, Township 26 South, Range 25 West of the 6th P.M.; thence South along the east line of said Section 36 to the southeast corner thereof; thence West along the south line of said Section 36 to the extended east right-of-way line of Red Avenue; thence South a distance of 30 feet along the extended east right-of-way line of Red Avenue to the north right-of-way line of Beeson Road; thence West along the south right-of-way line of Beeson Road to the east right-of-way line of Minneola Road; thence South along the

east right-of-way line of Minneola Road to a point on said east right -of-way line intersecting the extended south line of Broce #1 Subdivision; thence West along the extended south line of Broce #1 Subdivision to the west right-of-way line of South Second Avenue; thence South along the west right-of-way line of said South Second Avenue to a point that is approximately 1314 feet North of the south line of Section 2; thence West and parallel to the south line of said Section 2 to a point that is 748.70 feet West of the west line of South Second Avenue; thence Northwesterly and parallel to the west line of said South Second Avenue for a distance of 1265.60 feet; thence North for a distance of 200 feet to the East-West half section line of Section 2; thence West along the said half section line of Section 2 to the east line of Veeann Avenue; thence South along the east line of said Veeann Avenue to the south line of Merrit Road; thence West along the south line of said Merrit Road to the east right-of-way line of South Fourteenth Avenue; thence South along the east right-of-way line of South Fourteenth Avenue to a point of on said east right-of-way intersecting the extended south line of Dodge City Business Park Unit One; thence West along the extended south line of said Dodge City Business Park Unit One to the southeast corner thereof; thence continuing West along the south line of Dodge City Business Park Unit One, said south line being the north right-of-way line of U.S. Highway 56 to the east right-of-way line of Road 109; thence North along said east right-of-way line of Road 109 to the southerly right-of-way line of McArtor Road; thence Northeasterly along said southerly right-of-way line of McArtor Road to the north line of the south half of Section 3, Township 27 South, Range 25 West; thence East along the north line of the south half of said Section 3 to the center corner thereof; thence North along the west line of the northeast quarter of said Section 3 to a point on the north right-of-way line of the Atchison, Topeka & Santa Fe Railroad; thence Southwesterly along the north right-of-way of said Atchison, Topeka and Santa Fe Railroad to the west line of Lewis Addition No. 2; thence North along the west line of said Lewis Addition No. 2 to the south right-of-way line of West Beeson Road; thence West along the south right-of-way line of West Beeson Road to the west line of Section 3, Township 27 South, Range 25 West; thence North along the west line of said section 3 to the northwest corner thereof; thence continuing North along the west line of Section 34, Township 26 South, Range 25 West to the northwest corner of Boley Morgison Addition; thence East along the north line of said Boley Morgison Addition to the northeast corner thereof; thence North along the half section line of Section 34 a distance of 432 feet; thence East parallel with the south line of said Section 34 a distance of 1,676 feet; thence South parallel with the said half section line to the north line of Beeson Road; thence East along the north line of said Beeson Road to the west line of Sunset Tracts; thence North along the west line of said Sunset Tracts to the northwest corner thereof; thence Northeasterly along the south bank along the Arkansas

River to the extended east line of Tract 15 and Tract 88 of Westview Place No. 1; thence North along the extended east line of said Tract 15 and Tract 88 of Westview Place No. 1 to the north right-of-way line of the Dodge City Flood Control property; thence West along the north right-of-way line of the Dodge City Flood Control property a distance of 945.89 feet; thence continuing on a curve to the right along said flood control right-of-way having a radius of 5,639.58 feet, a chord length of 944.27 feet and a chord bearing of South 80 degrees 26 minutes 01 second west to a point which is 2,103 feet west of the east line of Section 34, Township 26 South, Range 25 West and 662 feet south of the south line of said Westview Place# 1; thence North 01 degree 38 minutes 04 seconds east parallel to the east line of said Section 34 a distance of 1052 feet to a point on the north right-of-way line of Pheasant Street 33 feet west of the southwest corner of Lot 27 of said Westview Place# 1; thence East along the north right-of-way line of Pheasant street to the southeast of lot 15 of said Westview Place# 1; thence North along the east line of said lot 15 to the northeast corner thereof; thence West along the north line of said Westview Place No. 1 to the east line of Moncrief Place No. 2; thence South along the east line of said Moncrief Place No. 2 to the southeast corner thereof; thence West along the south line of said Moncrief Place No. 2 to the southwest corner thereof; thence North along the west line of said Moncrief Place No. 2 to the south line of West Park Street; thence West along the along the south right-of-way line of West Park Street to the west right-of-way line of Matt Down Lane; thence North along the west right-of-way line of Matt Down Lane to the south right-of-way line of Wyatt Earp Blvd.; thence West along the south right-of-way line of Wyatt Earp Blvd. to the extended west line of Lot 4, Block 1, West Hwy. 50 Addition; thence North along the extended west line of said Lot 4 to the northwest corner thereof; thence East along the north line of said Lot 4 to the northeast corner thereof; thence North along the west line of Block 3 and Block 7 of Glenridge Estates to the northwest corner of Lot 36, Block 7 of said Glenridge Estates; thence East along the north line of said Block 7 to the northeast corner thereof; thence continuing East along the north line of Green Crest Memorial Gardens (also known as Maple Grove West) to the west right-of-way line of Matt Down Lane; thence North along the west right-of-way line of Matt Down Lane to the south right-of-way line of U.S. Highway 50; thence Northeasterly along the south right-of-way line of said U.S. Highway 50 to a point intersecting the east-west half section line of Section 22 Township 26 South, Range 25 West; thence East along the half section line of said Section 22 for a distance of 110.0 feet to the northeast corner of Lot 3, Block 1, J.S. & L. Subdivision; thence North 73 degrees 7 minutes 19 seconds east for a distance of 204.45 feet; thence South 89 degrees 53 minutes 58 seconds east for a distance of 196.02 feet to the northeast corner of Lot 1, Block 1, of said J.S. & L. Subdivision; thence South 5 degrees 47 minutes 43 seconds west for a distance of 60 feet to a point on the east-west half

section line of said Section 22; thence East along the half section line of said Section 22 to the center thereof; thence North along the north-south half section line of said Section 22 to the South right-of-way line of Frontview Street; thence West along the south right-of-way line of Frontview Street a distance of 1,385 feet; thence North perpendicular to and to a point on the south line of Section 15, Township 26 South, Range 25 West; thence West along the south section line of said Section 15 to the Southwest corner thereof; thence North along the west section line of said Section 15 to the West Quarter corner thereof; thence East along the east-west half section line of said Section 15 to a point 160 feet east of the Southwest corner of the Northeast Quarter of said Section 15; thence North 30 feet to the extended north line of Ross Blvd.; thence East along the north line of said Ross Blvd. to the west line of the Northeast Quarter of said Section 15; thence continuing East along said north line of Ross Blvd. for a distance of 627.40 feet; thence North 40 feet; thence East 40 feet parallel to the north line of said Ross Blvd.; thence South 40 feet to the north line of said Ross Blvd. thence East along the north line of said Ross Blvd. to the west line of the Southeast Quarter of the Northeast Quarter of said Section 15; thence North along the west line of said Southeast Quarter of the Northeast Quarter of Section 15 to the northwest corner thereof; thence East along the north line of said Southeast Quarter of the Northeast Quarter of Section 15 said line being the south line of Lot1, Block1, Church Subdivision on an assumed bearing of South 89 degrees 52 minutes 40 seconds east to a point 374.24 feet west of the southeast corner of said lot1; thence North 00 degrees 07 minutes 20 seconds east for a distance of 415.64 feet; thence South 47 degrees 41 minutes 14 seconds east for a distance of 326.15 feet; thence South 89 degrees 42 minutes 28 seconds West for a distance of 130.05 feet to a point of on the west right-of-way line of North fourteenth Avenue; thence North along the west right-of-way line of North Fourteenth Avenue to the north line of Section 10, Township 26 South, Range 25 West; thence East along the north line of Sections 10 and 11, Township 26 South, Range 25 West to the northeast corner of the west half of said Section 11; thence South along the east line of the west half of said Section 11 to a point on said east line 30 north of the southeast corner thereof; thence East parallel to and 30 feet north of the south line of said section 11 extended to the east right-of-way of Avenue A; thence South along the east right-of-way line of Avenue A to the north right-of-way line of Canterbury Road; thence East along the north line of said Canterbury Road to the west line of Joel Avenue; thence North along the west line of said Joel Avenue to the north line of William Street; thence East along the north line of said William Street to a point on the extended east line of the alley in Block 5, Kliesen Subdivision; thence South along the east line of said alley to a point on the south line of Anna Avenue; thence West along the south line of said Anna Avenue to the northeast corner of Lot 3, Block 6, Kliesen Subdivision; thence

South along the east line of said Lot 3 to a point on the south line of the alley in Block 6, Kliesen Subdivision; thence West along the south line of said alley to the northeast corner of Lot 2, Block 7, Kliesen Hills Subdivision; thence South along the east line of said Lot 2 to the southeast corner thereof; thence East along the north line of Ross Boulevard to a point on the extended east line of Lot 11, Block 6, Kliesen Hills Subdivision; thence South along the said east line of Lot 11 to the southeast corner thereof; thence South along the extended east line of Lots 1 through 8, Block 6, Kliesen Hills Subdivision to a point on the south right-of-way line of Saint Joseph Street; thence East along the said south line of Saint Joseph Street to the northeast corner Wagon Wheel Addition Unit Three; thence South along the east line of said Wagon Wheel Addition Unit Three to the southeast corner thereof; thence West along the south line of said Wagon Wheel Addition Unit Three to the southwest corner of Lot 1 Block 2, of said Wagon Wheel Addition Unit Three; thence South 0 degrees 30 minutes 40 seconds east along the east right-of-way line of Barbara Lane East for a distance of 229.57 feet; thence South 89 degrees 35 minutes 11 seconds east for a distance of 1.94 feet; thence South 26 degrees 07 minutes 35 seconds east for a distance of 66.33 to the Southwesterly corner of Lot 9, Block 14 Kliesen Subdivision; thence South 06 degrees 28 minutes 24 seconds east for a distance of 60.45 feet to the north right-of-way line of U.S. Highway 50; thence East along the north line of said U.S. Highway 50, said line being the south line of Kliesen Street as platted by Kliesen Subdivision, and Kliesen Subdivision No.2 to a point on the east line of Section 13, Township 26 South, Range 25 West; thence continuing East 130 feet along said north line of U.S. Highway 50; thence South 240 feet to a point on the south line of said U.S. Highway 50 that is 130 east of the west line of Section 19, Township 26 South, Range 24 West; thence West along the south line of said Highway 50 to the east right-of-way line of Avenue P; thence South along the east right-of-way line of Avenue P to the south right-of-way line of Military Avenue and Point of Beginning,

(B) Excel Main Plant No. 1 described as follows:

From the southwest corner, Section 33, Township 26 South, Range 24 West of the 6th P.M. and the northwest corner, Section 4, Township 27 South, Range 24 West of the 6th P.M.; thence Easterly 1,190 feet to a point "A" which is a point on a west building line. Point "A" will be the starting point of this building description; thence Southerly from point "A" along a west line 30 feet to point "B" of said building; thence Easterly along a south line, 270 feet to point "C" of said building; thence along an east line, Northerly 20 feet to a point "D" of said building; thence along a south line Easterly 400 feet to point "E" of said building; thence along an east line Northerly 50 feet to point "F" of said building; thence Westerly along a north line 275 feet to point "G" of said building; thence

Northerly along an east line 15 feet to point "H" of said building; thence Westerly along a north line 48 feet to point "I" of said building; thence Northerly along an east line 35 feet to point "J" of said building; thence Easterly along a south line 25 feet to point "K" of said building; thence Northerly along an east line 35 feet to point "L" of said building; thence Westerly along a north line 23 feet to a point "M" of said building; thence Northerly along an east line 20 feet to point "N" of said building; thence Easterly along a south line 80 feet to point "O" of said building; thence Northerly along an east line 20 feet to point "P" of said building; thence Westerly along a north line 90 feet to point "Q" of said building; thence Northerly along an east line 60 feet to point "R" of said building; thence Westerly along a north line 95 feet to point "S" of said building; thence Northerly along an east line 30 feet to point "T" of said building; thence Westerly along a north line 40 feet to point "U" of said building; thence Northerly along an east line 33 feet to point "V" of said building; thence Westerly along a north line 390 feet to point "W" of said building; thence Southerly along a west line 170 feet to point "X" of said building; thence Easterly along a south line 170 feet to point "Y" of said building; thence Southerly along a west line 113 feet to point "A" of said building.

Excel Secondary Plant No. 2 described as follows:

From point "B" of Excel Main Plant Easterly along a south building line 90 feet to point "A1" of said building; thence Southerly and on a perpendicular line between Main Plant No. 1 and Secondary Plant No. 2, 30 feet to point "B1" of Secondary Plant No. 2. Point "B1" of said exhibit will be the starting point of this building description; thence from point "B1" Southerly along a west line 35 feet to point "C1" of said building; thence Easterly along a south line 60 feet to point "D1" of said building; thence Southerly along a west line 90 feet to point "E1" of said building; thence Easterly along a south line 265 feet to point "F1" of said building; thence Northerly along an east line 20 feet to point "G1" of said building; thence Easterly along a south line 60 feet to point "H1" of said building; thence Northerly along an east line 55 feet to point "I1" of said building; thence Westerly along a north line 60 feet to point "J1" of said building; thence Northerly along an east line 50 feet to point "K1" of said building; thence from point "K1" Westerly along a north line 325 feet to point "B1" of said building.

(C) Part of the east half of Section 21, Township 26 South, Range 24 West and part of the west half of Section 22, Township 26 South, Range 24 West, Ford County, Kansas, referred to as Chaffin Industrial Park, more fully described as follows: Commencing at the southwest corner of the southeast quarter of Section 21, Township 26 South, Range 24 West, Ford County,

Kansas; thence North 0 degrees 50 minutes East along the west boundary line of the southeast quarter of said Section 21 for 102.85 feet to a point of beginning, said point being at the intersection of the north right-of-way of the Atchinson, Topeka and Santa Fe Railway with the east right-of-way line of U.S. Hwy 56-283; thence continuing North 0 degrees 50 minutes East along the west boundary line of the southeast quarter of said Section 21 for 110.88 feet; thence North 31 degrees 57 minutes East along the east right-of-way line of said U.S. Hwy 50 for 4,378.95 feet; thence North 33 degrees 10 minutes East along the east right-of-way line of said U.S. Hwy 56-283 for 295 feet; thence Northeasterly along a curve to the right having a radius of 2,292.01 feet along the south right-of-way line of said U.S. Hwy 50 for 1,722.53 feet; thence South 0 degrees 38 minutes East for 3,594.2 feet to a point on the north right-of-way line to the Atchinson, Topeka and Santa Fe Railway; thence South 77 degrees 11 minutes West along the north right-of-way line of said Atchinson, Topeka and Santa Fe Railway for 2,510.63 feet; thence North 12 degrees 49 minutes West for 25 feet; thence South 77 degrees 11 minutes West for 15.6 feet; thence along a curve to the left having a radius of 2,694.93 feet along the north right-of-way line of said Atchinson, Topeka and Santa Fe Railway for 1,722.6 feet to the point of beginning, containing 194.28 acres.

AND

Commencing at the southwest corner of the southeast quarter of Section 21, Township 26 South, Range 24 West, Ford County, Kansas; thence East 90 degrees along the south boundary line of the southeast quarter of said Section 21 for 174.87 feet to a point of beginning, said point being on the south right-of-way line of the Atchinson, Topeka and Santa Fe Railway; thence continuing East 90 degrees along the south boundary line of the southeast quarter of said Section 21 for 1,170.62 feet to a point on right-of-way; thence Northeasterly on a curve to the right having a radius of 8,594.42 feet along the center line of the abandoned Atchinson, Topeka and Santa Fe Railway right-of-way for 1,542.0 feet to a point on the east boundary line of the southeast quarter of said Section 21, said point being 883.0 feet North of the southeast corner of the southeast quarter of said Section 21; thence North 0 degrees 26 minutes East along the east boundary line of the southeast quarter of said Section 21 for 230.15 feet to a point on the south right-of-way line of said Atchinson, Topeka and Santa Fe Railway; thence South 77 degrees 11 minutes West along the south right-of-way line of said Atchinson, Topeka and Santa Fe Railway for 1,130.42 feet; thence South 12 degrees 49 minutes East for 25 feet; thence South 77 degrees 11 minutes West for 15.6 feet; thence along a curve to the left having a radius of 2,764.93 feet along the south right-of-way line of said Atchinson, Topeka and Santa Fe Railway for 1,164.4 feet to the point of beginning, containing 25.63 acres.

RESOLUTION NO. 2021-31

Page 9

Lot 7, Section 28, Township 26 South, Range 24 West, Ford County, Kansas, except railroad right-of-way, more fully described as follows:

Commencing at the northwest corner of Lot 7, Section 28, Township 26 South, Range 24 West, Ford County, Kansas; thence East 90 degrees along the north boundary line of said Lot 7 for 134.33 feet to a point of beginning, said point being on the present south right-of-way line of the Atchinson, Topeka and Santa Fe Railway; thence continuing East 90 degrees along the north boundary line of said Lot 7 for 1,170.62 feet to a point on the centerline of an abandoned Atchinson, Topeka and Santa Fe Railway right-of-way; thence Southwesterly on a curve to the left having a radius of 8,594.42 feet along the centerline of said abandoned Atchinson, Topeka and Santa Fe Railway right-of-way for 395.1 feet to a point on the south boundary line of said Lot 7; thence North 89 degrees 56 minutes West along the south boundary line of said Lot 7 for 1,043.7 feet to the southwest corner of said Lot 7; thence North 0 degrees 50 minutes East along the west boundary line of said Lot 7 for 59.7 feet to a point on the present south right-of-way of the Atchinson, Topeka and Santa Fe Railway; thence Northeasterly along a curve to the right, having a radius of 2,964.93 feet for 263.5 feet to the point of beginning, containing 6.63 acres, more or less.

(D) A tract of land located in the southwest quarter of Section 33, Township 26 South, Range 24 West of the 6th P.M., Ford County, Kansas, referred to as Millard Warehouse, more fully described as follows:

Beginning at the southwest corner of the southwest quarter of Section 33, Township 26 South, Range 24 West of the 6th P.M., Ford County, Kansas; thence North 0 degrees 15 minutes 38 seconds West along the west line of the southwest quarter of said Section 33 for 600 feet; thence North 89 degrees 44 minutes 22 seconds East at right angles to the west line of the southwest quarter of said Section 33 for 350 feet; thence South 0 degrees 15 minutes 38 seconds East parallel with the west line of the southwest quarter of said Section 33 for 605.84 feet; thence North 89 degrees 18 minutes 15 seconds West for 350.05 feet to the point of beginning; containing 211,022 square feet or 4.84 acres, more or less.

(E) A tract of land being part of Sections 20, 21, 28 and 29, Township 26 South, Range 24 West of the 6th P.M., Ford County, Kansas, referred to as the Dodge City Municipal Airport, more fully described as follows:

Commencing at the northeast corner of Section 29; thence South 0 degrees 12 minutes 04 seconds West along the east line of Section 29 for 894.76 feet to the point of beginning; thence continuing South 0 degrees 12 minutes 04 seconds West along said east line of Section 29 for 1,060.53 feet; thence South 26 degrees 10 minutes 18 seconds East, parallel with and 750 feet

easterly of the centerline of Runway 14-32 to the northerly right-of-way line of US Highway 56-283; thence Westerly along said northerly right-of-way line of US Highway 56-283 to a point on the west line of the east half of Section 29; thence North 0 degrees 00 minutes 41 seconds West along said west line of the east half of Section 29 to the North Quarter Corner of Section 29; thence North 0 degrees 14 minutes 05 seconds West along the west line of the Southeast quarter of Section 20 for 28 feet; thence North 29 degrees 10 minutes 18 seconds West parallel with and 750 feet westerly of the centerline of Runway 14-32 for 2,928.26 feet to a point on the north line of the southwest Quarter of Section 20; thence South 89 degrees 15 minutes 43 seconds East along said north line of the southwest quarter of Section 20 for 279.5 feet; thence North 26 degrees 10 minutes 18 seconds West for 1,228.08 feet; thence North 63 degrees 49 minutes 42 seconds East for 300 feet; thence North 26 degrees 10 minutes 18 seconds West for 500 feet; thence North 63 degrees 49 minutes 42 seconds East for 150 feet; thence North 26 degrees 10 minutes 18 seconds West for 961.60 feet to the south right-of-way line of US Highway 50; thence South 89 degrees 16 minutes 23 seconds East along said south right-of-way line of US Highway 50 for 112.13 feet; thence South 26 degrees 10 minutes 18 seconds East for 910.87 feet; thence North 63 degrees 49 minutes 42 seconds East for 150 feet; thence South 26 degrees 10 minutes 18 seconds East for 500 feet; thence North 63 degrees 49 minutes 42 seconds East for 300 feet; thence South 26 degrees 10 minutes 18 seconds East for 900 feet; thence North 63 degrees 49 minutes 42 seconds East for 100 feet; thence South 26 degrees 10 minutes 18 seconds East, parallel with and 600 feet easterly of the centerline of Runway 14-32 for 2,361.81 feet; thence South 89 degrees 03 minutes 34 seconds East for 1,785.95 feet to a point on the east line of Section 20; thence South 89 degrees 06 minutes 17 seconds East parallel to the south line of Section 21 for 700 feet; thence South 57 degrees 39 minutes 37 seconds East for 464.77 feet; thence South 32 degrees 20 minutes 23 seconds West for 719.66 feet; thence South 0 degrees 30 minutes 56 seconds East parallel to the west line of Section 21 for 462.45 feet to a point on the south line of said Section 21; thence South 0 degrees 12 minutes 04 seconds West parallel to the west line of Section 28 for 254.76 feet; thence South 89 degrees 06 minutes 17 seconds East parallel to the north line of said Section 28 for 457 feet; thence South parallel to said west line of Section 28 for 640 feet; thence west parallel to said north line of Section 28 for 1,157 feet to the point of beginning.

(F) A tract of land being part of Sections 21 and 28, Township 26 South, Range 25 West of the 6<sup>th</sup> P.M. Ford County, Kansas, referred to as Casino and Event Center, more fully described as follows:

Commencing at the northeast corner of the Southeast Quarter of said Section 21; thence on an assumed bearing of North 89 degrees 39 minutes 54 seconds West along the north line of the

Southeast Quarter of said Section 21 for a distance of 222.21 feet to the Northwesterly right of way line of U.S. Highway 50; thence South 34 degrees 50 minutes 32 seconds West along said right of way for a distance of 402.92 feet to the Point of Beginning; thence South 26 degrees 58 minutes 43 seconds East along said right of way line for a distance of 158.82 feet; thence South 34 degrees 50 minutes 32 seconds West along said right of way line for a distance of 6,241 feet more or less, to the Northeast corner of a tract recorded in the Ford County Register of Deeds, Book 176, page 274; thence West along the North line of two tracts described in the Ford County Register of Deeds Book 176, page 274 and Book 188, page 563, a distance of 807.95 to a point on the East line of a tract described in Ford County Register of Deeds, Book 151, page 233; thence North along the east line of and the projection thereof of said tract a distance of 749.23 feet; thence West a distance of 539.03 to the West line of said section 28, said point being 440 feet north of the West Quarter corner of said section 28; thence North along the west line of said Section 28 a distance of 1,784.58 feet; thence East parallel to the north line of said Section 28 a distance of 417.59 feet; thence North parallel to the west line of said Section 28 a distance of 417.42 to the north line thereof; thence West along the north line of said Section 28 to the northwest corner thereof; thence North along the west line of Section 21 to the West Quarter corner of said Section 21; thence South 89 degrees 39 minutes 54 seconds East along the east-west half section line of said Section 21 to a point 1,332.5 feet west of the East Quarter corner of said Section 21; thence South 0 degrees 20 minutes 06 seconds West a distance of 80 feet; thence South 55 degrees 09 minutes 28 seconds East a distance of 869.61; thence North 34 degrees 50 minutes 32 seconds East a distance of 292.00 feet to the point of beginning.

Said tract of land is considered contiguous with the City of Dodge City via right of way U.S. Highway 50 and Matt Down Road.

(G) A tract of land in the Northeast Quarter (NE/4) of Section Twelve (12), Township Twenty-seven (27) South, Range Twenty-five (25) West of the Sixth Principal Meridian, Ford County, Kansas.

Commencing at a 5/8-inch diameter smooth bar, at the Northeast Corner of the Northeast Quarter of Section 12, Township 27 South, Range 25 West of the Sixth Principal Meridian, Ford County, Kansas; Thence bearing North 89°01'51" West (as the bearing is described in Corporate Warranty Deed, recorded at Book 202, Page 342, with the Office of the Register of Deeds, Ford County, Kansas) along the North line of said Northeast Quarter of Section 12 a distance of 2638.15 feet to a 3/4-inch iron pipe with a red plastic I.D. cap stamped "PEC LS65" inside of an aluminum Ford County monument box at the Northwest Corner of said Northeast Quarter of Section 12; Thence bearing South 01°02'13 West along the West line of said Northeast Quarter of

Section 12 a distance of 249.86 feet to the South line of the right of way for U.S. Highway 56 and to the POINT OF BEGINNING; Thence continuing bearing South 01°02'13" West along the West line of said Northeast Quarter of Section 12 a distance of 2402.03 feet to a 3/4-inch iron pipe with I.D. cap stamped "A TO Z LS 1053" at the Southwest Corner of said Northeast Quarter of Section 12; Thence bearing South 89°00'31" East along the South line of said Northeast Quarter of Section 12 a distance of 2644.44 feet to a 1/2-inch diameter rebar, at the Southeast Corner of said Northeast Quarter of Section 12; Thence bearing North 0°54'04" East along the East line of said Northeast Quarter of Section 12 a distance of 2304.49 feet to a point on the South line of the right of way for U.S. Highway 56, said point being distant 348.42 feet south of said Northeast Corner of the Northeast Quarter of Section 12; Thence, following said South line of the right of way for U.S. Highway 56 for the remaining courses, bearing North 68°18'35" West a distance of 272.16 feet; THENCE bearing South 89°56'40" West a distance of 200.06 feet; Thence bearing North 88°37'24" West a distance of 1500.00 feet; Thence bearing South 82°50'45" West a distance of 101.12 feet; Thence bearing North 88°06'09" West for a distance of 584.29 feet to the POINT OF BEGINNING. Encompassing 145.30 acres, more or less.

Adopted by the Governing Body of the City of Dodge City

This \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Rick Sowers, Mayor

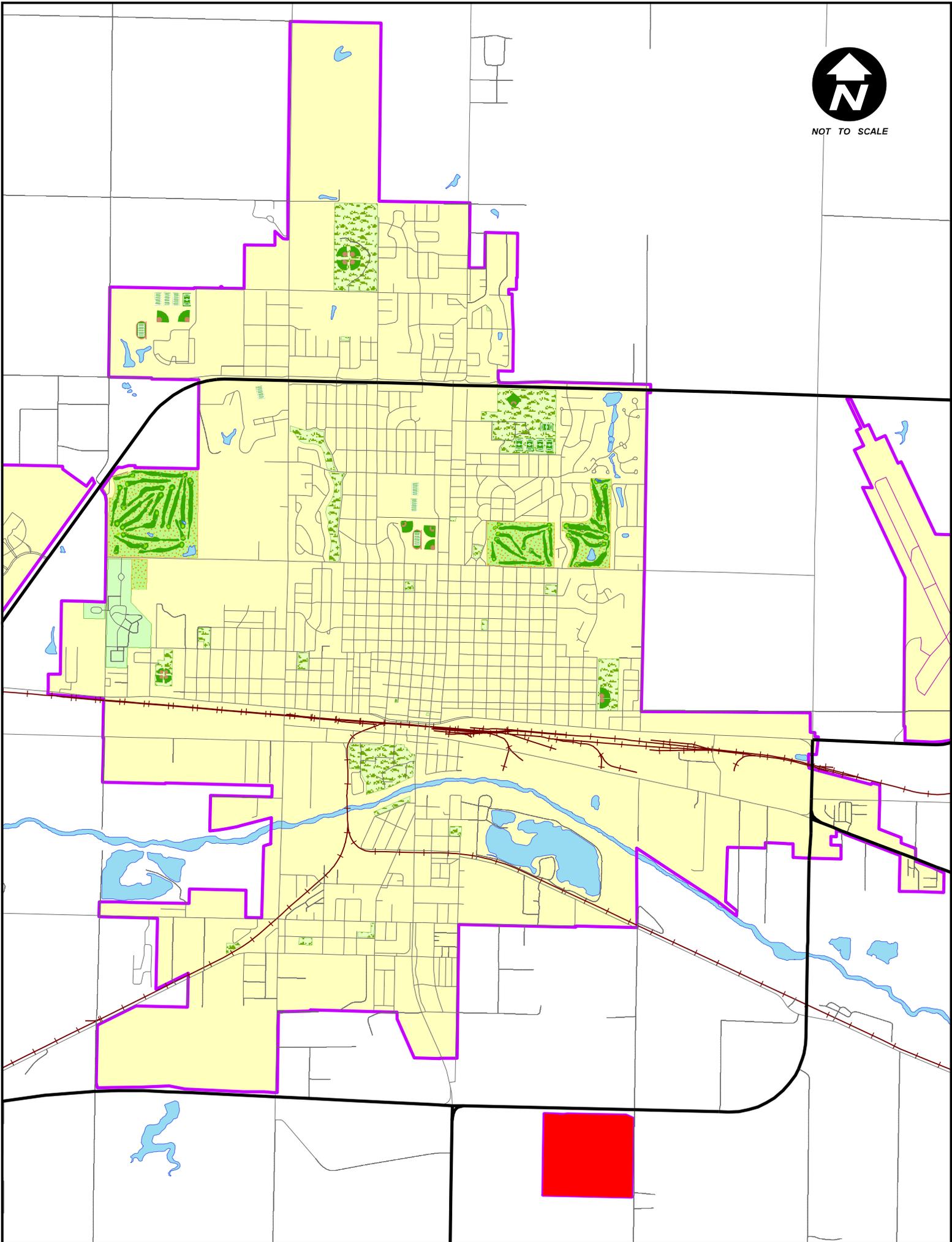
ATTEST:

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Connie Marquez, City Clerk



NOT TO SCALE





# Memorandum

**To:** City Commission  
**From:** Ryan Reid, Director of Administration  
**Date:** 2021 12 14  
**Subject:** Bids for New Patrol Vehicles (2)  
**Agenda Item:** New Business

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**Recommendation:** On December 2<sup>nd</sup>, 2021 Staff opened bids for six new police SUVs (with accessories installed). We received one bid, from Lopp Motors for \$46,377 per car. Staff recommends we purchase two of the six Durango Pursuit police vehicles from Lopp Motors for \$92,754. Staff will return to request the other four in early 2022.

**Background:** Due to slow delivery/manufacturing of vehicles, the police requested we order vehicles at this time.

**Justification:** Lopp has been providing us with these types of police vehicles for several years and they have been a solid partner.

These police vehicles serve as a vital tool for the Police Department to fulfill their mission. The vehicles serve as communication, rapid transportation, gear storage, prisoner transportation, and an office for City law enforcement officers.

New vehicles are taking longer to receive and older vehicles are taking longer to repair. This is making it difficult for the Police to fulfill their mission.

If these vehicles are approved tonight, Lopp says that they can get them to us before the Summer.

**Financial Considerations:** These two vehicles would be paid for with unfilled officer positions.

**Attachments (photo)**



## **2022 Dodge Durango**

(This one is outfitted somewhat differently and has different graphics than DCPD's would have but gives you an idea of the vehicle).



# Memorandum

**To:** City Manager, Nick Hernandez, and City of Dodge City Commission

**From:** Assistant City Manager/Public Affairs Melissa McCoy

**Date:** December 20, 2021

**Subject:** Approval of 2<sup>nd</sup> Amendment with Depot Theater, Inc

**Agenda Item:** New Business

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**Recommendation:** City staff recommends approval of the attached 2<sup>nd</sup> amendment to the Depot Theater, Inc. agreement.

**Background:** The Depot Theater, Inc. is a great cultural resource for entertainment not just for Dodge City but Southwest Kansas region. Based on the current amendment to the agreement, per Section two (2) Company Payments, after the first three-year term ending in March 2022, the Theater will be responsible for 15% of the utilities for the building for a term of three years. However, due to the COVID-19 pandemic and re-organization, the Theater has not been in operation until October 2021. In addition, the Depot Theater Company has changed the name of the entity to Depot Theater, Inc.

**Justification:** The additional year will give the Theater more time to re-establish and promote their organization following the pandemic while incorporating new staff members and performances. The existing name of the Theater needs to be updated to match their current certified articles of incorporation.

**Financial Considerations:** The City will forego receiving payment for 15% of the expenses for utilities for an additional year.

**Purpose/Mission:** This agreement meets with the City's Core Value of Ongoing Improvement where together we value progress, growth, and new possibilities by preparing for the community's future.

**Legal Considerations:** The City Attorney has reviewed the 2<sup>nd</sup> amendment and does not have any further changes.

**Attachments:**

2<sup>nd</sup> Amendment to Depot Theater Agreement

December 8, 2021

## **SECOND AMENDMENT TO LEASE AGREEMENT**

This Second Amendment to the lease agreement (the “Agreement”) is made and entered into by and between the City of Dodge City, a municipal corporation (the “City”) and the Depot Theater, Inc., a Kansas not-for-profit corporation (the “Company”).

**WHEREAS**, the City as Lessor, and the Company as Lessee, have entered into the Agreement dated 12-19-14, described in Exhibit A, attached hereto and made a part hereof by the reference; and,

**WHEREAS**, the Company, beginning in 2023, is responsible for a portion of the utility charges in addition to the Homestead Utilities; and,

**WHEREAS**, the Company’s utility charge is equal to thirty-seven percent (37%) of the monthly bills for electric, gas and other maintenance services for the Santa Fe Depot and,

**WHEREAS**, the Company is currently in default of the existing agreement as it is unable to pay its portion of utilities due to financial hardship; and,

**WHEREAS**, the City is willing to amend the Agreement to assist the Company; and,

**WHEREAS**, the Parties have negotiated certain concessions by the Company to account for the loss of funding for utilities; and,

**WHEREAS**, the City and the Company desire to work together with regard to the ongoing use and maintenance of the Complex in order that the public and tourists may enjoy the benefits of this historic structure and Complex along with the Company’s theater activities and programs.

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL CONVENANTS AND PROMISES OF THE PARTIES IT IS AGREED:**

December 8, 2021

1. All Prior Covenants, Promises and Responsibilities created in the Agreement and the First Amendment to the Agreement dated \_\_\_\_\_ shall remain in full force and effect unless expressly modified here: This Amendment is not intended to replace the Agreement, and this Amendment modifies only the portions of the Agreement and the First Amendment to the Agreement specifically indicated herein.
2. Company Payments: Beginning in the calendar year for 2022, there will be no monthly utility charges to be reimbursed to the City by the Company. Beginning in the calendar year for 2023, the Company will be responsible to pay a portion of the Depot utility charges in addition to the Homestead utility charges. To determine the portion of Depot utility charges to be reimbursed to the City by the Company, the amount of monthly utility charges for electric, gas and maintenance for building service agreements for the entire Depot will be totaled and a utility charge equal to fifteen percent (15%) of such total utility charges shall be reimbursed to the City by the Company. Following the second three-year period the Company will be responsible for its full thirty-seven percent (37%) of such utility charges.

7. Agreement Subject to Annual City Budget Appropriations: The Parties agree and understand that the City's obligation to provide funds and other services for the Complex is contingent upon the availability of funds budgeted and appropriated for that purpose during the City's current budget year, or funds made available from any lawfully operated revenue producing source

**IN WITNESS WHEREOF**, the Parties have executed this Second Amendment on the  
dates reflected below.

December 8, 2021

The "City"

City of Dodge City, Kansas  
a municipal corporation

by \_\_\_\_\_  
Rick Sowers, Mayor

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

Dated: \_\_\_\_\_

The "Company"

Depot Theater, Inc.

by \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Secretary

Dated: \_\_\_\_\_



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nicole May, Finance Director  
**Date:** December 10, 2021  
**Subject:** Allocation of 2021 Special Alcohol and Drug Funds  
**Agenda Item:** New Business

**Recommendation:** I recommend the approval of the disbursements of Special Alcohol and Drug Tax money for the recommended programs.

**Background:** The City of Dodge City receives a portion of the alcohol and drug tax that is collected in the community. That tax is allocated 1/3 to the General Fund, 1/3 to a Special Park and Recreation Fund and 1/3 to a Special Alcohol and Drug Fund. This allocation is spelled out in the Kansas State Statutes. The amount deposited into the Special Alcohol and Drug fund are to be used for “the purchase, establishment, maintenance or expansion of services or programs whose principal purpose is alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers”. In order to accomplish this, we take applications from agencies/programs that provide those services. A committee of 3 individuals reviewed the applications and made a recommendation on the allocation of these funds. The 3 people serving on the committee were Abbey Martin, Luanne Menard and Maria Ontiveros. There is approximately \$100,000 to be allocated for these programs. The applications received, the amount applied for and the recommended allocation is:

Organization	Project	Amount of Request	Recommendation
Dodge City Police Dept – GREAT Program	Supplies and training for GREAT Program	5,838.58	5,838.58
New Chance	Assist with social detox position & bilingual licensed counselor position	72,500	72,500
Friends of Recovery	Oxford Houses of Dodge City	20,000	20,000

**Justification:** The applications received met the general requirements of the program. The recommendations by the committee are the amounts they feel best meets the overall goals of the program.

**Financial Considerations:** Money is available in the Special Alcohol and Drug fund to pay the recommended amounts.

**Purpose/Mission:** Support the quality of life in Dodge City by best spending the monies the City receives for drug and alcohol treatment, education and prevention programs.

**Legal Considerations:** None

**Attachments:** None



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nicole May, Finance Director  
**Date:** December 9, 2021  
**Subject:** Audit Engagement Letter  
**Agenda Item:** New Business

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**Recommendation:** I recommend approval of the audit engagement letter with Kennedy McKee & Company for the year ending December 31, 2021.

**Background:** This proposal from Kennedy McKee & Company LLP is to audit the City of Dodge City's financial statement for the year ending December 31, 2021. The fees for these services will be based on actual time spent plus other out-of-pocket costs and will be billed at the standard hourly rates based on the experience level and responsibility level of the staff assigned to the audit. The fee for 2020 was \$41,128.58, which was billed at their standard hourly rates due to the change from GAAP to KMAAG. The fee for 2019 was a not to exceed amount of \$49,225 plus \$95 per hour for the audit of Federal financial assistance programs. The detailed audit objectives, management responsibilities and audit procedures are outlined in the attached audit engagement letter. Kennedy McKee & Company has been conducting the City's audit for the past several years. They have extensive background information on the City of Dodge City, know our organization and the financial policies and procedures, work well with the city employees and have done an excellent job.

**Justification:** All municipalities of our size are required to have an annual audit.

**Financial Considerations:** This is an annually budgeted item. Due to the change from GAAP to KMAAG the audit will be billed at the standard hourly rate based on the experience level of the staff assigned to the audit. For following years, the fees will return to a not to exceed amount.

**Purpose/Mission:** To promote transparency with residents.

**Legal Considerations:** None

**Attachments:** Proposed engagement letter.

*Kennedy*  
*McKee & Company LLP* Certified Public Accountants

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Dodge City, Kansas 67801  
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Fax (620) 227-2308  
[www.kmc-cpa.com](http://www.kmc-cpa.com)

JAMES W. KENNEDY, CPA  
PATRICK M. FRIESS, CPA  
JOHN W. HENDRICKSON, CPA  
JEREMY J. APPEL, CPA

December 7, 2021

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

We are pleased to confirm our understanding of the services we are to provide City of Dodge City, Kansas, a municipality, for the year ended December 31, 2021. We will audit the financial statement as of and for the year ended December 31, 2021.

We have been engaged to report on the regulatory-required supplementary information (RRSI) that accompanies the City's financial statement. We will subject the following RRSI to the auditing procedures applied in our audit of the financial statement and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statement or to the financial statement itself, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statement as a whole:

1. Schedule 1, Summary of Regulatory Basis Expenditures – Actual and Budget
2. Schedule 2, Schedules of Regulatory Basis Receipts and Expenditures
3. Schedule 3, Schedule of Regulatory Basis Receipts and Disbursements – Agency Funds

We have also been engaged to report on supplementary information other than RRSI that accompanies the City's financial statement. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statement and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statement or to the financial statement itself, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statement:

1. Schedule of Expenditures of Federal Awards

#### **Audit Objectives**

The objective of our audit is the expression of an opinion as to whether your financial statement is fairly presented, in all material respects, in conformity with the *Kansas Municipal Audit and Accounting Guide* (KMAAG) and the accounting practices prescribed by the State of Kansas to demonstrate compliance with the cash basis and budget laws of the State of Kansas, which is a regulatory basis of accounting, the practices of which differ from accounting principles generally accepted in the United States of America (GAAP) and to report on the fairness of the RRSI referred to in the second paragraph and the other supplementary information other than RRSI referred to in the third paragraph when considered in relation to the financial statement as a whole. The objective also includes reporting on –

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statement in accordance with *Government Auditing Standards*.

- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; the provisions of the Uniform Guidance; and the KMAAG, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the City Commission of the City. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue reports, or may withdraw from this engagement.

#### **Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statement. We will plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the City or to acts by management or employees acting on behalf of the City. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statement or major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts and may include tests of assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorney(s) as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statement; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

### **Audit Procedures—Internal Control**

Our audit will include obtaining an understanding of the City and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statement and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statement and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statement. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

### **Audit Procedures – Compliance**

As part of obtaining reasonable assurance about whether the financial statement is free of material misstatement, we will perform tests of the City's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance, and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of these procedures will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

### **Other Services**

We will assist in preparing the financial statement, and related notes of the City in conformity with the KMAAG and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.

We will perform the services in accordance with applicable professional standards, including the Statements on Standards for Tax Services issued by the American Institute of Certified Public Accountants. The other services are limited to the financial statement, and related notes, and tax services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities. We will advise management with regard to tax positions taken in the preparation of the tax return, but management must make all decisions with regard to those matters.

## **Management Responsibilities**

Management is responsible for (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of the financial statement that is free from material misstatement, whether due to fraud or error, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements.

You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statement, schedule of expenditures of federal awards, and all accompanying information in conformity with the KMAAG and the practices prescribed by the State of Kansas to demonstrate compliance with the cash basis and budget laws of the State of Kansas, which is a regulatory basis of accounting, the practices of which differ from GAAP, and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statement, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statement to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statement as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statement. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the City complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statement with any presentation of the schedule of expenditures of federal awards that includes our report thereon or make the audited financial statement readily available to intended users of the schedule of expenditures of federal awards no later than the date the schedule of expenditures of federal awards is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are responsible for the preparation of the RRSI in conformity with the KMAAG and the accounting practices prescribed by the State of Kansas to demonstrate compliance with the cash basis and budget laws of the State of Kansas, which is a regulatory basis of accounting, the practices of which differ from GAAP. You agree to include our report on the RRSI in any document that contains and indicates that we have reported on the RRSI. You also agree to include the audited financial statement with any presentation of the RRSI that includes our report thereon. Your responsibilities include acknowledging to us in the management representation letter that (1) you are responsible for presentation of the RRSI in accordance with the KMAAG; (2) you believe the RRSI, including its form and content, is fairly presented in accordance with the KMAAG; (3) the methods or measurement of presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the RRSI.

Management understands and acknowledges the following with regards to the financial statement:

- The purpose for using the KMAAG regulatory basis framework is to comply with the statutory provisions applicable to the City for preparation of the financial statement on a basis of accounting other than GAAP;
- The financial statement is intended for general use;
- Management has taken appropriate steps to determine that the KMAAG regulatory basis framework is acceptable in the circumstances for meeting its annual financial statement reporting needs;
- Informative disclosures will be included in the financial statement that are appropriate to the KMAAG regulatory basis framework, including:
  - A description of the KMAAG regulatory basis framework, including a summary of significant accounting policies, and how the framework differs from GAAP.
  - Informative disclosures similar to those required by GAAP for items contained in the financial statement that are the same as, or similar to, those in financial statements prepared in accordance with GAAP; and
  - Any additional disclosures beyond those specifically required by the KMAAG regulatory basis framework that may be considered necessary to achieve fair presentation of the financial statement.
  - Management has chosen not to include the financial information of any related municipal entities in this financial statement.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statement, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statement and related notes and that you have reviewed and approved the financial statement and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

### **Auditor's Responsibility**

We will also be responsible for the following with regard to the audit of the financial statement:

- For complying with all auditing standards generally accepted in the United States of America as relevant to and adapted to the circumstances of the audit of the financial statement;
- For evaluating whether the financial statement is suitably titled, adequately refers to or describes the KMAAG regulatory basis framework, includes a summary of significant accounting policies, adequately describes how the KMAAG regulatory basis framework differs from GAAP in qualitative terms, and includes the appropriate informative disclosures as described in Management's Responsibilities above;
- For evaluating whether the financial statement achieves fair presentation with regard to the KMAAG regulatory basis framework and forming the appropriate opinion on the financial statement taken as a whole; and
- Because the financial statement is intended for general use, we are responsible for expressing an opinion as to the fair presentation of the financial statement in accordance with GAAP, in addition to expressing an opinion about whether the financial statement is prepared in accordance with the KMAAG regulatory basis framework.

### **Engagement Administration, Fees, and Other**

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to submit the reporting package (including the financial statement, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audits.

We will provide copies of our reports to the City; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Kennedy McKee & Company LLP and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the cognizant or oversight agency for the audit, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Kennedy McKee & Company LLP personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the cognizant agency or the oversight agency for the audit. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We will begin our audit on a mutually agreed-upon date. John W. Hendrickson is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

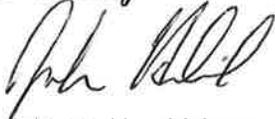
Our fee for these services will be at our standard hourly rates plus expenses (such as report reproduction, postage, copies, filing fees, etc.). Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees may be rendered as work progresses up to 75% of the contract amount, and are payable on presentation. The final billing will be sent after the report has been filed with the Director of Accounts and Reports. The fee for tax returns and any other work outside the scope of the audit will be charged at our standard hourly rates plus expenses.

The above fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to City of Dodge City, Kansas, and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

*Kennedy McKee & Company LLP*



John W. Hendrickson  
Partner

RESPONSE:

This letter correctly sets forth the understanding of City of Dodge City, Kansas.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Ray Slattery, PE, Director of Engineering Services  
**Date:** December 15, 2021  
**Subject:** Approval of quote for Streetlight installation on the McCaustland Rd. #2 Reroute, ST 2009  
**Agenda Item:** New Business

---

**Recommendation:** Approve the quote from Victory Electric to install 2 LED Street Lights in the Candletree #6 Sub-division in the amount of \$26,337.68.

**Background:** Work on the McCaustland Rd. #2 Reroute project is finishing up. It is City policy to have streetlights installed at intersections or roadway curves in residential sub-divisions. The reroute of the roadway contains 3 curves and then a 90-degree bend where the new roadway connects to the existing roadway, so staff felt that 4 streetlights would be required. The lights will be installed as shown on the attached map.

**Justification:** The addition of the streetlights will help with visibility and safety in the new sub-division.

**Financial Considerations:** Funding for the streetlights will come from General Obligation Bonds. Repayment of the bonds will come from AD Valorem Property Taxes collected on the Nor-Am development.

**Purpose/Mission:** The completion of this project aligns with the City's core value of Ongoing Improvement and Safety by providing and preparing for the community's future.

**Legal Considerations:** By approving the quote from Victory Electric, the City will be responsible to make payment to Victory Electric for the completed work.

**Attachments:** Victory Electric's estimate and a map showing the location of the streetlights.

# The Victory Electric Cooperative Assn., Inc.

# Estimate

3230 N 14th Ave.

Dodge City, KS 67801  
Phone: 620-227-2139

**DATE** December 10, 2021  
**Estimate project** STREET LIGHTS  
CITY OF DODGE  
**Member Name** CITY

**Bill To:**  
CITY OF DODGE CITY

*Estimate valid until:* March 10, 2022  
*Prepared by:* DANIEL POGUE

**Comments or special instructions: MCCAUSTLAND LIGHTS**

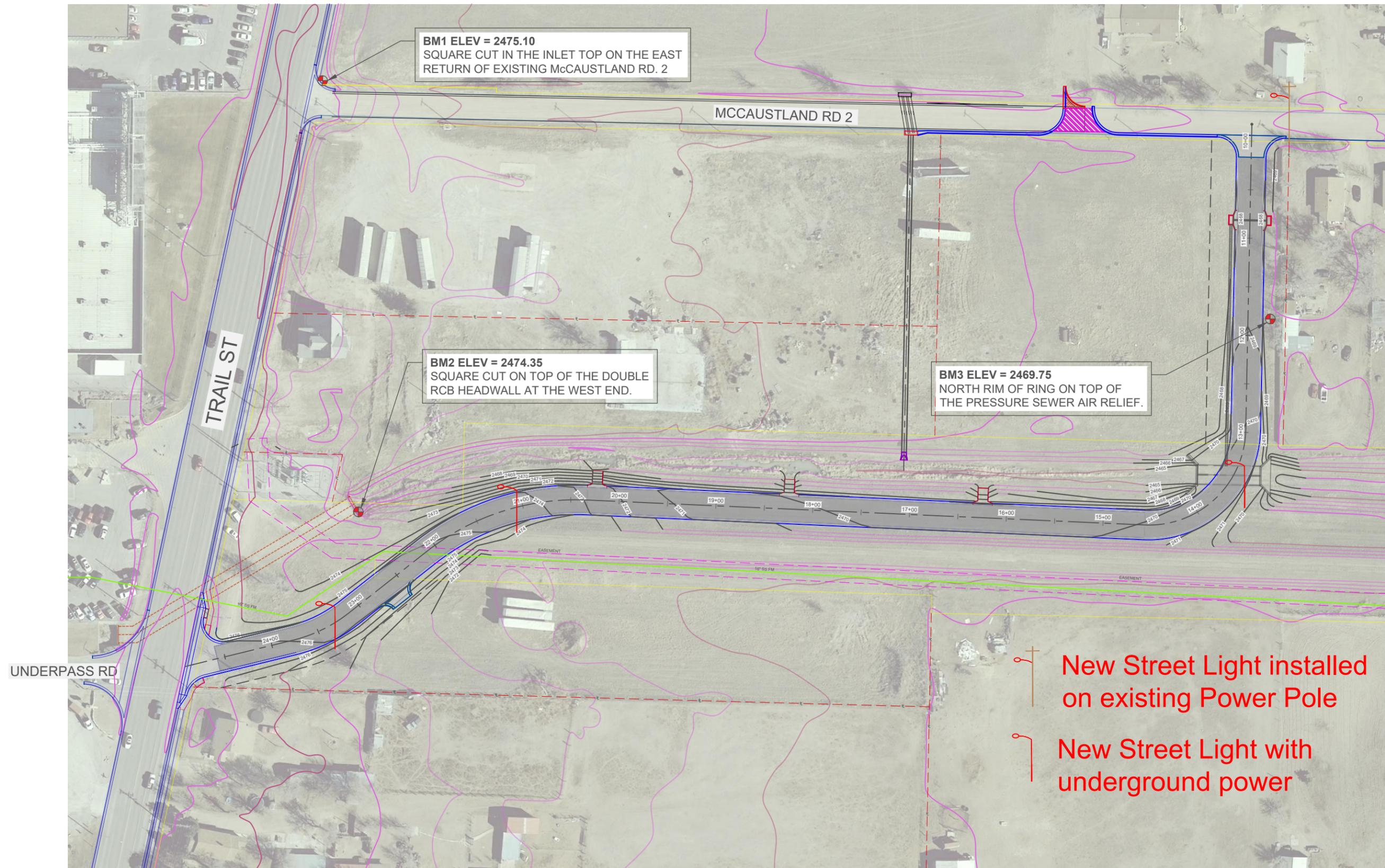
Description	AMOUNT
1.5 INCH CONDUIT	\$5,857.36
6 DPX URD	\$5,817.29
CONDUIT RISERS UP POLES	\$942.98
LIGHTS 50 WATT LED	\$ 1,384.80
STEEL POLES, ARMS, ANCHORS	\$ 12,335.25
<i>Labor and Equipment built into estimate</i>	
<b>TOTAL</b>	<b>\$ 26,337.68</b>

If you have any questions concerning this estimate, Contact 620-227-2139

**THANK YOU FOR YOUR BUSINESS!**



A Touchstone Energy® Cooperative 



UNDERPASS RD

TRAIL ST

MCCAUSTLAND RD 2

BM1 ELEV = 2475.10  
SQUARE CUT IN THE INLET TOP ON THE EAST  
RETURN OF EXISTING MCCAUSTLAND RD. 2

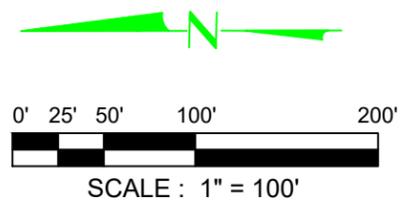
BM2 ELEV = 2474.35  
SQUARE CUT ON TOP OF THE DOUBLE  
RCB HEADWALL AT THE WEST END.

BM3 ELEV = 2469.75  
NORTH RIM OF RING ON TOP OF  
THE PRESSURE SEWER AIR RELIEF.

New Street Light installed  
on existing Power Pole

New Street Light with  
underground power

NOTES:  
ALL SOIL BROUGHT TO THE SITE AND IN SITU SHALL BE COMPACTED BY ROLLING WITH A SHEEPSFOOT ROLLER OR BY MECHANICAL TAMPING.  
ALL FILL MATERIAL SHALL HAVE ROCK NO LARGER THAN 3" DIAMETER. EACH LIFT SHALL CONSIST OF 12-INCH LOOSE LIFTS OR LESS PRIOR TO COMPACTION.  
THE CONTRACTOR IS RESPONSIBLE FOR ALL DENSITY TEST AND PROCTOR INFORMATION FOR TESTING.  
ALL STRIPPED SOIL SHALL BE STOCKPILED FOR RE-USE.



DRAWN BY <b>TJR</b>	<b>CITY OF DODGE CITY, KANSAS</b> CITY HALL    ENGINEERING DEPARTMENT    (620) 225-8106	PROJECT NO <b>ST 2009</b>
CHECKED BY <b>RS</b>		SHEET OF <b>3 23</b>
DATE <b>9/20</b>	<b>GRADING PLAN</b> McCaustland Rd. 2 Reroute MCCAUSTLAND RD 2	REVISIONS



# Memorandum

**To:** City Manager

**From:** Corey Keller Public Works Director

**Date:** December 14, 2021

**Subject:** Approval of Professional Engineering Service Agreement for the Procurement of New Snow Removal Equipment

**Agenda Item:** New Business

---

**Recommendation:** To approve the professional engineering agreement with Burns and McDonnell of Kansas City MO. for the procurement of new snow removal equipment for the Dodge City Regional Airport in the amount of \$18,897.00

**Background:** The engineering service agreement is for FAA Grant # 36. The total amount of the grant will be \$750,000.00 to acquire snow removal equipment (carrier vehicle and broom attachment). The grant will be considered a 95% federally funded grant with a 5% local match. The service agreement will include the design of the equipment to meet FAA standards. This will include the bidding, construction, and grant closeout phases for this project.

Staff has received a go letter to initiate action necessary to obtain professional engineering services for this project from the FAA. The approval of this agreement is the first step to acquire the \$750,000.00 grant to purchase the snow removal equipment. This grant will utilize the airports entitlement money given to the airport each year based on the number of Dodge City's enplanements. The local match for the entire project will be \$37,500.00 if the entire \$750,000.00 is used for this purchase.

**Justification:** This is a budgeted project for FY2022. For this portion of the agreement FAA will pay \$17,952.00 and the local match will be \$945.00

**Financial Considerations:** Funds are budgeted in the 2022 CIP for this project.

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

**Legal Considerations:** Legal has reviewed the agreement.

**Attachments:** DDC Authorization NO.1, picture of the Snow Removal Equipment

**AUTHORIZATION NO. 1  
FOR PROFESSIONAL ENGINEERING SERVICES  
FOR  
THE PROCUREMENT OF NEW SNOW REMOVAL EQUIPMENT  
AT DODGE CITY REGIONAL AIRPORT  
AIP Project No. 3-20-0017-036**

In accordance with SECTION 1 – AUTHORIZATION OF SERVICES of the Agreement for Professional Engineering Services (the “AGREEMENT”) dated November 5, 2021, by and between the City of Dodge City, Kansas (SPONSOR) and Burns & McDonnell Engineering Company, Inc. (ENGINEER), the following Airport Improvement Project (“AIP”) authorization is hereby given and mutually agreed upon:

**A. PROJECT NAME AND DESCRIPTION OF IMPROVEMENTS:**

1. **Project Name:** Acquire Snow Removal Equipment (Carrier Vehicle and Broom Attachment)
2. **Description of Improvements:** Provide professional engineering services in the procurement of new snow removal equipment at the Dodge City Regional Airport.

**B. DESCRIPTION OF SERVICES TO BE PERFORMED:**

ENGINEER has developed the following scope of engineering services for the aforementioned project. The Scope of Services is defined as follows:

1. **Preliminary Design Phase:** This phase includes activities for defining the scope of the aforementioned project and establishing preliminary requirements. The elements of work for this task include:
  - a. Meet with the SPONSOR and discuss the overall program requirements and vehicle accessories.
  - b. Review existing information & CIP cost estimates.
  - c. Meet with the SPONSOR and FAA via teleconference to review program requirements and applicable accessories.
2. **Design Phase:** This phase will include the activities required to develop the project design documents showing the character and scope of work to be performed by contractors on the project. The specific tasks that will be performed in this phase are:
  - a. Prepare a Project Manual that will include the following reference manuals:
    - i. FAA AC 150/5220-20A – Airport Snow and Ice Control Equipment
    - ii. FAA AC 150/5210-5D – Painting, Marking, and Lighting of Vehicles Used on an Airport.
  - b. Prepare Standard FAA and SPONSOR front-end documents.
  - c. Revise the preliminary cost estimate for final engineer's estimate of probable cost.

- d. Submit Project Manual and cost estimate to the SPONSOR and the FAA for 90% review.
- e. Revise contract documents and resubmit to the SPONSOR and the FAA for bidding.
- f. Provide an electronic copy of project manual and construction drawings to SPONSOR for the purpose of filing and use for distribution to contractors.

**3. Bidding & Construction Award Phase:** This phase will include basic services to assist the SPONSOR with bidding of the contract documents and reviewing and award of the bid, including the following activities:

- a. Assist SPONSOR with advertising the project.
- b. Prepare any addenda for the project.
- c. Respond to questions during the bidding phase.
- d. Receive from the SPONSOR, copies of the Bidders Proposals and tabulate the bids, analyze and provide recommendations to the SPONSOR.
- e. Review the Bidder's Buy American documentation with the SPONSOR and the FAA prior to ENGINEER's recommendation of award.
- f. Assist SPONSOR with preparing contract documents.
- g. Assist SPONSOR with preparing grant application documents.
- h. Conduct pre-procurement meeting via teleconference with the Sponsor and Bidder to confirm project requirements.

**4. Grant Closeout Services:** This phase will include basic services to complete the FAA closeout compliance requirements for equipment purchases.

- a. Meet with the SPONSOR and Contractor/Vendor at the Airport and perform an equipment walk-through to confirm the equipment meets the project requirements.
- b. Provide all project closeout documentation within 45 days after acceptance of equipment purchase.

**C. METHOD OF COMPENSATION:**

- 1. Compensation of the Scope of Work for items shall be made by Method A - Fixed Lump Sum Payment according to SECTION 6- COMPENSATION, paragraph 6.1.1 of the Agreement, which outlines compensation on a fixed lump sum basis.

**D. AMOUNT OF COMPENSATION:**

- 1. ENGINEER will perform the Scope of Services for items identified in B.1-4 of this Authorization No. 1, per the terms and conditions set forth in the Agreement, for a Lump Sum Amount of Eighteen Thousand Eight Hundred Ninety-Seven Dollars (**\$18,897.00**).

**E. ESTIMATED TIME OF COMPLETION:**

- 1. The estimated time to complete the Scope of Services B.1-2 of this Authorization No. 1 is estimated at (60) calendar days from the Notice to Proceed.

**F. ENGINEERS' NOTICE TO PROCEED DATE:**

1. ENGINEER is prepared to commence work on this project immediately upon receiving a Notice to Proceed. The Notice to Proceed date for this project is \_\_\_\_\_.

It is further understood and agreed by the parties hereto that all of the terms and conditions of the AGREEMENT are hereby incorporated by reference as if set forth fully herein and are made a part of this Authorization.

IN WITNESS WHEREOF, the parties hereto have caused this Authorization to be executed in three (3) counterparts by their duly authorized representatives and made effective the day and year first written above.

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CITY OF DODGE CITY, KANSAS

BURNS & McDONNELL  
ENGINEERING COMPANY, INC.

By \_\_\_\_\_  
Corey Keller  
Public Works Director

By \_\_\_\_\_  
Doug Lenz  
Aviation Projects Director

ATTEST:

By \_\_\_\_\_  
Connie Marquez  
City Clerk

END OF AUTHORIZATION NO. 1

SUMMARY EXHIBIT 1

DERIVATION OF CONSULTANT PROJECT COSTS  
 SUMMARY OF COSTS  
 SRE Acquisition- Carrier Vehicle and Broom  
 Planning, Design, Bidding, Construction Award, & Closeout Services  
 Dodge City, KS  
 BASIC & SPECIAL SERVICES  
 October 11, 2021

1 DIRECT SALARY COSTS

TITLE	HOURS	RATE/HR	COST (\$)		
			Office	Field	Contract
Principal	0.00	\$ 73.00	\$ -	\$ -	\$ -
Project Manager	25.00	\$ 55.00	\$ 1,375.00	\$ -	\$ -
Sr. Civil Engineer	14.50	\$ 46.00	\$ 667.00	\$ -	\$ -
Staff Civil Engineer	59.50	\$ 42.00	\$ 2,499.00	\$ -	\$ -
Quality Control Reviewer	4.00	\$ 64.00	\$ 256.00	\$ -	\$ -
Clerical	12.00	\$ 27.50	\$ 330.00	\$ -	\$ -
Total Hours	115.00				
Total Direct Salary Costs			\$ 5,127.00	\$ -	\$ -

2 LABOR & GENERAL ADMINISTRATIVE OVERHEAD

a. Percentage of Direct Salary Cost: (Office Rate)	221.75%	\$ 11,369.12			
b. Percentage of Direct Salary Cost: (Field Rate)	188.24%		\$ -		
c. Percentage of Direct Salary Cost: (Contract Employee Rate)	0.00%			\$ -	

3 SUBTOTAL

<b>Summary of Items No. 1 and No. 2 (a,b,c):</b>			\$ 16,496.12	\$ -	\$ -
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4 PROFIT/FIXED FEE:

Percentage:	10.00%	\$ 1,649.61	\$ -	\$ -	
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5 SUBTOTAL

<b>Summary of Items No. 1, No. 2 &amp; No. 4: (Lump Sum Fee)</b>			\$ 18,145.73	\$ -	\$ -
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6 OUT OF POCKET EXPENSES

OFFICE	No. of Units	Units	Cost/Unit			
Travel: Mileage	730.00	Miles	\$ 0.560	\$ 408.80		
Meals	2.00	Per Day	\$ 51.00	\$ 102.00		
Printing, Shipping & Misc.				\$ 240.47		
<b>Subtotal</b>				\$ 751.27	\$ -	\$ -

<b>Summary of Out of Pocket Expenses: (Not to Exceed)</b>			\$ 751.27	\$ -	\$ -
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7 SUBCONSULTANTS

Consultant-1			\$ -	\$ -	\$ -
<b>Subtotal (Not to Exceed)</b>			\$ -	\$ -	\$ -

8 MAXIMUM TOTAL FEE

<b>Subtotal</b>			\$ 18,897.00	\$ -	\$ -
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<b>TOTAL (Not to Exceed)</b>			\$		<b>18,897.00</b>
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SUMMARY EXHIBIT 2

DERIVATION OF CONSULTANT PROJECT COSTS  
 SUMMARY OF COSTS  
 SRE Acquisition- Carrier Vehicle and Broom  
 Planning, Design, Bidding, Construction Award, & Closeout Services  
 Dodge City, KS  
 BASIC & SPECIAL SERVICES  
 October 11, 2021

		Principal	Project Manager	Sr. Civil Engineer	Staff Civil Engineer	Quality Control Reviewer	Clerical	Other Costs	
Gross Hourly Rates		\$ 258.37	\$ 194.66	\$ 162.81	\$ 148.65	\$ 226.51	\$ 97.33		
<b>BASIC SERVICES</b>									
Total =	1	Preliminary Design	0.0	2.0	2.0	1.0	0.0	0.0	Sum: (1, 2, 3, 4, & 5)
		\$ 863.58	\$ -	\$ 389.32	\$ 325.61	\$ 148.65	\$ -	\$ -	\$ -
Total =	2	Final Design	0.0	2.5	2.0	42.5	4.0	6.0	Sum: (1, 2, 3, 4, & 5)
		\$ 8,739.84	\$ -	\$ 486.65	\$ 325.61	\$ 6,317.56	\$ 906.05	\$ 583.98	\$ 120.00
Total =	3	Bidding & Construction Award Phase	0.0	11.5	0.5	12.0	0.0	4.0	Sum: (1, 2, 3, 4, & 5)
		\$ 4,613.55	\$ -	\$ 2,238.58	\$ 81.40	\$ 1,783.78	\$ -	\$ 389.32	\$ 120.47
Total =	4	Grant Closeout Services	0.0	9.0	10.0	4.0	0.0	2.0	Sum: (1, 2, 3, 4, & 5)
		\$ 4,680.04	\$ -	\$ 1,751.93	\$ 1,628.06	\$ 594.59	\$ -	\$ 194.66	\$ 510.80
<b>TOTAL</b>		<b>\$ 18,897.00</b>							

- (1) Mileage, Motel & Meals
- (2) Equipment, Materials & Supplies
- (3) Computer Services
- (4) Vendor Services
- (5) Miscellaneous Items





# Memorandum

**To:** City Commission and City Manager  
**From:** Ernestor De La Rosa, Assistant City Manager  
**Date:** December 20, 2021  
**Subject:** Dodge City Legislative Policy 2022  
**Agenda Item:** New Business

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**Recommendation:** Staff recommends approval of the 2022 State/Federal Legislative Policy.

**Background:** City staff has been actively working on defining the City of Dodge City 2022 legislative policy that will be submitted to our state legislators and congressional representatives. The legislative policy will be utilized to offer our stance on various issues that could impact how we deal with issues on a local level. The policy defers from but does not conflict with the Southwest Kansas Coalition or the League of Kansas Municipalities legislative policy.

**Justification:** The legislative policy is a communication tool that enables our legislators to understand our position on issues that might come up during the legislative session. The City also generally supports the provisions of the State of Municipal Policy of the League of Kansas Municipalities.

**Financial Considerations:** None

**Purpose/Mission:** Together we promote open communications with our community members to improve quality of life and preserve our heritage to foster a better future.

**Legal Considerations:** None

**Attachments:** 2022 State/Federal Legislative Policy



K A N S A S

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

# *2022 Legislative Policy*

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## **SUMMARY POSITION**

This policy statement presents general state legislative goals and objectives formally adopted by the Governing Body of the City of Dodge City. This statement will be provided to the Dodge City legislative delegation for its consideration at the 2022 legislative session. The focus of this policy statement is on general policies and principles; however, some positions on specific legislative proposals are included under appropriate general policy statements. Future revisions to this statement will include additional positions of the City on specific proposals and bills introduced during the 2022 session.

## **FEDERAL**

### **FEMA**

Although FEMA has revised its mapping strategies, it still discounts the protection that existing structures provide. For Dodge City, this happens when an existing structure is structurally sound but since design standards have changed, a sound structure is now considered useless. It still adds previously unmapped flood areas into a classification of “Undetermined Flooding”. No one knows the affect this will have on the citizens living in or development in this newly classified area. Also, the “one fit” approach does not work. Attention needs to be given to local conditions to determine the “best fit” for the area.

If accreditation is still necessary, Dodge City supports new legislation prohibiting FEMA from adding previously unmapped or any new special flood hazard areas to flood insurance rate maps without local government agency approval. In addition, Dodge City supports new legislation prohibiting FEMA from using the “approximation method” for establishing new special flood hazard areas, particularly in developed areas of the country. The “approximation method” was designed by FEMA to streamline map modernizations and employs no reasonable opportunity for due process by affected property owners and local officials. New special flood hazard areas should only be added to the flood insurance rate maps after a detailed study and concurrence of local government.

Dodge City supports legislation that would extend the accreditation time period. This would allow cities to responsibly budget and prepare for the financing necessary to meet the required improvements to the levy system.

## **IMMIGRATION**

Immigrant labor is vital to the Dodge City economy. Concurrently, Dodge City believes in legal immigration. Therefore, Dodge City believes the United States Congress should approach the immigration issue in a sensible way. For Dodge City, a sensible approach is an approach built on an essential foundation including the following:

- 1) All immigration legislation is tempered with an understanding of such legislation's economic impact for companies employing immigrants.
- 2) A recognition that immigrants living in Dodge City require a reduction in time and distance barriers between the individual and his or her pursuance of legal residency.
- 3) It is critical that United States Citizenship and Immigration Services provide local governments the ability to offer biometric services for applicants to reduce travel expenses as well as lost work and school time.
- 4) Recognition that Dodge City requires additional resources to integrate immigrants into the community; and
- 5) Dodge City supports a path to citizenship which is vital for immigrants who are of good moral character and ready to become fully integrated in our communities.

The City of Dodge City requests that the United States Citizenship and Immigration Services (USCIS) give serious consideration to opening a field office in Southwest Kansas where services are desperately needed. To help address this issue in the meantime, we request an increase in frequency of USCIS mobile services in Dodge City and Southwest Kansas as follows:

- Increased frequency of mobile service visits from 3 times a year, to 9 times a year (minimum).
- Provide full services (biometrics, interviews, etc.) during each visit.
- Dodge City will continue to provide support staff, designated space (rent-free), and technology.
- Increased frequency of naturalization ceremonies.

In addition, the City of Dodge City strongly believes that the United States Congress should engage to deliver bipartisan legislation that provides a permanent solution for recipients of the Deferred Action for Childhood Arrivals (DACA) program. Such legislation should include a pathway to citizenship within a reasonable time frame.

## **TRANSPORTATION**

**AIR:** The Essential Air Service (EAS) program is critical to providing the region with access to multiple major international airports. Dodge City encourages continued federal funding for passenger air service to Dodge City.

Dodge City supports incorporating qualified classroom and simulator training for commercial pilot certification to meet the increasing demand for passenger air transportation service in Dodge City and Southwest Kansas communities.

Federal funding through the Airport Improvement Program (AIP) is critical to maintaining the infrastructure of airports. AIP funding is available and should continue to be available to all airports. The uninterrupted funding of the AIP program is critical to the timely delivery of airport improvements. Dodge City supports continued and uninterrupted funding of Federal Aviation Administration and Airport Improvement Projects for airports.

**HIGHWAY:** Transportation infrastructure is critical not only to the safety of regional residents and travelers but also for the maintenance and growth of the regional economy. Dodge City supports increased transportation safety including continued funding for highway maintenance and infrastructure investment and efforts to promote traveler safety.

**RAIL:** Preserving cross-country rail service through Dodge City and Southwest Kansas is important as rural regions must offer many alternative modes of transportation. Dodge City believes freight and passenger rail service is one important way to maintain and grow the economy of Dodge City. Such service includes, but is not limited to, Amtrak passenger rail service. Dodge City believes Amtrak should continue to be adequately funded at the federal level to provide daily service and that necessary upgrades to rail infrastructure be provided through a joint effort involving federal, states, Amtrak, and BNSF.

## **HOUSING**

The City strongly supports the prevention of disproportionate cuts to rural development programs. Such cuts affect rural housing which is vital to the continued prosperity of the economy in rural communities. Prevent changes to qualification standards currently in place for USDA Rural Development programs.

Provide the assistance of the USDA Rural Development to offer training in local housing associations, in programs such as the Direct Home Loans, Home Repair Loans and Grants, Mutual Self-Help Housing and Guaranteed Rural Housing Loans.

## **RENEWABLE ENERGY**

The City strongly supports renewable energy alternatives and the biogas industry. Dodge City believes that developing a viable biogas, solar and wind energy industry in the United States and the State of Kansas can boost the economy and provide a reliable, sustainable, distributed source of renewable energy while reducing greenhouse gas emissions. Communities and private organizations around the nation are utilizing renewable energy alternatives not only to diversify energy supply and reduce dependence on imported fuels, but also to improve profitability for operations through energy and co-product sales, nutrient recovery and avoided energy costs.

Dodge City encourages continued support for RINS (renewable identification numbers), which provide an important incentive to producing renewable natural gas and promote financial opportunities to move forward in developing a robust biogas industry. The City suggest that no changes be made to the Renewable Fuel Standard program and that the Environmental Protection Agency does not lower the targets for cellulosic biofuels from the current statutory targets.

## **RAILROAD QUIET ZONES**

We urge Congress to reexamine the Train Horn Rule with the Federal Railroad Administration. Rules for implementing quiet zones should be less burdensome and allow for differences in community circumstances while continuing to protect public safety. We also request Congress provide federal funds for the purpose of establishing quiet zones and consider new technology which may enhance the safety of quiet zones while minimizing or eliminating train horn noise.

## **STATE**

### **HOME RULE**

**HOME RULE:** Dodge City strongly supports the constitutional home rule authority of Kansas cities. Consistent with the Home Rule Amendment of the Kansas Constitution **approved by voters in 1960**, Dodge City supports the ability of local elected officials to make decisions for their communities, particularly local tax, and revenue decisions. Self-governance by locally elected officials must be preserved to ensure that local issues and problems are handled at the level of government closest to the citizens that they represent.

**ANNEXATION:** The ability of Dodge City to grow is inherent to the ultimate success of annexation powers as they are currently established in state statute. Dodge City recognizes the statutory framework which was amended in 2011 and 2015. Further amendment would shift this balance in a way that would impede orderly growth. Therefore, Dodge City would strongly oppose any further change which would limit the authority of Dodge City to grow through annexation.

**EMINENT DOMAIN:** Eminent domain is a fundamental municipal necessity. The authority to acquire property through condemnation proceedings is critical for public improvement projects. Dodge City supports increased flexibility for local government to use eminent domain for economic development purposes, including blight remediation, without seeking legislative approval.

**PUBLIC PROPERTY & RIGHTS-OF-WAY:** Dodge City opposes any legislation which would restrict the ability of cities to control and manage public property and rights-of-way or the ability of cities to franchise those entities that utilize the rights-of-way.

**CITY ELECTIONS:** Dodge City strongly believes that City Elections should remain non-partisan and separate from state and national elections.

## **GOVERNMENTAL ETHICS**

**KANSAS OPEN MEETINGS ACT (KOMA) and KANSAS OPEN RECORDS ACT (KORA):** Dodge City supports all levels of government being subject to the same open meeting requirements which promote citizen involvement without being unduly burdensome. Open records laws should balance the public's right to access with the necessity of protecting the privacy of individual citizens and the ability of public agencies to conduct essential business functions. The statutorily required sunset for all exemptions to the Kansas Open Records Act is impractical and should be removed.

## **PUBLIC EMPLOYEES**

City employees are the foundation of effective city government. City governing bodies must have the authority to develop personnel policies to attract and maintain a high-quality public workforce.

**KPERS/KP&F:** Dodge City accepts the State's efforts to maintain the solvency of the Kansas Public Employees Retirement System by providing employees with a diverse professional investment portfolio that will offer long-term security. Dodge City supports the current statutory framework regarding KPERS and KP&F as passed by the 2012 Kansas Legislature. The local KPERS system should remain separate from the state and school retirement system. Changes to the KPERS/KP&F system should consider the impact on cities' ability to hire and retain qualified public employees.

**LAW ENFORCEMENT OFFICERS:** Dodge City believes that employment persons with lawful employment status should be allowed to serve as law enforcement officers in Kansas. The City strongly encourages the state legislature to amend statute (KSA 74-5605 (b) (1) that requires citizenship for law enforcement officers. The City asks to consider aligning with U.S. Military requirements in the Military Accessions Vital to the National Interest (MAVNI) program. We believe that this amendment will expand the pool of law enforcement candidates and increase diversity across Police Departments in Kansas communities who are struggling with recruitment.

## **MUNICIPAL FINANCE:**

**KANSAS TAX SYSTEM:** Cities are important partners in creating jobs, reviving the economy, delivering vital services, and providing quality of life. Any changes to the Kansas Tax System must avoid shifting additional financial burdens to local governments.

**PROPERTY TAX EXEMPTIONS:** Dodge City believes that the existing property tax base should be protected and therefore encourages the Kansas Legislature to resist any proposal to further exempt any specific property classification from taxation. The machinery and equipment exemption should not be expanded. The Kansas Legislature should actively review existing exemptions to determine whether the exemptions are still appropriate or should be repealed.

**REVENUE SHARING:** The Kansas Legislature should reinstate existing revenue sharing programs. In the event that the State is unable to fully fund said programs, the Kansas

Legislature should authorize cities to impose alternative revenue sources in order to maintain appropriate levels of funding for the health, safety, and welfare of our citizens.

**TAX/SPENDING LID:** Dodge City believes that local spending and taxing decisions are best left to the local officials representing the citizens that elected them. We strongly oppose any state-imposed limits on the taxing and spending authority of cities.

**UNFUNDED MANDATES:** Dodge City opposes unfunded mandates. If the State seeks to promote policy objectives, such mandates should be accompanied by an appropriate level of funding.

### **INTERNET SALES TAX**

The collection of sales and use tax should not preempt state and local sales and use tax authority. Should federal legislation allow for the State imposition of such taxes, we support the distribution of those funds to cities and counties using an equitable formula. Kansas should continue to participate in the Streamlined Sales Tax Project. Cities are important partners in creating jobs, reviving the economy, delivering vital services, and providing quality of life. The Governor and Kansas Legislature should include city leaders in discussions regarding restructuring the Kansas tax system and any changes must avoid shifting additional financial burdens to local governments. The City of Dodge City opposes the removal of sales tax exemptions for Kansas Municipalities.

## **COMMUNITY DEVELOPMENT**

**ECONOMIC DEVELOPMENT:** Dodge City relies on state and federal programs to remain competitive in efforts to attract and retain businesses and qualified labor. Unfortunately, many government programs are designed for either urban or rural communities. Dodge City is neither, based on the region's micropolitan statistical area ( $\mu$ SA) geographical designation. Therefore, Dodge City is too big for rural-oriented programs and too small for urban-oriented programs. Dodge City is dedicated to the design and implementation of economic development programs for the growing segment of Kansas communities that are ineligible for many programs.

**HISTORIC PRESERVATION:** The Historic Tax Credit program and Historic Preservation Grants should be maintained and enhanced. Such programs assist communities in maintaining and/or restoring their historic buildings and serve as a critical resource for economic development and job creation. Without such gap assistance, many if not all redevelopment plans would be impossible to fulfill. These credits and grants provide valuable private investment that preserves our history and heritage not only for today but for future generations.

**ZONING:** Zoning is a fundamental municipal responsibility and is best controlled by local governments to ensure that acceptable and compatible uses of property are in place to retain and preserve the character of a community. This regulatory process is an activity best suited to the locally elected officials when considerations of health, safety and welfare of the community are to be determined. Dodge City opposes any change which would limit authority of cities.

**STAR BONDS:** Dodge City supports the ability of cities to utilize STAR bonds to promote economic development in their communities.

**CHILDCARE:** The current childcare system is failing both families and communities across Kansas. The supply of childcare has been on the decline for years, disproportionately affecting certain families, including those who work nontraditional hours; live in rural communities; have an infant or toddler, or child with special needs; or are immigrants. SKC supports creating a regulatory environment that supports rather than impedes the creation of more childcare facilities. In addition, to adapting the regulatory environment, SKC supports additional funding to those facilities attempting to meet the requirements and close the gap on children without childcare. This issue impacts economic development, employers, and the future of our region.

**BROADBAND:** Access to reliable broadband service is increasingly important to the economic health of Kansas cities. We support the establishment of the Broadband Deployment Grant to facilitate broadband expansion in Kansas. Guidance for the grant program and broadband related statutes must recognize the important role of local governments play in such expansion and not remove important planning and right of way authority from local governments.

## **GAMBLING**

By law, two percent of gambling revenue in Kansas must go to the Problem Gambling and Addictions Grant Fund which is designed to treat problem gamers and people with other addictions. Grants are to be awarded for the direct treatment of pathological gambling and for research regarding the impact of gambling on residents of Kansas, including determining the effectiveness of education and prevention efforts.

The Problem Gambling Fund must be protected for the purpose it is intended and must be allocated throughout the State with an emphasis on the gaming zones where people are at a greater risk to develop issues with problem gambling.

The State of Kansas should avoid legislation which would negatively affect existing gaming facilities and the communities which have dedicated public funds for infrastructure and growth related to such facilities.

## **HOUSING**

The State of Kansas has provided many useful tools for communities to utilize incentives where gaps between construction rates and market rates prohibit development without incentives. The retention of these programs is critical to Dodge City as is the simplification of the processes required to make utilization timely and less complicated.

Dodge City strongly supports the Moderate-Income Housing (MIH) Program, an initiative funded by the State of Kansas and administered by Kansas Housing Resources Corporation (KHRC), which works to help cities and counties develop multi-family rental units, single-family for-purchase homes, and water, sewer and street extensions in communities with populations of fewer than 60,000 people. MIH funding can also be used to finance construction costs, rehabilitate unsafe or dilapidated housing, and offer down-payment and closing-cost assistance to

homebuyers. We encourage the State of Kansas to continue providing MIH funding and expand its financial commitment to this very important housing program.

The retention and simplification of programs such as Rural Housing Incentive Districts and Neighborhood Revitalization Program that are currently permitted by statute in qualifying communities is vital to Dodge City.

The Kansas Legislature should continue to grant affordable housing tax credits. The tax credit program continues to be a gap financing necessity which is imperative for developers to create affordable housing facilities.

## **TRANSPORTATION**

**TRANSPORTATION:** Passenger rail, freight rail, commercial aviation, general aviation, and adequate highways are critical to the safety of our citizens as well as a vital means of maintaining and growing our local economy. Dodge City believes in the continued advocacy and funding for transportation infrastructure and maintenance in Southwest Kansas.

**HIGHWAY:** Transportation infrastructure is critical not only to the safety of regional residents and travelers but also to the maintenance and growth of the regional economy. Dodge City supports increased transportation safety including continued funding for highway maintenance and infrastructure investment and efforts to promote traveler safety.

**RAIL:** Preserving long distance rail service through Dodge City and Southwest Kansas is important as rural regions must offer many alternative modes of transportation. Dodge City believes freight and passenger rail service is one way to maintain and grow the economy of Dodge City. Such service includes but is not limited to Amtrak passenger rail service. Dodge City believes Amtrak should continue to be adequately funded and that necessary upgrades to rail infrastructure be provided through a joint effort involving federal, states, Amtrak, and BNSF.

## **IMMIGRATION**

Immigrant labor is vital to Dodge City's economy and continued growth and development. In correlation with this issue and due to the increased number of safety and transportation risks with uninsured drivers, Dodge City supports an initiative for limited and restricted driver's license. The City also supports current legislation that gives in-state tuition to undocumented students at Kansas colleges and universities.

## **EDUCATION**

**EDUCATION:** An adequate and stable workforce is essential to maintaining and growing the economy of Dodge City and Southwest Kansas. Therefore, Dodge City believes in establishing educational opportunities for local and regional residents. Such opportunities include, but are not limited to, specialized training programs and educational degree programs. To meet these educational goals, Dodge City wishes to maintain adequate funding to allow for growth and advancement of educational programs in K-12, as well as post-secondary and graduate programs. Additionally, Dodge City supports adequate funding for all Kansas Board of Regents institutions.

Southwest Kansas is the only quadrant of the state without a four-year public university. In order to bridge this gap and to provide a stronger higher education presence in our region, a University Center has been established to offer bachelor and masters level programs to meet the demands of the workforce with an initial focus on healthcare services. Students will obtain their first two years of education and their associate degree through one of the regions' community colleges and then have the opportunity to finish their bachelor or advanced degree through the University Center. Headquartered in Dodge City, students across the region will have access to programs through a blended mix class format with some face to face classroom time in addition to web-based offerings. The opportunity to "Grow Our Own" is extremely critical to the long-term success of our regional workforce and the state of Kansas.

## **MEDICAID**

Medical providers are challenged in meeting their communities' needs. We support the expansion of Medicaid/KanCare through receipt of the state budget neutral money therefore allowing such entities the ability to support critical services for their citizens.

## **WATER**

**WATER:** Dodge City is dedicated to a thoughtful water policy that enables Dodge City to safely and effectively meet water needs while also protecting resources. Dodge City believes increased local involvement is critical to the successful implementation of the current Kansas Water Plan and the Vision for the Future of Water in Kansas plan which is intended to coordinate the management, conservation and development of the water resources across the state for the next fifty years. Dodge City also strongly encourages the development of new and sustainable water supplies.

The expanded use of reclaimed or re-use water is one way that communities/cities can meet the future demands for water. The use of this water for non-potable uses needs to be considered. A couple of examples are: 1) expanding the use of re-use water for irrigation of private property; or 2) use in construction projects.

To provide for the future growth of a community, cities must be diligent in purchasing water rights; however, in the past, water rights were 'tied together' and municipalities lost additional allocation with this procedure. When water rights are converted to municipal use from agriculture use, there is a reduction in the amount allowed for consumption. Agriculture consumption is in the form of irrigation. Most of the water consumption incurred by municipalities occurs during the summer months by irrigation. Consequently, municipalities should not have a reduction when converting water rights.

Dodge City supports legislation to allow municipalities the ability to "untie" currently owned water rights and reduce or eliminate the conversion of water rights from agriculture to municipal.

The City generally supports state legislative initiatives which would improve the quality of life for our citizens and enhance the effectiveness of local governments consistent with Home Rule. The City generally supports the provisions of the Statement of Municipal Policy of the League of Kansas Municipalities.