

# **CITY COMMISSION AGENDA**

City Commission Chambers  
Monday, October 20, 2008 7:00 p.m.  
MEETING #4731

## **CALL TO ORDER**

## **ROLL CALL**

**INVOCATION:** Father Zimmerman, St Cornelius Episcopal Church

## **PLEDGE OF ALLEGIANCE**

## **PETITIONS & PROCLAMATIONS**

## **PUBLIC HEARING**

Revolving Loan-Boothill Bed & Breakfast

Revolving Loan-The Dodge House

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

## **CONSENT CALENDAR**

1. Approval of City Commission Work Session minutes, October 6, 2008
2. Approval of City Commission Meeting minutes, October 6, 2008
3. Approval of City Commission Work Session minutes, October 15, 2008
4. Appropriation Ordinance No. 20, October 20, 2008
5. Purchase Addendum Contracts for Phillip L. and LaVada R. Gjerstad

## **ORDINANCES & RESOLUTIONS**

Resolution No. 2008-18: A Resolution Establishing an Identity Theft Prevention Program.

## **UNFINISHED BUSINESS**

**NEW BUSINESS**

Approval of PEC Recommendation of Wastewater Reclamation Facility Location.  
Presented by Joe Finley, Director of Engineering Services.

Approval of KLINK Project with the Kansas Department of Transportation for US 400.  
Presented by Joe Finley, Director of Engineering Services.

Approval of Revolving Loan with Boothill Bed & Breakfast. Presented by Joann Knight,  
Executive Director of Dodge City/Ford County Development Corporation.

Approval of Revolving Loan with the Dodge House. Presented by Joann Knight,  
Executive Director of Dodge City/Ford County Development Corporation.

**OTHER BUSINESS**

**ADJOURNMENT**

CITY COMMISSION WORK SESSION MINUTES  
City Commission Chambers  
Monday, October 6, 2008 6:15 p.m.  
MEETING #4728

CALL TO ORDER

ROLL CALL –Mayor Kent Smoll, Commissioners Monte Broeckelman, Rick Sowers, Jim Sherer and Brian Weber

Review of 2007 Audit. Presented by Pat Kolb.

Commissioner Sherer moved to adjourn the meeting, seconded by Commissioner Broeckelman.  
Motion carried unanimously.

CITY COMMISSION MINUTES  
City Commission Chambers  
Monday, October 6, 2008 7:00 p.m.  
MEETING #4729

CALL TO ORDER

ROLL CALL: Mayor Kent Smoll, Commissioners Monte Broeckelman, Rick Sowers, Jim Sherer, Brian Weber

INVOCATION: Father Zimmerman, St Cornelius Episcopal Church

PLEDGE OF ALLEGIANCE

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).

City Character Trait: Obedience vs. Willfulness. Austin Magette, Troop 171 Boy Scouts of America.

Dodge City Public Library, Cathy Reeves

CONSENT CALENDAR

1. Approval of City Commission Work Session minutes, September 15, 2008
2. Approval of City Commission Meeting minutes, September 15, 2008
3. Appropriation Ordinance No. 19, October 6, 2008
4. Cereal Malt Beverage License
  - a. Kate's, 305 East Trail Street, Dodge City
5. 6<sup>th</sup> Ave. Reconstruction Change Order Decrease of \$1,408.00
6. Purchase of Back Up Motor for OMI

Commissioner Sowers moved to approve the consent calendar, Commissioner Broeckelman seconded. Motion carried unanimously.

NEW BUSINESS

Pat Kolb presented the 2007 audit. Commissioner Sherer moved to accept the 2007 audit, Commissioner Broeckelman seconded. Motion carried unanimously.

## ORDINANCES &amp; RESOLUTIONS

Ordinance No. 3463: An Ordinance Regulating Parking of Certain Motor Vehicles. Commissioner Sowers moved to table Ordinance No. 3463, Commissioner Weber seconded. Motion carried unanimously.

Ordinance No. 3464 : An Ordinance Providing for the Acquisition by Eminent Domain of Certain Private Property, Easement and Right-of-Way therein, for the purpose of acquiring real property for the construction, improvement of Fourteenth Avenue and a portion of Burkhart Street in the City of Dodge City, Ford County, Kansas; designating the lands required for such purposes and directing the attorney retained by the City to file a petition in the District Court of Ford County, Kansas for acquisition of the lands and easements therein taken and providing for payment of the cost thereof. Commissioner Sherer moved to approve, Commissioner Sowers seconded. Motion carried unanimously.

Resolution No. 2008-17: A Resolution Approving the Form of an Amendment to a Certain Bond Agreement Entered into by the City in Connection with the Issuance by the City of its Taxable Industrial Revenue Bonds (Kimbroy's Properties L.L.C.). Commissioner Sherer moved to approve, Commissioner Broeckelman seconded. Motion carried unanimously.

## NEW BUSINESS

Approval of Bids for 14<sup>th</sup> Street Sewer Extension to APAC Shears in the amount of \$66,729.05 on a motion by Commissioner Sowers, seconded by Commissioner Sherer. Motion carried unanimously.

Appointed Judy Bleumer to the Golf Course Advisory Board Member on a motion by Commissioner Weber, seconded by Commissioner Broeckelman. Motion carried unanimously.

## OTHER BUSINESS

Ken Strobel – work session planned for October 15 with PEC to discuss location of Water Reclamation Project at 5:30 p.m. in City Commission meeting room.

Discussed League of Municipalities Meeting in Wichita on October 12-14.

Talked about invitation from Great Plains Development Inc. annual meeting on October 16 for all City Commissioners and administrative staff.

Jim Sherer. Attended a Senior Center task force meeting and reported that at a subcommittee meeting prior to the meeting, the Meals on Wheels and Friendship Meals will move to the Senior Center for their programs.

Kent Smoll talked about Ken Strobel's employment evaluation. A form will be developed and given to the City Commissioners and an executive session will be planned for the next meeting.

Congratulated Butler National for being granted the casino in Ford County. Also thanked Dodge City Gaming and Resort for their cooperation and work on this process. We all need to be proud of all the activity in Dodge City.

Jim Sherer thanked CFAB for their efforts in establishing the position of Arts and Tourism coordinator for which Bob Lancaster has been hired.

Commissioner Broeckelman moved to adjourn the meeting, Commissioner Sowers seconded the motion. Motion carried unanimously.

# **CITY COMMISSION WORK SESSION MINUTES**

City Commission Chambers  
Wednesday, October 15, 2008 5:30 p.m.  
MEETING #4730

## **CALL TO ORDER**

## **ROLL CALL**

## **NEW BUSINESS**

Discussion of Water Reclamation Project

**ADJOURNMENT:** Commissioner Sowers moved to adjourn, seconded by Commissioner Sherer. Motion carried by unanimous vote.

## Memorandum

*To: City Commission*  
*From: Ken Strobel, City Manager*  
*Date: October 17, 2008*  
*Subject: Purchase Addendum Contracts for  
Phillip L. and LaVada R. Gjerstad*

As you know, we will soon be closing on the purchase of the Gjerstad water rights. Since we need to proceed with the closing on the water rights before DWR has approved the actual locations of the new wells and piping, we need to amend the Purchase Contract to add language providing that the actual easement locations will be determined at a later date, but at no additional cost to the City.

The attached addendum, which the Gjerstad's have approved, will allow us to proceed with the closing on the water rights by the contract date while deferring the preparation and execution of the necessary easements until the actual locations have been determined.

## PURCHASE ADDENDUM CONTRACT

**THIS PURCHASE CONTRACT ADDENDUM** (this "Addendum") is made and entered into by and between CITY OF DODGE CITY, KANSAS, a municipal corporation (the "City") and Phillip L. & LaVada R. Gjerstad, husband & wife (the "Owners");

**WHEREAS**, the City and Owners are parties to a Purchase Contract approved by the City on September 2, 2008 reflecting the terms and conditions of the City's purchase from the Owners of certain water rights and various easements related to said water rights (the "Contract"), and

**WHEREAS**, the City and Owners are ready and desire to close on the Contract, but have not received from the Division of Water Resources of the State of Kansas (the "DWR") all necessary approvals for change in point of diversion for new wells which the City will install to access the acquired water rights. Not knowing the new well location makes it impossible to identify the precise location of the various easements needed to service the new well as described in paragraph 10 of the Contract by the closing date as setforth in the Contract, and

**WHEREAS**, the City and Owners are agreeable to proceed with the closing on the Contract within the closing deadline as established by paragraph 15 of the Contract, notwithstanding that the easements being acquired as part of the Purchase Contract cannot be precisely located and finalized by closing. Therefore, the parties have enter into this Addendum in order to establish a procedure by which said easements can be finalized and conveyed following the closing on the Contract:

**NOW THEREFORE**, the City and Owners agree as follows:

1. The City and Owners will proceed with closing on the Contract by the closing deadline established in paragraph 15 of the Contract; provided, however, the City and Owners agree and acknowledge that by proceeding with the closing the City is in no way waiving, surrendering, or abandoning its legal right to obtain and acquire all necessary easements as provided in paragraph 10 of the Contract, nor are the Owners released or discharged from their contractual obligation to grant and convey such easements to the City pursuant to the provision of paragraph 10 of the Contract at no additional cost or compensation to be paid by the City.
2. The Owners agree that following the receipt by the City of all necessary DWR approvals and at the City's request, the Owners will execute and deliver to the City recordable easements as prepared by the City and described in paragraph 10 of the Contract which easements will include all necessary legal descriptions identifying the location of the easements, which locations shall be established in accordance with the conditions as set out in paragraph 10 of the Contract.
3. The City and Owners agree to be bound by the provisions of this Addendum notwithstanding provisions of the Contract which may express or imply a contrary procedure or requirement with regard to the execution and conveyance of the easements described in paragraph 10 of the Contract.
4. The City and Owners hereby ratify and confirm all other provisions of the Contract not inconsistent with the provisions of this Addendum.

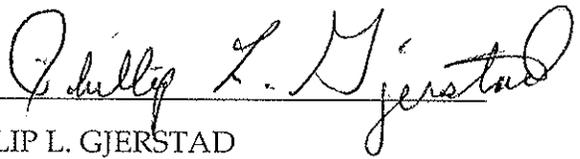
5. The provisions of this Addendum shall be binding of the parties hereto and their heirs, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties have executed this Addendum on the date's setforth below:

CITY OF DODGE CITY, KS

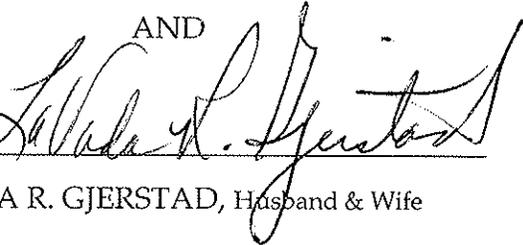
OWNERS:

BY: \_\_\_\_\_  
E. KENT SMOLL, MAYOR

BY:   
PHILLIP L. GJERSTAD

ATTEST:

\_\_\_\_\_  
NANNETTE POGUE, CITY CLERK

AND  
BY:   
LAVADA R. GJERSTAD, Husband & Wife

Approved this \_\_\_day of October, 2008    Approved this \_\_\_day of October, 2008

October 16, 2008

MEMO

TO: Ken Strobel, City Manager  
Cherise Tieben, Assistant City Manager

FROM: Nannette Pogue, City Clerk 

SUBJECT: Resolution No. 2008-18

The US Government enacted Section 114 of the FACT Act which addresses "Identity Theft Red Flags and discrepancies under the Fair and Accurate Credit Transactions Act of 2003. This law was effective January, 2008 and the compliance deadline is November 1, 2008. The proposed regulations implementing Section 114 requires the development and establishment of a written identity theft program to detect, prevent and mitigate identity theft. The agencies that are required to comply with this law are all banks, thrifts, credit unions, mortgage lenders and other "creditors" such as utility companies, municipalities, health care companies, telecommunications companies, and others.

To meet these requirements, Connie Marquez and Barb Slagle attended a workshop in Garden City put on by the Kansas Municipal Utilities group. KMU suggested that in order to comply a utility would adopt a policy in the form of a resolution. This resolution is what is being presented for the City Commission approval. The resolution contains all of the components necessary to meet compliance. The policy deals with identifying "identity theft", detecting those "red flags" that could be identity theft, preventing and mitigating identify theft and program administration. This policy deals with mostly the utility billing department, but could be expanded into other areas of the City. Most of the steps to identifying the problem have already been addressed and have been implemented some time ago. This resolution formalizes the process and provides for training of employees.

If you have any questions or wish additional information, please let me know.

## RESOLUTION NO.2008- 18

### A RESOLUTION ESTABLISHING AN IDENTITY THEFT PREVENTION PROGRAM FOR THE CITY OF DODGE CITY

#### SECTION 1. INTRODUCTION

WHEREAS, the City of Dodge City developed this Identity Theft Prevention Program ("Program") pursuant to the Federal Trade Commission's ("FTC") Red Flag Rule, which implements Section 114 of the Fair and Accurate Credit Transaction Act of 2003. 16 C. F. R. § 681.2.

WHEREAS, This Program is designed to detect, prevent and mitigate Identity Theft in connection with the opening and maintenance of certain city accounts. For purposes of this Program, "Identity Theft" is considered to be "fraud committed using the identifying information of another person." The accounts addressed by the Program, (the "Accounts"), are defined as:

1. An account the City offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the City offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the City from Identity Theft.

Whereas, This Program was developed with oversight and approval of the City Commission and City Manager. After consideration of the size and complexity of the City's operations and account systems, and the nature and scope of the City's activities, the City Clerk determined that this Program was appropriate for the City of Dodge City, and therefore approved this Program on October 20, 2008.

#### Section 2. IDENTIFICATION OF RED FLAGS.

A "Red Flag" is a pattern, practice, or specific activity that indicates the possible existence of Identity Theft. In order to identify relevant Red Flags, the City considered the types of Accounts that it offers and maintains, the methods it provides to open its Accounts, the methods it provides to access its Accounts, and its previous experiences with Identity Theft. The City identifies the following Red Flags, in each of the listed categories:

##### A. Suspicious Documents

- 1) Receiving documents that are provided for identification that appear to be forged or altered;
- 2) Receiving documentation on which a person's photograph or physical description is not consistent with the person presenting the documentation;

- 3) Receiving other documentation with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and
  - 4) Receiving an application for service that appears to have been altered or forged.
- B. Suspicious Personal Identifying Information.**
- 1) A person's identifying information is inconsistent with other sources of information (such as an address not matching an address on a consumer report or a SSN that was never issued);
  - 2) A person's identifying information is inconsistent with other information the customer provides (such as inconsistent SSNs or birth dates);
  - 3) A person's identifying information is the same as shown on other applications found to be fraudulent;
  - 4) A person's identifying information is consistent with fraudulent activity (such as an invalid phone number or fictitious billing address);
  - 5) A person's SSN is the same as another customer's SSN;
  - 6) A person's address or phone number is the same as that of another person;
  - 7) A person fails to provide complete personal identifying information given at the time of application for service when reminded to do so; and
  - 8) A person's identifying information is not consistent with the information that is on file for the customer.
- C. Unusual Use Of or Suspicious Activity Related to an Account.**
- 1) A change of address for an Account followed by a request to change the Account holder's name;
  - 2) An account being used in a way that is not consistent with prior use (such as late or no payments when the Account has been timely in the past);
  - 3) Mail sent to the Account holder is repeatedly returned as undeliverable;
  - 4) The City receives notice that a customer is not receiving his paper statements or utility bill; and
  - 5) The City receives notice that an Account has unauthorized activity;
  - 6) Breaches in a City's computer system;
  - 7) Unauthorized access to or use of customer Account information
- D. Notice Regarding Possible Identity Theft.**
- 1) The City receives notice from a customer, an identity theft victim, law enforcement or any other person that it has opened or is maintaining a fraudulent Account for a person engaged in Identity Theft.

**Section 3. DETECTION OF RED FLAGS.**

In order to detect any of the Red Flags identified above with the opening of a new Account, City personnel will take the following steps to obtain and verify the identity of the person opening the Account:

- 1) Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, SSN, driver's license or other identification;
- 2) Verify the customer's identity, such as by reviewing a driver's license or other identification card;
- 3) Review documentation showing the existence of a business entity; and

In order to detect any of the Red Flags identified above for an existing Account, City personnel will take the following steps to monitor transactions with an Account:

- 1) Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email);
- 2) Verify the validity of requests to change billing addresses; and
- 3) Verify changes in banking information given for billing and payment purposes.

#### **Section 4. PREVENTING AND MITIGATING IDENTITY THEFT.**

In the event City personnel detect any identified Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag:

- 1) Continue to monitor an Account for evidence of Identity Theft;
- 2) Contact the customer;
- 3) Change any passwords or other security devices that permit access to Accounts;
- 4) Reopen an Account with a new number;
- 5) Do not open a new Account;
- 6) Close an existing Account;
- 7) Notify law enforcement;
- 8) Determine that no response is warranted under the particular circumstances; or
- 9) Notify the Program Administrator (as defined below) for determination of the appropriate step(s) to take.

In order to further prevent the likelihood of identity theft occurring with respect to City accounts, the City will take the following steps with respect to its internal operating procedures:

- 1) Provide a secure website or clear notice that a website is not secure when the City implements online bill payment;
- 2) Ensure complete and secure destruction of paper documents and computer files containing customer information;
- 3) Ensure that office computers are password protected and that computer screens lock after a set period of time; and

## **Section 5. UPDATING THE PROGRAM AND THE RED FLAGS**

This Program will be periodically reviewed and updated to reflect changes in risks to customers and the soundness of the City from Identity Theft. At least annually, the City Clerk will consider the City's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, changes in types of Accounts the City maintains and changes in the City's business arrangements with other entities. After considering these factors, the City Clerk will determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the City Clerk will present the City Commission, with his or her recommended changes and the City Commission will make a determination of whether to accept, modify or reject those changes to the Program.

## **Section 6. PROGRAM ADMINISTRATION.**

**A. Oversight.** The City's Program will be overseen by a Program Administrator. The Program Administrator shall be the City Clerk or designee. The Program Administrator will be responsible for the Program's administration, for ensuring appropriate training of City staff on the Program, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, determining which steps of prevention and mitigation should be taken in particular circumstances, reviewing and, if necessary, approving changes to the Program.

**B. Staff Training and Reports.** City staff responsible for implementing the Program shall be trained either by or under the direction of the Program Administrator in the detection of Red Flags, and the responsive steps to be taken when a Red Flag is detected. Identity Theft Training will occur on an annual basis and/or when new Staff is hired

**C. Service Provider Arrangements.** In the event the City engages a service provider to perform an activity in connection with one or more Accounts, the City will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

- 1) Require, by contract, that service providers have such policies and procedures in place;
- 2) Require by contract that service providers review the City's Program and report any Red Flags to the Program Administrator.

**Section 7. Effective Date.** This Resolution shall take effect and be in full force from and after the adoption by the Governing Body of the City.

**ADOPTED AND APPROVED BY THE GOVERNING BODY OF THE CITY  
OF DODGE CITY THE 20<sup>TH</sup> DAY OF OCTOBER 2008.**

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**E. Kent Smoll, Mayor**

**Attest:**

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**Nannette Pogue, City Clerk**



## *Memorandum*

October 17, 2008

TO: Ken Strobel  
City Manager

FROM: Joseph E. Finley, P.E.  
Director of Engineering

RE: Wastewater Treatment Plant Information &  
Location Recommendation

### **Background**

Staff has been concerned for sometime about the ability of our current wastewater treatment plant to handle additional commercial and industrial development. With the approval of the casino development, we have become even more concerned with the capability of the current plant. The City hired PEC to evaluate our present plant and to make recommendations to us as to the ability of our existing system to handle normal growth patterns and the added growth that would come with the Casino, events center and related development.

Their initial study showed that the south plant would require substantial upgrades at a cost far in excess of building a new plant to service the north part of the city. Based on this information, City staff and PEC in conjunction with a comprehensive plan consulting firm began to analyze the growth patterns of the city and possible locations for a treatment plant that would serve the growth area most economically for the next 20-25 years. Based on this analysis several possible sites were reviewed. Of the available preferred sites, the Rebein property provided the most economical location for service to the widest area of development.

During the past several weeks the site location that was recommended by our consultants has met with resistance from some property owners close to the proposed site. One property owner suggested an alternate site and staff was directed to look at this site and evaluate the cost.

PEC made a presentation at a study session earlier this week and these alternate costs were discussed. Commissioners have asked for a break down of these costs. As

reported during the work session, the cost of the plant itself is basically the same at either site. The difference of pipe size and lift stations between the two sites are shown on the attached map and are delineated below:

Deletion of east west line Phase I

20" force main	- 1,378,000
Pump Station	- 1,250,600

Addition of new east west line and east Treatment Plant Phase I

Pump Station	1,250,000
Force main	643,200
Pump Station	1,375,700
Force main	1,354,800

Deletion of Phase III east west line

Force main	-963,500
Pump Station	-1,250,600

Addition of gravity sewer

Sewer line	<u>1,759,300</u>
-	1,540,300

Total additional cost for construction of the plant and related equipment and lines results in a **\$1,540,300 increase** over the central site. In addition, we also want to bring the reclaimed water back to the golf course and cemetery sites. Placing the plant on the east site would increase this cost **\$990,500** over the central site. This brings the total cost increase for plant, lines, equipment and reuse at the east site to **\$2,530,800**.

An evaluation of each site was also done and is included as Table 1.

**Consideration**

As you know, the location of the casino has been determined and the casino project is being fast tracked. Given the time frame we have to construct this plant it is important that we proceed with choosing a site. While financial consideration of the east site may not seem great to some, the commission needs to be aware that this is only the first of many projects that will be under consideration. It will also be necessary to construct roads, wells, water lines, etc to handle the new growth that is expected. Money we save now can be used for those projects.

**Recommendation**

Staff recommends construction of the water reclamation project at the central site location in accordance with the recommendation of our consultant, PEC.



Table 1. Site Evaluation

CRITERIA	CURRENTLY PROPOSED SITE		ALTERNATIVE SITE	
	COMMENTS	SCORE	COMMENTS	SCORE
Proximity to utilities	Existing 12" waterline approx. 1-mi south of site; electrical substation approx. 1-mi southeast of site	4	Existing 12" waterlines approx. 2.5-3 miles southwest of site; electrical substation approx. 1.5-mi southwest of site	2
Access	14th Avenue (paved) approx. 1/2-mi west of site	3	No roadway to site; 1-2 miles of roadway would need to be constructed	1
Remote Pumping or Increase Interceptors	2 lift stations proposed	3	2 lift stations proposed	3
Site property and easements	City owned ground	4	Would have to purchase or trade site; ingress/egress easements need to be acquired	4
Proximity to closest potential beneficial re-use customers	Approx. 1.5 miles from Legends Park	4	Approx. 3-mi from St. Mary's College	2
Proximity to Mariah hills Golf Course	Approximately 3.75 miles	4	Approximately 5.5 miles	2
Location relative to adjacent service areas or jurisdictions	Substantial existing development 1.5-mi south	4	Substantial existing development approx. 2.5-3 miles southwest	2
Location relative to growth area	Located within projected growth corridor	5	Approx. 2-mi east of growth corridor	3
Expandable areas on site	Yes	4	Yes	4
Floodplain/Floodway	No	4	Portion of site in floodplain	2
Receiving stream	Tributary of Duck Creek	4	Tributary of Duck Creek	4

TOTAL SCORE

43

29

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# Memorandum

*To: Ken Strobe, City Manager*  
*From: Joseph E. Finley, P.E. <sup>JA</sup>*  
*Director of Engineering Services*  
*Date: October 15, 2008*  
*RE: KDOT Agreement for surfacing project*  
*US – 400 City Connecting Link*

## **Background**

A portion of US – 400 (Trail Street) is classified as a City connecting Link (KLINK). As such the state of Kansas pays the City a lane mileage payment for maintenance of this portion of US – 400 (from overpass east to the city limits). In addition, the City is also eligible to apply for assistance in financing reconstruction projects for these KLINK road sections.

Each year the City submits to KDOT their 5-year road plan and any KLINK requests. Earlier this year staff submitted a request to KDOT for a resurfacing project for this section of roadway. Normally it can take 5-7 years before funding is available for such projects.

## **Current Considerations**

Several weeks ago, we were notified that our request was approved. We were also notified that as KDOT was letting a similar project from the City limits east, and KDOT wanted to include the City's project with their project. By including our project this way we can take advantage of letting our project with a much bigger project which should save money. In addition, KDOT is developing all the plans and specifications and will also pay for mobilization, traffic control, and field office. This too will save the City money by letting the two projects together.

## **Recommendations**

The current estimate is \$118,088.99. Under this agreement KDOT will pay for 50% of the cost (up to \$400,00 total project cost). As we did not anticipate this project being awarded quite so soon, funds were not budgeted specifically for this project either in 2008 or 2009. The City must make a payment to the state within 50 days after the letting date of November 12, 2008. Staff would recommend approval of this contract and funds would be taken from projects that have been completed under budget.

PROJECT NO. 400-29 U-2197-01  
SURFACING  
CITY OF DODGE CITY, KANSAS

**A G R E E M E N T**

**PARTIES:** **DEBRA L. MILLER, Secretary of Transportation**, Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary,"

**The City of Dodge City, Kansas**, hereinafter referred to as the "City,"

**Collectively** referred to as the "Parties."

**PURPOSE:** The Secretary has authorized a maintenance project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City. The Secretary desires to surface asphalt pavement on US-400, a city connecting link. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such state aid, such work is required to be done in accordance with the laws of Kansas.

**PROJECT:** The Secretary and the City desire to enter into this Agreement for the construction of the Project which is described as follows:

Surface recycling and resurfacing on US-400, from the US56/283 junction east to the east city limits, 0.52 miles.

**EFFECTIVE**

**DATE:** The Parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the date signed by the Secretary or designee.

**ARTICLE I**

**THE SECRETARY AGREES:**

1. If necessary, in the name of the Secretary, to perform appraisal and acquisition work including condemnation for rights of way and easements as shown on the Project plans.
2. To prepare the Project plans, let the contract for the Project, award the contract to the lowest responsible bidder, administer the construction of the Project, and administer the payments due the contractor.

3. To be responsible for fifty percent (50%) of the total actual costs of construction (which includes the costs of all construction contingency items), not to exceed a maximum of \$200,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of construction (which includes the costs of all construction contingency items) that exceeds \$400,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of rights of way and utility adjustments for the Project.

4. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the Secretary will defend, indemnify, hold harmless, and save the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Secretary, the Secretary's employees, or subcontractors. The Secretary shall not be required to defend, indemnify, hold harmless, and save the City for negligent acts or omissions of the City or its authorized representatives or employees.

5. To require the contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the contractor, the contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

6. The Secretary will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes and other utilities, publicly or privately owned, which may be necessary to construct the Project in accordance with the final design plans. New or existing utilities to be installed, moved or adjusted will be located or relocated in accordance with the current version of the Kansas Department of Transportation Utility Accommodation Policy (UAP), as amended or supplemented.

If the City has a population of less than 2,501 (based on the U.S. Bureau of Census- 2000 Census), the Secretary agrees to be responsible for the expense to remove or adjust City owned utility facilities located on public rights of way as necessary to construct the Project in accordance with the final design plans. The payment of such expense by the Secretary shall be by a separate utility adjustment agreement between the Secretary and the City. If the City has a population of more than 2,500 (based on the U.S. Bureau of Census-2000 Census), the utility owners shall be responsible for the expense to remove or adjust all utility facilities on public rights of way as necessary to construct the Project in accordance with the final design plans. The expense of removal or adjustment of utility facilities located on private easements shall be reimbursed to the utility owners by the Secretary. The payment of such expense by the Secretary shall be by separate utility adjustment agreement between the Secretary and the utility owners.

## ARTICLE II

### THE CITY AGREES:

1. It shall, by resolution, authorize the Secretary to undertake and complete the Project within the corporate limits of the City.
2. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of state aid for this Project.
3. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final design plans, for the purpose of constructing the highway Project. The Secretary shall not participate in the cost of these rights of way or easements, unless the Secretary determines the City will incur an unnecessary hardship. The City shall execute the appropriate deeds and easements transferring its property rights to the Secretary. Further, the City acknowledges the execution and transferring of the deeds and easements by the City to the Secretary is an obligation of the City for this Agreement and construction of the Project.
4. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the rights of way shown on the Project plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting (provided, however, if the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The City further agrees it will not in the future permit the erection of gas and fuel dispensing pumps upon the rights of way of the Project, and it will require any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than 12 feet (3.7 meters) back of the right of way line. All rights of way provided for the Project shall be used solely for public highway purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the rights of way limits except as provided by state laws.
5. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.
6. To prohibit parking of vehicles on the city connecting link and on the acceleration

and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways the Secretary may deem necessary to permit free flowing traffic throughout the length of the improvement covered by this Agreement.

7. To maintain the control of access rights and to prohibit the construction or use of any entrance or access points along the Project other than those shown on the Project plans. The City agrees any exceptions there from must be approved by the Secretary.

8. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the City not to be reimbursed by the KDOT for rights of way, utility adjustments, construction, and construction engineering work phases, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

9. To be responsible for fifty percent (50%) of the total actual costs of construction (which includes the costs of all construction contingency items), up to \$400,000.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) that exceeds \$400,000.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of rights of way and utility adjustments for the Project.

10. To deposit with the Secretary the City's share of the total Project expenses known at the time of letting based upon estimated approved contract quantities. The City will remit its share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the letting date.

### ARTICLE III

#### THE PARTIES MUTUALLY AGREE:

1. The final design plans for the Project are by reference made a part of this Agreement.
2. They shall determine the manner in which traffic is to be handled during construction. It is therefore agreed between the Parties before Project plans have been completed, detour routes and street closings, if necessary, shall be agreed upon by authorized representatives of the City and the Secretary, and noted on the Project plans. If revisions to the traffic handling plan are proposed during the progress of construction, the City and the Secretary shall approve such revisions before they become effective.

3. They have in the past entered into an agreement covering routine maintenance of the city connecting link, and it is the intention of the Secretary and the City the agreement for routine maintenance shall remain in full force and effect and the mileage set out thereon shall not be affected by this Agreement.
4. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003 and any amendments thereto are incorporated by reference.
5. If, in the judgment of KDOT, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, KDOT may terminate this Agreement at the end of its current fiscal year. KDOT will participate in all costs approved by KDOT incurred prior to the termination of the Agreement.
6. The Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.
7. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.
8. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.
9. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

THE CITY OF DODGE CITY, KANSAS

\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR

(SEAL)  
  
Transportation

Kansas Department of Transportation  
Debra L. Miller, Secretary of

By: \_\_\_\_\_  
Jerome T. Younger, P.E.

(Date)

Deputy Secretary for Engineering and  
State Transportation Engineer

PROJECT NO. 400-29 U-2197-01  
SURFACING  
CITY OF DODGE CITY, KANSAS

## A G R E E M E N T

**PARTIES:** **DEBRA L. MILLER, Secretary of Transportation,** Kansas Department of Transportation (KDOT), hereinafter referred to as the “Secretary,”

**The City of Dodge City, Kansas,** hereinafter referred to as the “City,”

Collectively referred to as the “Parties.”

**PURPOSE:** The Secretary has authorized a maintenance project, hereinafter referred to as the “Project.” The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City. The Secretary desires to surface asphalt pavement on US-400, a city connecting link. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such state aid, such work is required to be done in accordance with the laws of Kansas.

**PROJECT:** The Secretary and the City desire to enter into this Agreement for the construction of the Project which is described as follows:

Surface recycling and resurfacing on US-400, from the US56/283 junction east to the east city limits, 0.52 miles.

### EFFECTIVE

**DATE:** The Parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the date signed by the Secretary or designee.

## ARTICLE I

### THE SECRETARY AGREES:

1. If necessary, in the name of the Secretary, to perform appraisal and acquisition work including condemnation for rights of way and easements as shown on the Project plans.
2. To prepare the Project plans, let the contract for the Project, award the contract to the lowest responsible bidder, administer the construction of the Project, and administer the payments due the contractor.

3. To be responsible for fifty percent (50%) of the total actual costs of construction (which includes the costs of all construction contingency items), not to exceed a maximum of \$200,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of construction (which includes the costs of all construction contingency items) that exceeds \$400,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of rights of way and utility adjustments for the Project.

4. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the Secretary will defend, indemnify, hold harmless, and save the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Secretary, the Secretary's employees, or subcontractors. The Secretary shall not be required to defend, indemnify, hold harmless, and save the City for negligent acts or omissions of the City or its authorized representatives or employees.

5. To require the contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the contractor, the contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

6. The Secretary will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes and other utilities, publicly or privately owned, which may be necessary to construct the Project in accordance with the final design plans. New or existing utilities to be installed, moved or adjusted will be located or relocated in accordance with the current version of the Kansas Department of Transportation Utility Accommodation Policy (UAP), as amended or supplemented.

If the City has a population of less than 2,501 (based on the U.S. Bureau of Census- 2000 Census), the Secretary agrees to be responsible for the expense to remove or adjust City owned utility facilities located on public rights of way as necessary to construct the Project in accordance with the final design plans. The payment of such expense by the Secretary shall be by a separate utility adjustment agreement between the Secretary and the City. If the City has a population of more than 2,500 (based on the U.S. Bureau of Census-2000 Census), the utility owners shall be responsible for the expense to remove or adjust all utility facilities on public rights of way as necessary to construct the Project in accordance with the final design plans. The expense of removal or adjustment of utility facilities located on private easements shall be reimbursed to the utility owners by the Secretary. The payment of such expense by the Secretary shall be by separate utility adjustment agreement between the Secretary and the utility owners.

## ARTICLE II

### THE CITY AGREES:

1. It shall, by resolution, authorize the Secretary to undertake and complete the Project within the corporate limits of the City.
2. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of state aid for this Project.
3. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final design plans, for the purpose of constructing the highway Project. The Secretary shall not participate in the cost of these rights of way or easements, unless the Secretary determines the City will incur an unnecessary hardship. The City shall execute the appropriate deeds and easements transferring its property rights to the Secretary. Further, the City acknowledges the execution and transferring of the deeds and easements by the City to the Secretary is an obligation of the City for this Agreement and construction of the Project.
4. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the rights of way shown on the Project plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting (provided, however, if the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The City further agrees it will not in the future permit the erection of gas and fuel dispensing pumps upon the rights of way of the Project, and it will require any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than 12 feet (3.7 meters) back of the right of way line. All rights of way provided for the Project shall be used solely for public highway purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the rights of way limits except as provided by state laws.
5. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.
6. To prohibit parking of vehicles on the city connecting link and on the acceleration

and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways the Secretary may deem necessary to permit free flowing traffic throughout the length of the improvement covered by this Agreement.

7. To maintain the control of access rights and to prohibit the construction or use of any entrance or access points along the Project other than those shown on the Project plans. The City agrees any exceptions there from must be approved by the Secretary.

8. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the City not to be reimbursed by the KDOT for rights of way, utility adjustments, construction, and construction engineering work phases, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

9. To be responsible for fifty percent (50%) of the total actual costs of construction (which includes the costs of all construction contingency items), up to \$400,000.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) that exceeds \$400,000.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of rights of way and utility adjustments for the Project.

10. To deposit with the Secretary the City's share of the total Project expenses known at the time of letting based upon estimated approved contract quantities. The City will remit its share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the letting date.

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#### THE PARTIES MUTUALLY AGREE:

1. The final design plans for the Project are by reference made a part of this Agreement.
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4. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003 and any amendments thereto are incorporated by reference.
5. If, in the judgment of KDOT, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, KDOT may terminate this Agreement at the end of its current fiscal year. KDOT will participate in all costs approved by KDOT incurred prior to the termination of the Agreement.
6. The Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.
7. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.
8. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.
9. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

THE CITY OF DODGE CITY, KANSAS

\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR

(SEAL)  
Transportation

Kansas Department of Transportation  
Debra L. Miller, Secretary of

By: \_\_\_\_\_  
Jerome T. Younger, P.E.

Deputy Secretary for Engineering and  
State Transportation Engineer

(Date)

**KANSAS DEPARTMENT OF TRANSPORTATION**

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

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,  
REHABILITATION ACT OF 1973, and any amendments thereto,  
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,  
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,  
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL  
JUSTICE IN MINORITY POPULATIONS AND LOW INCOME POPULATIONS (1994), and  
any amendments thereto,  
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 3555) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following seven "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following seven "Nondiscrimination Clauses", the term "consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- (1) Compliance with Regulations: The consultant will comply with the Regulations of the U. S. Department of Transportation relative to nondiscrimination in federally-

assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- (2) Nondiscrimination: The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.
- (4) Information and Reports: The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- (6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,

- (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation
- (a) Disadvantaged Businesses as defined in the Regulations, shall have a level playing field to compete fairly for contracts financed in whole or in part with Federal funds under this contract.
  - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
  - (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- (8) Executive Order 12898
- (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the state of Kansas and use such information in complying with this Order.
- (9) Incorporation of Provisions: The consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

**KANSAS DEPARTMENT OF TRANSPORTATION**

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By the Secretary of Transportation of the State of Kansas

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NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 3555) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following seven "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following seven "Nondiscrimination Clauses", the term "consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- (1) Compliance with Regulations: The consultant will comply with the Regulations of the U. S. Department of Transportation relative to nondiscrimination in federally-

assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- (2) **Nondiscrimination:** The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.
- (4) **Information and Reports:** The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) **Employment:** The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- (6) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,

- (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation
- (a) Disadvantaged Businesses as defined in the Regulations, shall have a level playing field to compete fairly for contracts financed in whole or in part with Federal funds under this contract.
  - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
  - (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- (8) Executive Order 12898
- (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the state of Kansas and use such information in complying with this Order.
- (9) Incorporation of Provisions: The consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

## *Engineering Department WIP Project Listing*

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### *City Administration*

CA 0700	CITY ADMINISTRATION
CA 0701	CASINO DEVELOPMENT
CA 0001	SPECIAL EVENTS CENTER
CA 9901	DOWNTOWN DODGE CITY LANDSCAPE PLAN

### *Facility Management*

FM 0100	FACILITY MANAGEMENT
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### *General Engineering*

GE 0700	GENERAL ENGINEERING
GE 9702	GIS DEVELOPMENT

### *Inspection*

IN 0700	INSPECTION
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### *Park*

PK 0700	PARK
PK 0701	ST. MARY'S IMPROVEMENTS
PK 0601	DODGE CITY PEDESTRIAN-BICYCLE PATH
PK 0602	SPIERS PARK DRAINAGE AND PARKING

### *Planning*

PL 0801	ARMY RESERVE CENTER
PL 0700	PLANNING
PL 0707	LOCAL UPDATE OF CENSUS ADDRESSES

### *Storm Drainage*

SD 0801	SMITH STREET STORM DRAINAGE
SD 0802	AVENUE D STORM DRAINAGE
SD 0803	3RD AVE. INLETS (MULBERRY, HICKORY)
SD 0804	ROLLIEDEE DRAINAGE IMPROVEMENTS
SD 0805	STORMWATER MASTER PLAN
SD 0806	LEVEE CERTIFICATION
SD 0807	BELL AVE. DRAINAGE IMPROVEMENTS
SD 0701	14TH AVE. & LINN STORM DRAIN
SD 0702	3RD AVE. INLET REPAIR (CEDAR, BRIER & DIVISION)
SD 0703	9TH AVE. DRAINAGE FLUME
SD 0704	NPDES PHASE II
SD 0401	KLIESEN HILLS DRAINAGE (ROSS E. BASIN)
SD 0301	NPDES PERMIT - PHASE II
SD 0103	14TH AVENUE DRAINAGE (HIGH ST. SOUTH 1000')
SD 9901	STORM DRAINAGE STRUCTURES - GIS MAPPING

### *Sanitary Sewer*

SS 0801	2008 MANHOLE REHABILITATION
SS 0802	SEWER MASTERPLAN UPDATE (PEC)
SS 0803	14TH AVE SANITARY SEWER EXTENSION
SS 0701	MANHOLE REHABILITATION
SS 0702	SEWER MASTERPLAN UPDATE (PEC)

*Engineering Department WIP Project Listing*

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SS 0402 COTTONWOOD SANITARY SEWER  
SS 0204 RANCHWOOD/HAPPY HOMES II SANITARY SEWER

*Street*

ST 0901 SIDEWALK PROGRAM  
ST 0801 2008 ASPHALT STREET SEALING PROGRAM  
ST 0802 2008 ASPHALT STREET PATCHING PROGRAM  
ST 0700 STREETS  
ST 0701 2007 ASPHALT STREET RECONSTRUCTION  
ST 0702 2007 STREET SEALING PROGRAM  
ST 0703 2007 SIDEWALK PROGRAM  
ST 0704 N 14TH AVE. WIDENING (FRONTVIEW-COUNTRY ACRES)  
ST 0706 FAIRWAY DR. EXTENSION  
ST 0707 6TH AVE RECONSTRUCTION  
ST 0604 COMMUNITY COLLEGE ENTRANCE  
ST 0501 6TH AVENUE CONSTRUCTION (ROSS BLVD - CITY LIMITS)  
ST 0504 14TH AVENUE RECONSTRUCTION (COUNTY-ROSS-IRON RD)  
ST 0508 14TH AVENUE RECONSTRUCTION (COMANCHE-US 50)  
ST 0306 3rd AVENUE SIDEWALK (FRONT ST - SPRUCE)  
ST 0201 WEST WYATT EARP RECONSTRUCTION (2ND - MATT DOWN LANE)

*Solid Wast*

SW 0700 SOLID WASTE

*Water*

WL 0801 KANSAS WATERLINE CONNECTING LINK  
WL 0700 WATER  
WL 0601 WTR QUALITY STUDY-PEC/ WTR WELL DEVELOPMENT  
WL 0605 WELL NO. 9 REHAB  
WL 0303 WELL #21 - RACETRACK  
WL 0006 WATER MAP UPDATES

*Zoning*

ZO 0700 ZONING

# Memo

**To:** City Commission  
**From:** Cherise Tieben, Assistant City Manager  
**CC:** Ken Strobel, City Manager  
**Date:** October 17, 2008  
**Re:** Boot Hill Bed and Breakfast and Dodge House Inn LRLF Applications

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The City Local Revolving Loan Fund (LRLF) Advisory Board reviewed the LRLF applications of Boot Hill Bed & Breakfast and Swift Investments, LLC on October 9, 2008.

The Boot Hill Bed & Breakfast application pertains to a loan package for the purchase of machinery & equipment in addition to working capital. The machinery and equipment portion of the loan proceeds will be used for the purchase of heating and air units to increase efficiency. The applicant has requested of the City thirty-five thousand dollars (\$35,000.00) at a rate of six percent (6%) for a term of seven (7) years. However, the Boothill Bed & Breakfast has an existing LRLF with the City. The Advisory Board has recommended that the two loans be consolidated into one loan and extended back to the ten year term as is the original loan. The total project will create 1 low to moderate income job within an 18 month period. This job creation allows the loan to readily fulfill the job creation requirement of the State which is followed in this program. As typical with an LRLF loan, the following will be provided as collateral to the City for the loan:

- A. will continue a 2nd mortgage and will have a 4th lien on the assets of the business.
- B. an assignment of life insurance on Enid Scadden was increased \$35,000.00.
- C. hazard insurance with lender as mortgagee and loss payee was continued.
- D. personal guaranty's of Kurt and Enid Scadden.

The Swift Investment, LLC (Dodge House Hotel) application pertains to working capital for building improvements. The improvements range from safety, cleanliness, comfort and aesthetics. The Swift's are simultaneously applying to the City for \$75,000.00 and the County for \$200,000, however, one loan is not contingent upon the other. The loan rate is 6% with a term of 7 years. The total project will create 8 full time equivalent jobs with at least 5 being low to moderate income positions, which readily fulfills the program requirements. If the Swift's are successful with both loan applications, the County and the City would share a third mortgage position and a second lien on inventory, supplies, accounts receivable, etc. Also both the County and the City would have personal guarantees from Mr. and Mrs. Swift and be listed as mortgagee and loss payee on the hazard insurance. In similar situations in the past, we have shared these positions with the County when both organizations have loaned funds to the same entity. The LRLF Advisory Board recommends this loan for approval by the Commission.

The LRLF has one hundred sixteen thousand dollars (\$116,000.) available to lend to qualified applicants at this time.

In addition, I would like to request that the City Commission approve the loan and authorize the City Manager to approve the final loan documents for the Mayor and the Finance Directors signature. The personal financials and business plan will be kept in the City Manager's office for your confidential review.

If you have any questions or wish any additional information, please do not hesitate to contact me at your convenience.